



COMPETITION COMMISSION OF INDIA

*Suo Motu Case No. 1 of 2014*

***In Re: Alleged cartelisation in supply of LPG Cylinders procured through tenders by Hindustan Petroleum Corporation Ltd. (HPCL)***

**Allampally Brothers Ltd.**  
Aluva, Kerala

**Opposite Party No.1**

**Asian Fab Tec Ltd.**  
Bengaluru,  
Karnataka

**Opposite Party No.2**

**AKMN Cylinders (P) Ltd.**  
Musiri, Tamil Nadu

**Opposite Party No.3**

**Andhra Cylinders**  
Medak District, Andhra Pradesh

**Opposite Party No. 4**

**Bhiwadi Cylinders Pvt. Ltd.**  
Bhikaji Cama Place, New Delhi

**Opposite Party No.5**

**Balaji Pressure Vessels Ltd.**  
Secunderabad, Andhra Pradesh

**Opposite Party No.6**

**BTP Structural India Pvt. Ltd.**  
Belgaum, Karnataka

**Opposite Party No.7**

**Carbac Holdings Ltd.**  
Ronaldshay Road, Kolkata

**Opposite Party No.8**

**Confidence Petroleum India Ltd.**  
Nagpur, Maharashtra

**Opposite Party No.9**

**Confidence Petroleum India Ltd. (Halol)**  
Nagpur, Maharashtra

**Opposite Party No.10**

**Daya Industries**  
Chandigarh, Haryana

**Opposite Party No.11**

**ECP Industries Ltd.**  
Balasore, Orissa

**Opposite Party No.12**

**Faridabad Metal Udyog Pvt. Ltd.**  
Faridabad, Haryana

**Opposite Party No.13**



**Gopal Cylinders - (Unit-III)**  
Panchkula, Haryana

**Opposite Party No.14**

**Gopal Cylinders**  
Panchkula, Haryana

**Opposite Party No.15**

**GDR Cylinders (P) Ltd.**  
Chennai, Tamil Nadu

**Opposite Party No.16**

**Ginni Industries**  
Ranchi, Jharkhand

**Opposite Party No.17**

**Hans Gas Appliances Pvt. Ltd.**  
Raigarh, Maharashtra

**Opposite Party No.18**

**Southern Cylinders Pvt. Ltd.**  
Hyderabad, Telengana

**Opposite Party No.19**

**Hyderabad Cylinders Pvt. Ltd.**  
Hyderabad, Telengana

**Opposite Party No.20**

**Haldia Precision Engineering Pvt. Ltd.**  
Kolkata, West Bengal

**Opposite Party No.21**

**International Cylinders (P) Ltd.**  
Paonta Sahib, H.P

**Opposite Party No.22**

**J.K.B. Gas Pvt. Ltd.**  
Kolkata, West Bengal

**Opposite Party No.23**

**Kurnool Cylinders Pvt. Ltd. (Unit-II)**  
Hyderabad, Telengana

**Opposite Party No.24**

**Krishna Cylinders**  
Chandigarh, Haryana

**Opposite Party No.25**

**Raghupati Synergy Pvt. Ltd.**  
Kirti Nagar, New Delhi

**Opposite Party No.26**

**Khara Gas Equipments Pvt. Ltd.**  
Nagpur, Maharashtra

**Opposite Party No.27**

**Intel Gas Gadgets (P) Ltd. (Unit-II)**  
GK-I, South Delhi

**Opposite Party No.28**

**Lite Containers Pvt. Ltd.**  
Chennai, Tamil Nadu

**Opposite Party No.29**

**Mahaveer Cylinders Ltd.**  
Ghaziabad, Uttar Pradesh

**Opposite Party No.30**



**Mauria Udyog Ltd.**  
Kolkata, West Bengal

**Opposite Party No.31**

**North India Wires Ltd. (Howrah)**  
Kolkata, West Bengal

**Opposite Party No.32**

**Nandi Cylinders Pvt. Ltd**  
Hyderabad, Telengana

**Opposite Party No.33**

**North India Wires Ltd. (Unit-II)**  
Kolkata, West Bengal

**Opposite Party No.34**

**Omid Engineering Pvt. Ltd.**  
Una, Himachal Pradesh

**Opposite Party No.35**

**Om Containers**  
Nasik, Maharashtra

**Opposite Party No.36**

**Prestige Fabricators Pvt. Ltd.**  
Indore, M.P

**Opposite Party No.37**

**Punjab Gas Cylinders Ltd.**  
Sangur, Punjab

**Opposite Party No.38**

**Prathima Industries Pvt. Ltd.**  
Hyderabad, Telengana

**Opposite Party No.39**

**Rajasthan Cylinders & Containers Ltd.**  
Jaipur, Rajasthan

**Opposite Party No.40**

**Konark Cylinders & Containers Pvt. Ltd.**  
Bhubaneshwar, Orissa

**Opposite Party No.41**

**R.M. Cylinders Pvt. Ltd.**  
Barkatpura, Hyderabad

**Opposite Party No.42**

**Saboo Cylinders Pvt. Ltd.**  
Nahan, HP

**Opposite Party No.43**

**Sanghvi Cylinders Pvt. Ltd.**  
Hyderabad,  
Telengana

**Opposite Party No.44**

**Sahuwala Cylinders (P) Ltd.**  
Visakhapatnam, Andhra Pradesh

**Opposite Party No.45**

**Sunrays Engineers Pvt. Ltd.**  
Delhi

**Opposite Party No.46**



**Sarthak Industries Ltd.**  
Mumbai, Maharashtra

**Opposite Party No.47**

**S.M. Cylinders**  
Kirti Nagar,  
New Delhi

**Opposite Party No.48**

**Shri Shakti Cylinders P Ltd.**  
Hyderabad, Telengana

**Opposite Party No.49**

**Shri Ram Cylinders**  
Chandigarh,  
Haryana

**Opposite Party No.50**

**Sri Sai Balaji Gas Cylinders Pvt. Ltd.**  
Chennai, Tamil Nadu

**Opposite Party No.51**

**Surya Shakti Vessels Pvt. Ltd.**  
South Extension, Part-II,  
New Delhi

**Opposite Party No.52**

**Super Industries**  
Nasik, Maharashtra

**Opposite Party No.53**

**Tirupati Cylinders Ltd.**  
Preet Vihar,  
Delhi

**Opposite Party No.54**

**Tirupati Containers Pvt. Ltd.**  
Ghaziabad, UP

**Opposite Party No.55**

**Tirupati LPG Industries Ltd.**  
Dehradun, UK

**Opposite Party No.56**

**Teekay Metals Pvt. Ltd.**  
Nasik, Maharashtra

**Opposite Party No.57**

**Universal Cylinders Ltd. (Unit-II)**  
Delhi

**Opposite Party No.58**

**Vidhya Cylinders Pvt. Ltd.**  
Gwalior, MP

**Opposite Party No.59**

**Universal Cylinders Ltd.**  
New Delhi

**Opposite Party No.60**

**Sahuwala Cylinders (P) Ltd.(Unit-II)**  
Autohangar, Visakhapatnam  
Andhra Pradesh

**Opposite Party No.61**



**Him Cylinders Ltd.**  
Una, H.P

**Opposite Party No.62**

**Jesmajo Industrial Fabrications Karnataka Pvt. Ltd.**  
Bengaluru, Karnataka

**Opposite Party No.63**

**Winfab Equipments Pvt. Ltd.**  
Erragadda, Hyderabad,

**Opposite Party No.64**

**Pankaj Gas Cylinders Ltd.**  
Sangpur, Punjab

**Opposite Party No.65**

(Hereinafter collectively called ‘the Opposite Parties/ the OPs’)

**CORAM**

**Ashok Kumar Gupta**  
Chairperson

**U.C. Nahta**  
Member

**Sangeeta Verma**  
Member

**Present:**

For Gopal Cylinders (Unit-III), Gopal Cylinders, Shri Ram Cylinders, Krishna Cylinders & their officers identified by the DG	Mr. Ramji Srinivasan, Sr. Advocate Mr. Amit Goyal, Advocate Ms. Sylona Mohapatra, Advocate Mr. Nikhil Ramdev, Advocate
For Universal Cylinders Ltd. (Unit –II), Universal Cylinders Ltd., Mahaveer Cylinders Ltd., Vidhya Cylinders Pvt Ltd, Saboo Cylinders Pvt Ltd., GDR Cylinders (P) Ltd., Kurnool Cylinders Pvt. Ltd. (Unit II), Punjab Gas Cylinders Pvt. Ltd., Bhiwadi Cylinders Pvt. Ltd., Surya Shakti Vessels Pvt Ltd., Sunrays Engineers Pvt. Ltd., Winfab Equipments Pvt. Ltd. & their officers identified by the DG.	Mr. Praveen Mahajan, Advocate Mr. Ishan, Advocate Mr. Pragun Dua, Advocate

For Allampaly Brothers Ltd., BTP Structural India Pvt Ltd., Carbac Holding Ltd., Daya Industries, Haldia Precision Engineering Pvt. Ltd., International Cylinders (P) Ltd., Raghupati Synergy Pvt Ltd., Intel Gas Gadgets (P) Ltd. (Unit-II), Mauria Udyog Ltd., North India Wires Ltd. (Howrah), North India Wires Ltd. (Unit-II), Omid Engineering Pvt Ltd., Prestige Fabricators Pvt Ltd., Konark Cylinders & Containers Pvt Ltd., S.M. Cylinders, Shri Shakti Cylinders P Ltd., Tirupati Cylinders Ltd., Tirupati LPG Industries Ltd., Him Cylinder Ltd. & their officers identified by the DG	Mr. Amol Sinha, Advocate Mr. Rahul Kochar, Advocate Mr. Kshitiz Garg, Advocate Mr. Ashvini Kumar, Advocate Mr. Anshum Jain, Advocate
For Tirupati Containers Pvt. Ltd., Andhra Cylinders, Confidence Petroleum India Ltd., Confidence Petroleum India Ltd.(Halol), Hans Gas Appliances Pvt. Ltd., Khara Gas Equipments Pvt. Ltd., Faridabad Metal Udyog Pvt Ltd. & their officers identified by the DG	Mr. Pradeep Aggarwal, Advocate Ms. Arjun Aggarwal, Advocate Mr. Jacob Mathews, Power Attorney Holder & Commercial Manager
For J.K.B Gas Pvt Ltd. & its officer identified by the DG	Mr. Manas Kumar Chaudhuri, Advocate Mr. Ebaad Nawaz Khan, Advocate
For HPCL	Mr. Sanjay Das Gupta, GM, Mr. Pradeep Chauhan, DGM, Mr. Siva Shankar, Chief Manager
For Asian Fab Tec Ltd. & its officers identified by the DG	Ms. V. Susheatha, Advocate
For Om Containers, Super Industries, Teekay Metals Pvt. Ltd., Sahuwala Cylinders (P) Ltd. Sahuwala Cylinder (P) Ltd. (Unit-II) & their officers identified by the DG	Mr. Ankur Sood, Advocate
For Jesmajo Industrial Fabrications Karnataka Pvt. Ltd. & its officer identified by the DG	Mr. O P Gaggar, Advocate

For Lite Containers Pvt. Ltd., AKMN Cylinders (P) Ltd., Sri Sai Balaji Gas Cylinders Pvt. Ltd. & their officers identified by the DG	Mr. Krishna Kumar, Advocate
For Rajasthan Cylinders & Containers Ltd. & its officer identified by the DG	Mr. Avinash Bajoria, Advocate, Mr. Siddharth Bhatia, Advocate
For ECP Industries Ltd.	Dr. Kedar Nath Tripathy, Advocate
For Prathima Industries Pvt. Ltd., Balaji Pressure Vessels Ltd. Southern Cylinders Pvt. Ltd., Hyderabad Cylinders Pvt. Ltd., Nandi Cylinders Pvt Ltd., R.M. Cylinders Pvt Ltd., Sanghvi Cylinders Pvt. Ltd., Sarthak Industries Ltd., Ginni Industries and Pankaj Gas Cylinders Ltd.	None

### **Order under Section 27 of the Competition Act, 2002**

#### **A. Background**

1. An anonymous letter dated 25.04.2013 was received in the Commission wherein it was alleged that there was a cartel operating in tenders floated by Hindustan Petroleum Corporation Ltd. (“**HPCL**”) in contravention of the provisions of Section 3 of the Competition Act, 2002 (“**Act**”).
2. The facts and allegations raised in present matter are summarised as under:
  - i. HPCL floated e-tender No. 11000083-HD-12001 dated 28.10.2011, for supply of 45,00,000 14.2 Kg LPG cylinders (“**Tender No.1**”). Tender No.1 was floated under two bid system (unpriced/technical and priced bids) for supply of cylinders to its depots in 18 states. As per the tender conditions, a bidder could quote for a maximum of 9 states out of 18. In this tender a total of 78 LPG cylinder manufacturers participated and submitted their bids. Out of 78 bidders, 72 were technically qualified. Out of 72, 53 bidders met the qualification criteria for ‘existing vendor’ in terms of the conditions in the tender and 19 qualified as ‘new vendors’. It was alleged that orders were placed on vendors at prices higher than

the procurement price of the other oil companies with the same vendors during the same period. It was also alleged that cylinders continued to be procured at higher rates and HPCL may have incurred losses running into crores by placing orders at higher rates.

- ii. HPCL floated another e-tender No. 12000147-HD-12001 dated 24.01.2013 under the two bid system (unpriced/technical and priced bids) for supply of 40,00,000, 14.2 Kg LPG cylinders (“**Tender No.2**”) to its bottling plants located in 18 states. The unpriced bids were to be opened on 15.02.2013. In this tender, 66 LPG manufacturers had participated by submitting their bids. Out of 66 bidders, 65 were technically qualified and 1 was disqualified. 04 qualified in the category of ‘existing vendors’ and 10 qualified as ‘new vendors’. It had been alleged that while technical evaluation was in progress, 51 bidders withdrew their bids by submitting letters of withdrawal from Tender No.2. While some cited reasons such as power cuts, labour problems, *etc.* for withdrawal of bids, certain others did not provide any reason. After withdrawal, HPCL decided to proceed with the evaluation of the remaining bidders and found that 5 were from ‘existing vendor’ category and 10 were from ‘new vendor’ category. Tender rates were finalised based on L-1 rates obtained from bids of 4 ‘existing vendors’ category. It was stated by HPCL that as there was delay in finalising the price bids of Tender No.2, to meet its present requirement, purchase orders were placed on 4 existing vendors at L-1 rates under Tender No.1. As per HPCL, price bids of Tender No.2 were opened on 31.05.2013 and since then purchase orders based on new L1 rates were being placed.

**B. *Prima-facie* consideration by the Commission and directions to Director General**

3. On the basis of letter dated 25.04.2013 the Commission registered a *Suo-Motu* Case No. 1 of 2014 under Section 19 (1) of the Act. As regards Tender No.1, the Commission observed that a comparison of price bids submitted by vendors showed a similarity of pattern in the price bids submitted by 53 vendors. Further, many vendors had submitted exactly the same or similar bids in most of the 18 states, which indicated a possible collusion and concerted action amongst the bidders. The Commission further observed that 45 out of total 78 bidders of Tender No.1 were found to have infringed the provisions of Section 3(3) of the Act in *Suo-Motu* Case No. 3 of 2011 (*In Re: Suo-Motu case against LPG cylinder manufacturers*).



4. With respect to Tender No.2, the Commission observed that comparison of the price bids submitted by 4 bidders from existing vendor category revealed that they submitted their respective bids in a close range and out of these two bidders (Krishna Cylinders and Gopal Cylinders) submitted same price bids in the states where they had participated. The Commission further observed that 40 bidders out of 66 in Tender No.2 were found to have contravened the provisions of Section 3(3) of the Act in *Suo-Motu* Case No. 3 of 2011. Furthermore, 51 bidders withdrew their bids without any plausible reason and the collective withdrawal of their bids lend credence to the allegation of existence of an understanding or arrangement amongst them.
5. Upon considering the information and allegations therein, the Commission passed an order dated 02.01.2014, under Section 26 (1) of the Act directing the Director General (DG) to cause an investigation into the matter. The DG was also directed to investigate the role (if any) of the persons who were in-charge of and responsible to the companies for the conduct of their business. DG submitted its Investigation Report in respect of both Tender No.1 and Tender No.2 to the Commission on 06.10.2016.

### C. Findings of investigation in the Investigation Report

6. Major findings recorded in the Investigation Report are summarised as under:

#### ***Market conditions conducive to cartelisation:***

- i. Apart from HPCL, Indian Oil Corporation Ltd. (IOCL), and Bharat Petroleum Corporation Ltd. (BPCL) (OMCs) are the other market players in the procurement of empty LPG cylinders for retail and distribution of 14.2 Kg LPG filled cylinders. As per information available on the website of Petroleum and Explosive Safety Organisation (PESO), the investigation revealed that there were 155 authorized LPG cylinders manufacturers in India whereas yearly demand of HPCL for LPG Cylinders is approximately between 50,00,000-60,00,000 cylinders and vendors participating in tender are 60-80 in number. Such suppliers are connected either by being in one group, common management or related management, which reduces the number of effective competitors. Further, the demand can be easily estimated and markets can be allocated and shared between them. In this case, the manufacturers know that there is no substitute to 14.2 Kg LPG cylinder, thereby

giving them an opportunity to collude. The bidding takes place on repetitive basis, which gives chance to the suppliers of LPG Cylinders to reach at an agreement to allocate contracts amongst themselves. As the LPG cylinder manufacturers are engaged in manufacturing and supply of an identical product, there are more chances of meeting of minds of the manufacturers. Also, there is little or no technological change in the product design helping firms to reach an agreement. The presence of an industry association makes the market all the more conducive to formation of a cartel as it provides a common platform for the manufacturers to meet and indulge in anti-competitive acts. In view of the foregoing, the market for supply of 14.2 Kg LPG cylinders with SC valve is conducive for cartelisation.

***Findings in relation to Tender No. 1***

- ii. As regards Tender No.1, out of 53 bidders who submitted bids, it was revealed during investigation that several entities had common or related management. Not only the related concerns quoted identical prices in this tender, but also several different unrelated entities quoted identical rates for different States. The DG has done an analysis of identical rates quoted by enterprises for different states, which would be discussed in detail while dealing with the case on merits.
- iii. The manufacturing units of different OPs are located at different places and in different States. While the manufacturing and transportation cost provided by the OPs did not match with each other, their final quoted rates were either identical or within a narrow range. Further, during the course of investigation, most of the OPs stated that freight was one of the most important determinants of cost in submission of a bid. Therefore, freight cost for supply of cylinders could not be same for delivery to a particular station from different manufacturing plants situated across different States. Also, other components such as tax credit (which is not available in every state), excise duty exemption, power supply tariff etc. which affect costs of a firm, were also different in different states. Despite the above, the bidders had quoted identical rates for different states. This pointed to a collusion and understanding among them.
- iv. Several OPs quoted not only identical L1 rates, but also identical L2, L3, L4 and L-5 rates without any justification or basis.

- v. Although the OPs were located at different geographical location of the country, the investigation revealed that they were in contact with each other and exchanged vital and sensitive information. Most of the OPs during their depositions before the DG admitted to be in touch with each other and meeting them on various occasions such as pre-bid meetings, negotiation meetings, *etc.* Several OPs were owned and controlled by members of the same family or were relatives with business and financial dealings amongst them. Various OPs admitted during the course of investigation to have met regularly at social gatherings.
- vi. Based on the above, the DG found 48 OPs to be in contravention of the provisions of Section 3(3)(d) read with Section 3(1) of the Act. The investigation also identified certain office bearers of the OPs who were in charge of and responsible for the conduct of the business of the respective OP and thus, found them liable under Section 48 of the Act.

***Findings in relation to Tender No.2***

- vii. As regards Tender No.2, identical rates were quoted by two qualified bidders, *viz* Krishna Cylinders and Gopal Cylinders out of four qualified bidders from the 'existing vendor category'. These two bidders had quoted identical prices in 8 states out of a total of 10 in which they had submitted bids. The other two qualified bidders were ECP Industries Ltd. and Pankaj Gas Cylinders Ltd.
- viii. The representatives of both these firms admitted in their depositions before the DG that they always discussed rates for the tenders of LPG cylinders and quoted accordingly. Hence, these OPs had quoted rates in Tender No.2 after discussing with each other and thereby contravened provisions of Section 3(3)(d) of the Act.
- ix. 51 OPs withdrew their bids, out of which 46 OPs simultaneously withdrew their bids on 04.03.2013, while technical evaluation of Tender No.2 was still in progress. Most of the OPs either stated no reasons for withdrawal or stated a common reason "*Due to unavoidable circumstances*". The bidders are stated to have been aware that no action like blacklisting could be taken against them as they were withdrawing from the tender process before opening of price bids. Since the entire

quantity of 40,00,000 cylinders was expected to be procured through the tender, it could not be finalized by HPCL due to collusive action of the bidders. Repeat orders were thus placed by HPCL on the existing vendors at the existing rates for uninterrupted supply in the market to meet the demand of this important product.

- x. OPs who withdrew their bids were examined by the DG. Written replies were also sought from them by the DG seeking reasons for withdrawal from Tender No.2. Detailed discussion and analysis in regard is carried out subsequently while dealing with the case on merits.
- xi. Several OPs had discussions amongst themselves before withdrawing from Tender No.2 which is evidenced by exchange of withdrawal letter format through e-mails between them. Withdrawal letters sent to HPCL by several OPs were identical. In certain cases, even though the format of withdrawal letter were not identical, the reasons stated by the OPs for withdrawal were similar, which may not have been possible unless the OPs had acted in concert.
- xii. Scrutiny of IP addresses of the OPs related to Tender No.2, revealed that several OPs had identical IP addresses through which their bids were uploaded. It was brought out that the OPs which had common management or related management were always aware of internal decisions of their related entities. Even unrelated OPs had uploaded bids from common IP addresses, which by no stretch of imagination could be possible without their reaching an understanding amongst each other.
- xiii. There were 6 common agents working for LPG cylinder manufacturers. The main job of agents is to receive documents from and submit documents from/to oil companies for their principal(s) and convey important information to principal(s). Such agents met each other frequently and were aware of decisions of other companies. At times, the agents also worked for other agents in their absence. Further, many times some of the OPs authorised other agents instead of their own to represent their company before the OMCs in their tenders. This suggested that information among the cylinder manufacturers regarding tenders and other issues passed quickly through their agents. Further, the agents did not have any

confidentiality agreements with their principal(s) which also led to dissemination of information freely among bidders.

- xiv. OPs were in regular contact with each other through e-mails. The DG also relied upon email exchanges between the OPs during the period of investigation to prove that OPs have shared important and confidential information relating to tenders, negotiations, strategies, etc.
- xv. *Vide* email dated 15.02.2013, Mr. D.V. Rajasekhar, Managing Director of Shri Shakti Cylinders (P) Ltd. had shared information in relation to bid price with Mr. P.K. Gupta, Director of Sahuwala Cylinders (P) Ltd.
- xvi. There was an active national level association of manufacturers namely, Indian LPG Cylinders Manufacturers Association and regional associations namely, North India LPG Cylinder Manufacturers Association and Rajasthan LPG Cylinder Manufacturers Association. These associations gave a platform to the OPs to discuss and exchange various issues. The OPs, however, had denied existence of such associations but it was discovered that these did exist. The fact of existence of associations was established by exchange of information between the OPs under banner of different associations.
- xvii. Based on the above, the DG found 53 OPs to be in contravention of provisions of Section 3(3)(d) read with Section 3(1) of the Act with respect to Tender No.2.
- xviii. The investigation also identified certain office bearers of the OPs who were in charge of and who were responsible for the conduct of the business of the respective OP and thus, found them liable under Section 48 of the Act.

#### **D. Consideration of Investigation Report and Cross-examination Report**

- 7. The Commission, in its meeting held on 09.02.2017, considered the Investigation Report submitted by the DG and decided to forward copies to the OPs and the persons identified by the DG for the purpose of Section 48 of the Act, for filing their written objections/ suggestions thereto on or before 12.04.2017 and appear for hearing on the Investigation Report on 27.04.2017. The OPs and their officials found liable by the DG under Section 48 were also asked to file copies of their audited financial statements

including balance sheets and profit and loss accounts/ Income Tax Returns for the financial years 2013-14, 2014-15 and 2015-16. The Commission also decided to forward a copy of the Investigation Report to HPCL to file its objections/suggestions to the Investigation Report.

8. On 27.04.2017, the Commission observed that some of the parties had either not filed their written submissions or had filed part submissions and thus requested the Commission to grant extension of time to file their objections/suggestions to the Investigation Report. Accordingly, the Commission allowed the parties to file their objections/suggestions, if any, latest by 17.07.2017. The Commission also decided to hear the OPs including the office bearers identified by the DG under Section 48 of the Act and HPCL, on the Investigation Report on 29.08.2017, 31.08.2017 and 05.09.2017.
9. Subsequently, the Commission received applications dated 14.07.2017, from Andhra Cylinders, Confidence Petroleum India Ltd., Confidence Petroleum India Ltd. (Halol), Hans Gas Appliances Pvt. Ltd., Khara Gas Equipments Pvt. Ltd., Faridabad Metal Udyog Pvt. Ltd., Tirupati Containers Pvt. Ltd. and their respective office bearers, seeking cross-examination of certain persons. Upon hearing these OPs, the Commission *vide* order dated 19.02.2018, allowed the cross-examination of 11 persons, who were officials of HPCL, agents of OPs and authorised representatives of OPs and directed the DG to conduct cross-examination and submit its report.
10. After seeking due extension of time, the DG submitted the Cross-Examination Report on 06.12.2018. As per the DG, the evidences gathered during investigation could not be challenged by the OPs, who had requested cross-examination. These OPs could not establish their non-involvement in the collusive behaviour in Tender No. 1 and Tender No. 2. Further, the proceedings of cross-examination of the witnesses could not bring out any new facts/material which could negate the findings in the Investigation Report.
11. Upon considering the Cross-Examination Report on 09.01.2019, the Commission decided to forward copies to all the OPs and their office bearers identified by the DG under Section 48 of the Act and to HPCL, for filing their respective written submissions/objections and hear them on the Investigation Report on 05.03.2019, 06.03.2019 and 07.03.2019, respectively. Upon completion of hearing on 07.03.2019,

the Commission directed the officers of HPCL to submit certain information, with an advance copy to the OPs, within one week of receipt of the order dated 07.03.2019. The OPs (including those parties who did not appear before the Commission on 05.03.2019, 06.03.2019 and 07.03.2019) were directed to file their respective written submissions, within two weeks of receipt of submissions from HPCL.

#### **E. Submissions of HPCL**

12. HPCL filed the requisite information, in terms of order dated 07.03.2019, on 26.04.2019, after seeking extension of time. A gist of the submissions filed by HPCL is as under:

- i. The tender conditions contained in Tender No.1 and Tender No.2 are in the nature of rate contracts.
- ii. With respect to treatment accorded to identical bids received from OPs in Tender No.1, especially having regard to Clause 11 (c) of the Instructions to Tenderers (Annexure-1 to Tender No.1) it has been stated that as per the records pertaining to Tender No.1, two or more vendors have quoted identical rates in some states. HPCL negotiated with vendors to reduce their rates and purchase orders were placed on such negotiated rates in most of the states. Negotiating rates below L-1 rates quoted in Tender No.1 was in line with clause 11(c) of the Instructions to Tenderers in Tender No.1. Clause 11(c) of the Instructions to Tenderers (Annexure-1 to the tenders) is reproduced as follows:

*“11(c) Notwithstanding anything contained elsewhere in this tender, in the event the Corporation receives the same rate for any state / states from 2 or more bidders, the Corporation reserves the right to believe that these bidders have formed a cartel, and the rate quoted as cartel rate and may accept or reject or not reckon such rates/ offered quantities/ States participated/ ranking etc., of such offers. In such cases, the Corporation also reserves the right to follow the negotiation process with such bidders if deemed fit and amend the order distribution criteria / ratio best suited to the interest of the Corporation.”*



- iii. In response to the specific question whether HPCL had invoked the integrity pact submitted by respective bidders in both the tenders, it was stated that it had not invoked the integrity pact submitted by the respective bidders in either of the tenders.
- iv. In respect of factors taken into consideration by HPCL in finalising the price per cylinder prior to award of tender to various parties including the nature and extent of consideration of price bids submitted by the parties, HPCL responded as under:

*“The internal estimate of HPCL prior to floating of tender is one of the guiding factors in finalising the price per cylinder. The internal estimate is arrived at by considering the price of Body steel, steel for foot ring and VP Ring, Bung, SC Valve and cost of consumables like paint, welding rods, inert gas, Zinc wire, furnace oil, iron shots/grits, flux (SAW welding), DD compound, cost of spares, stores, etc., BIS marking fee, PESO fee, packing charges, loading/unloading charges etc., manufacturing cost like labour cost, electricity cost, administrative charges and steel transportation cost, finished cylinder transportation costs, taxes, working capital, profit margin, etc.*

*The existing procurement cost of HPCL and Industry rates compared to the price bids submitted by parties to HPCL and the time the existing tenders of industry were finalised is another factor taken into consideration during finalisation.”*

**F. Submissions/Replies of OPs to Investigation Report and Cross-Examination Report**

13. In February, 2017, J.K.B. Gas Pvt. Ltd filed its response to the Investigation Report. Thereafter, in April, 2017, the OPs, namely, Allampally Brothers Ltd., Asian Fab Tec Ltd., Bhiwadi Cylinders Pvt. Ltd, BTP Structural India Pvt. Ltd, Daya Industries, GDR Cylinders (P) Ltd, Him Cylinders Ltd, International Cylinders (P) Ltd, Intel Gas Gadgets (P) Ltd (Unit-II), Jesmajo Industrial Fabrications Karnataka Pvt Ltd, Kurnool Cylinders Pvt. Ltd (Unit-II), Mahaveer Cylinders Ltd, Mauria Udyog Ltd., Omid Engineering Pvt. Ltd, Punjab Gas Cylinders Ltd, Prathima Industries Pvt. Ltd, Saboo Cylinders Pvt. Ltd, Sunrays Engineers Pvt. Ltd, Sarthak Industries Ltd., Surya



Shakti Vessels Pvt. Ltd., Vidhya Cylinders Pvt Ltd and Universal Cylinders Ltd. (Unit-II) filed their replies to the Investigation Report. In July, 2017, the OPs, namely, Andhra Cylinders, Carbac Holdings Ltd., Haldia Precision Engineering Pvt. Ltd. , Confidence Petroleum India Ltd (Halol), Faridabad Metal Udyog Pvt. Ltd., Gopal Cylinders (Unit-III), Gopal Cylinders, Hans Gas Appliances Pvt. Ltd., Hyderabad Cylinders Pvt. Ltd., Konark Cylinders & Containers Pvt. Ltd., Krishna Cylinders, Khara Gas Equipments Pvt. Ltd, Nandi Cylinders Pvt. Ltd., North India Wires Ltd (Unit-II), North India Wires Ltd (Howrah), Om Containers, Prestige Fabricators Pvt. Ltd, Raghupati Synergy Pvt. Ltd, R.M. Cylinders Pvt. Ltd., Sanghvi Cylinders Pvt. Ltd., Sahuwala Cylinders (P) Ltd., S.M. Cylinders, Shri Shakti Cylinders P Ltd, Shri Ram Cylinders, Super Industries, Tirupati Cylinders Pvt. Ltd., Tirupati LPG Industries Ltd. and Teekay Metals Pvt. Ltd. filed their replies to Investigation Report.

14. In February, 2019, the OPs namely, Andhra Cylinders, Confidence Petroleum India Ltd (Halol), Faridabad Metal Udyog Pvt. Ltd., Hans Gas Appliances Pvt. Ltd., J.K.B. Gas Pvt. Ltd., Khara Gas Equipments Pvt. Ltd., Lite Containers Pvt. Ltd., Rajasthan Cylinders & Containers Ltd. and Tirupati Containers Pvt. Ltd. filed their respective responses to the Cross-Examination Report.
15. After conclusion of hearing held on 05.03.2019, 06.03.2019 and 07.03.2019, certain OPs filed their written submissions as well as their submissions to the response filed by HPCL. Certain OPs also filed their financial statements after the conclusion of hearing, in compliance with orders of the Commission.
16. Mr. Pradeep Agarwal, the authorised representative for Tirupati Containers Pvt. Ltd., Andhra Cylinders, Confidence Petroleum India Ltd., Confidence Petroleum India Ltd. (Halol), Hans Gas Appliances Pvt Ltd., Khara Gas Equipments Pvt. Ltd, Faridabad Metal Udyog Pvt. Ltd. and their office bearers, submitted at length in relation to both Tender No.1 and Tender No.2. The authorised representatives present for other OPs during the hearing, adopted the arguments of Mr. Pradeep Agarwal in so far as the said arguments were applicable to their case in relation to allegations pertaining to Tender No.1 and Tender No.2.
17. The submissions made by the OPs in their replies to the Investigation Report, Cross-Examination Report, oral submissions made during the course of hearing held on

05.03.2019, 06.03.2019 and 07.03.2019, and written submissions filed pursuant to the order dated 07.03.2019 passed by the Commission, are summarised as under:

- i. Reliance was placed upon the judgment of the Hon'ble Supreme Court in the case of *State of Gujarat and others Versus Utility Users' Welfare Association and Others* reported as (2018) 6 SCC 21, to contend that it is mandatory to have a judicial member in the Commission, which performs adjudicatory functions. Reliance was also placed upon other judgments of the Hon'ble Supreme Court in the cases of *Competition Commission of India Versus Steel Authority of India Ltd. and Another* reported as (2010) 10 SCC 744 and *Madras Bar Association Versus Union of India and another* reported as (2014) 10 SCC 1, in this regard.
- ii. OPs also referred to the judgment of the Hon'ble Supreme Court in the case of *Rajasthan Cylinders and Containers Ltd. Versus Union of India and another* with other connected cases (Civil Appeal No. 3546 of 2014), to contend that the present case is in the teeth of the aforesaid judgment. It was also contended that despite the presence of identical prices, exchange of information among bidders, pre-bid meetings prior to tender, active association, the Hon'ble Supreme Court held that there was no cartelisation, as the nature of market was such, being a monopsony/oligopsony.
- iii. The order dated 02.01.2014, passed by the Commission under Section 26(1) of the Act is the basis on which the investigation was initiated by the DG. This order noted the receipt of an anonymous complaint dated 25.04.2013 and also recorded *prima-facie* findings of the investigation that had been directed by this Commission. However, this order did not provide when and how the alleged anonymous complaint was received by the Commission. The Commission could not have taken cognizance of an anonymous complaint in view of the provisions of the Act and General Regulations. Further, an anonymous complaint could not have been converted into a *suo-motu* case. Proceedings under Section 26(1) of the Act can be initiated either on a complaint or *suo-motu*. Section 19(1)(a) provides for the manner for receipt of information, which shows that anonymous information cannot be taken into consideration for initiation of investigation as per the Act and Regulations.

- iv. There was delay in forming the *prima-facie* opinion by the Commission. Further, the Investigation Report is nullity in law on account of being time barred in light of Section 26(3) of the Act read with Regulations 15, 16, 17, 20(2) and 20(3) of the Competition Commission of India (General) Regulations, 2009 ('General Regulations') as there was a delay of 948 days in filing of the said report by the DG. Neither the DG had provided reasons seeking extension of time for submission of the Investigation Report nor had any reasons been recorded by the Commission for grant of extension of time to the DG for submission of the Investigation Report. The Cross-Examination Report is also time barred in view of Regulation 20(2) and 20(3) of the General Regulations. Further, there is no explanation for delay in the submission of the Investigation Report.
- v. In the *prima-facie* order dated 02.01.2014, the Commission observed that the rates finalised for Tender No.1 were substantially higher than the procurement rates finalised with other OMCs by the same vendors, thus reflecting the reasons for investigation, *i.e.* the loss suffered by HPCL. However, the DG did not provide any evidence to establish that cylinders were procured at a higher rate. Further, the Investigation Report did not indicate any admission on part of HPCL regarding any loss suffered by it. On the contrary, HPCL letter dated 03.11.2014, provided state wise prevailing rates on 28.10.2011, indicating that the cylinders were actually procured at market rates only. Further, OMCs followed the process of analysing and assessing the price of cylinders before floating the tender through their own internal estimates. Thus, the cost of procurement by HPCL was based on its internal estimated price per cylinder and not on the prices offered by the parties in their bids.
- vi. The DG had not considered the fact that the impugned tenders were rate contracts and not tenders in a strict sense. In rate contracts, the quantities are not guaranteed and only a price for procurement is fixed. Further, the DG ignored the special features of the product and manner of procurement as also the past history in relation to rates and supplies to be made uniformly to all manufacturers. Clause 2(c) of Annexure of Tender No.1 reads as under:

*“2(c) Quantities are not guaranteed as this is basically a rate contract. However, estimated quantity as per best estimate is given in the tender.”*

During the course of hearing, the judgment of the Hon’ble Delhi High Court in the case of *Vaishnav Transformer Versus Union of India and Another [161 DRJ 406 (DB)]* and *A.R. Polymer Pvt. Ltd. Versus CCI [2016 CompLR 0905 (COMPAT)]* was relied to submit that rate contracts are agreements under which seller agrees to sell and buyer agrees to purchase specified item or items at a fixed price during a fixed period of time. The quantity of item may or may not be fixed. Within the specified period, whenever the need arises, the buyer would issue a purchase order based on the fixed rate on the supplier. It was also submitted that there was no price discovery in case of rate contracts.

- vii. As the tenders in question were rate contracts, the bidders were unaware of the actual order that would have been received for a particular bottling plant, even if the tender was awarded in a particular state. Thus, the bids were made by keeping the cost of transportation constant. Further, the distance from the bottling plant of HPCL to the manufacturing facility is unknown at the time of submission of price bids and is only known once specific purchase orders of a particular bottling plant are given. As such, the manufacturers take the freight on a fixed average figure.
- viii. DG proceeded on a wrong assumption of correlating total capacity utilisation of vendors with identical rates. There was no nexus between capacity utilisation and placement of orders as these tenders were rate contracts, which was not taken into account by the DG. The parties knew the prices at which previous orders were placed by HPCL in the month when tender was opened. Further, the price of basic raw materials, average freight and other expenses based on which parties determine their rates is also known. HPCL also had its internal estimates with regard to the rates at which procurement of cylinders was to be made. Thereafter, HPCL held meetings for negotiation in respect of bids submitted by parties.
- ix. The product in question *i.e.* the LPG cylinder is regulated by “The LPG (Regulation of Supply and Distribution) Order, 2000” issued under the Essential Commodities Act, 1955 under Notification dated 26.04.2000 of the Ministry of Petroleum and Natural Gas, which specifies that the cylinder, regulator and valves

used by parallel market have to be distinctively different from those used by public sector oil companies.

- x. In this market, the essential costs are all regulated and are well known to the OMCs and also to each bidder. Moreover, the bidders know the rates at which the last supplies have been made by the cylinder manufacturers and the rates of last tender and profit margin, which each manufacturer has taken into account while quoting its price.
- xi. Bidders were supposed to quote for supplies in different states of India as per their installed capacity. Rates for supplies were fixed by HPCL after negotiation with L-1 bidder. In case, L-1 bidder could not supply the required number of cylinders, the order for supply would go to L-2 and also to L-3 bidder, depending upon the requirement in the State as per fixed formula mentioned in the bid documents. Hence, due to the very nature of the industry, a bidder has no incentive to match its rates with other competitors when the quantity of cylinders that he is likely to get orders for is pre-determined on the basis of its installed capacity, which in any event varies from bidder to bidder.
- xii. Nature of market, relevant market and effect of an oligopolistic market has not been considered in the Investigation Report. The OMCs (including HPCL) are in a dominant position in respect of 14.2 Kg cylinders and the OPs have no bargaining power with these OMCs.
- xiii. Oligopoly is the most prevalent market structure in most economies. Since strategic business planning of market players in an oligopolistic market takes into account likely responses of other market participants, price parallelism is a common and accepted element of such markets. Further, price parallelism by itself is not prohibited and cannot be considered anti-competitive *per se* and it does not create presumption of collusion or cartelisation.
- xiv. The DG did not consider the fact that in order to ensure that the quality of product is not compromised, OMCs have since introduced price bands in Tenders so that no one can quote for any State at a price lower than the price band fixed by the OMCs.

- xv. No evidence has been brought out in the Investigation Report in respect of factors required to be examined under Section 19(3) of the Act. Further, no finding has been recorded by the DG in this regard. The DG did not consider that several new entrants applied as new vendors and the existing competitors are not driven out of the market. Further, the DG ignored that improvement in production and distribution in this market has been made, which has benefited the consumers.
- xvi. The DG, while relying on the documents has violated provisions of Indian Evidence Act, 1872. Certificates annexed to the Investigation Report dated 06.10.2016 do not fulfil the requirements of Section 65B of the Indian Evidence Act, 1872.
- xvii. Quoting of identical prices cannot lead to an inference that parties have formed a cartel or indulged in bid rigging. The judgment of the Hon'ble Supreme Court in the case of *Union of India Vs. Hindustan Development Corporation* reported in AIR 1994 SC 980 and other decisions of the Commission and erstwhile Competition Appellate Tribunal (COMPAT) have been quoted in this regard.
- xviii. The DG has not conducted the investigation with a view to detect any direct evidence of any 'agreement' or 'meeting of minds' between the OPs except that there has been identical pricing in the bids submitted by them. No evidence has been collected by the DG that any price bids were discussed and agreed to be fixed before quoting for tender. Circumstantial evidence, in absence of any corroboration by an independent witness is not admissible as evidence and conclusions cannot be based on such uncorroborated circumstantial evidence alone. Further, the DG has not produced any witness to substantiate the conclusion made in this report and a conclusion which is based entirely on presumptive existence of circumstantial evidence cannot be made the basis for holding existence of cartel among the cylinder manufacturers.
- xix. The allegation that existence of an association reflected collusive behaviour amongst its members is perverse. Formation of an association or being its member is a fundamental right guaranteed under the Constitution of India. It is natural for the persons who are in trade to interact with each other. This is a fundamental right

to associate, to speak and move freely. The parties were engaged in general discussion in respect of various matters related to the industry and such conduct is natural and cannot be termed as anti-competitive.

- xx. The withdrawal of bids in case of Tender No.2 was accepted by HPCL as withdrawal took place prior to opening of technical bids which was allowed as per tender conditions. Thus, there was no breach of the tender conditions and no action was taken by HPCL.
- xxi. The DG merely has conjectured that various manufacturers engaged the service of common agents to show collusion.
- xxii. As regards imposition of penalty on OPs and their officers identified by the DG, most of the OPs have stated as regards contravention of provisions of Section 3(3)(b) of Act that they have not breached the provisions of the Act for the reasons discussed above in preceding paragraphs. Further, OPs have stated that their companies are small scale industries and would close down if penalty is imposed upon them. Further, the observation of the DG affixing liability of individual directors under Section 48 of the Act cannot be sustained. In order to implicate a Director in vicarious capacity, it is mandatory to produce clinching evidence that the concerned Director was not only involved in the day to day affairs of the company but also had a specific role and direct nexus with alleged non-compliance of the Act.

#### **G. Analysis of the Commission**

18. The Commission has perused the Investigation Report, Cross-Examination Report suggestions/ objections filed by the parties thereto, submissions made by the procurer, i.e. HPCL and other material available on record. The Commission also considered the extensive submissions made by the parties during the course of final hearing as also the written submissions/synopsis of arguments filed by them subsequently. On consideration of the aforesaid, the following issues arise for determination in the present matter:

*Issue 1: Whether bidders while bidding for Tender No.1 acted in contravention of the provisions of Section 3(3)(d) read with Section 3(1) of the Act?*



*Issue 2: Whether the bidders while bidding/withdrawing the bids for Tender No.2 acted in a concerted manner and manipulated the process of bidding and thus are in contravention of the provisions of Section 3(3)(d) read with Section 3(1) of the Act?*

*Issue 3: If the bidders are found to have contravened the provisions of Section 3(3)(d) read with Section 3(1) of the Act, then who are the persons in charge thereof and responsible for the conduct of business of the respective enterprises under Section 48 of the Act?*

19. Before dealing with the merits of the case, the Commission shall first deal with the preliminary issues raised by certain OPs during the course of final hearing and in their written submissions. The first preliminary issue raised by certain OPs is whether the hearings of the Commission can be conducted in the absence of a judicial member being present in the quorum particularly in light of the judgments of the Hon'ble Supreme Court of India in case of *State of Gujarat and others Versus Utility Users' Welfare Association and Others* reported as (2018) 6 SCC 21 and of the Hon'ble High Court of Delhi in the case of *Mahindra Electric Mobility Ltd. and Another Versus Competition Commission of India* (Judgment dated 10.04.2019 in Writ Petition No. 11467 of 2018). ("**Mahindra Case**").

20. The Commission in this regard places reliance on the order of the Hon'ble High Court of Delhi in W.P.(C) No. 6661/2019 (*CADD Systems and Services Pvt. Ltd. case*) wherein it has been held that the import of judgment in Mahindra Case cited above cannot be that the working of Commission be brought to a standstill until the judicial member is appointed in the Commission. The Hon'ble Court did not interdict the functioning of the Commission pending such appointment. The Hon'ble Court also observed that as per Section 15 of the Act, orders passed by the Commission cannot be called in question on account of any vacancy or any defect in the constitution of the Commission. Further, the Hon'ble Supreme Court, vide its order dated 10.09.2018, passed in *K.R.Tamizhmani and Others v. The State of Tamil Nadu and Others* [M.A No.2217 of 2018 in T.C.(C) No.137/2015], clarified that 'till such time a reconstitution of the tribunal does not take place arising from a retirement of a member from the legal field, the existing Tribunal will decide all the cases'. Therefore the Commission does not find merit in the objections raised by OPs.



21. The next preliminary issue which has been raised by most of the OPs is whether the Commission can assume jurisdiction based on an anonymous complaint dated 25.04.2013. In this regard, the OPs have contended that no document or material was attached with the complaint dated 25.04.2013 and thus no credence can be given to such complaint. It has also been contended that the Commission cannot convert an anonymous complaint to *suo-motu* cognizance when regulations provide for different methodology to deal with a complaint and a *suo-motu* case. After taking into consideration the submissions and arguments of the OPs, the Commission observes that Section 19 (1) of the Act provides that the Commission may inquire into any alleged contravention of provisions of the Act ‘on its own motion’, i.e. the Commission can take *suo-motu* cognizance of a case. The Commission observes that provisions of Section 19 (1) of the Act does not preclude the Commission from taking *suo-motu* cognizance of a case based on a complaint or even on an anonymous complaint. Rather, the Commission can enquire on the basis of any information to which it is privy or even information available in public domain to fulfil the object of the Act as enshrined in Section 18 of the Act. The Commission observes that once the Commission has taken a *suo-motu* cognizance of a case and is satisfied that there exists a prima-facie case, it can direct the Director General to cause an investigation into the matter under Section 26(1) of the Act. Accordingly, the Commission finds no merit in the argument of OPs in this regard and the contentions made are rejected.

22. As regards the next contention of some of the OPs that the Investigation Report and Cross-Examination Report prepared by the DG are time barred, it is pertinent to note contents of Regulation 20 of the General Regulations, provides as under:

*“(2) The Commission shall direct the Director General to submit a report within such time as may be specified by the Commission which ordinarily shall not exceed sixty days from the date of receipt of the directions of the Commission.*

*(3) The Commission may, on an application made by the Director General, giving sufficient reasons extend the time for submission of the report by such period as it may consider reasonable.”*

Further, Section 26(3) of the Act states that the DG shall submit a report on his findings within such period as may be specified by the Commission. Thus, in terms of the provisions of the Act, as well as the regulations framed thereunder more particularly under Regulation 20(3) of General Regulations, the Commission is empowered to grant appropriate time to the DG to investigate and submit the Investigation Report and there is no period of limitation prescribed for that purpose. Accordingly, the Commission finds no merit in the argument of the OPs in this regard.

23. With respect to the preliminary issue raised by some of the OPs that there was delay in passing of the order passed by the Commission under Section 26(1) of the Act, the Commission notes that as per the provisions of Section 26(1) of the Act read with Regulation 16(2) of the General Regulations, the Commission shall 'as far as possible' record its opinion on the existence of a *prima-facie* case within 60 days. It is clear from the bare reading of Section 26(1) of the Act that the expression used is 'as far as possible' which does not connote a definite time period. Same is true of Regulation 16(2) of General Regulations. Thus, it cannot be said that there is any delay in passing of *prima-facie* order. Moreover, directions under Section 26(1), have to be issued, after consideration of all the facts and circumstances justifying such course of action. Thus, there is no merit in the contentions raised by the OPs, in this respect.
24. With regard to the submissions made by certain OPs of electronic evidence been collected during investigation, without compliance of the requirements of Section 65B of the Indian Evidence Act, 1872, the Commission notes that the submissions are without substance. The investigation has submitted the certificate as is required under Section 65B along with the Investigation Report, wherein reliance has been placed on electronic evidence in the form of e-mails *etc.* of the OPs which they exchanged *inter-se*. Further, none of the OPs have denied the existence of the evidences when confronted with during the course of investigation as these evidences emanated and are attributable to them or to HPCL, which provided the same to the office of the DG.
25. Having dealt with the preliminary issues, the Commission proceeds to deal with the issues framed by the Commission.

***Issue 1: Whether bidders while bidding for Tender No.1 acted in contravention of provisions of Section 3(3)(d) read with Section 3(1) of the Act?***

26. The Commission notes that Tender No.1 was floated under the two bid system on 31.10.2011 for 18 states. As per tender conditions, a tenderer could quote for a maximum of 9 states only. As already discussed above the relevant particulars of Tender No. 1 are as below:

**Table No.1**

Total No. of bids received	78
Vendors disqualified for not meeting technical criteria	06
Number of bids technically qualified	72
Vendors meeting the qualification criteria for becoming 'existing vendor' as per tender terms and conditions	53
Vendors qualified as 'new vendor'	19

27. The investigation revealed that out of 53 bidding parties who submitted bids, several entities had common or related management, a list of which is as under:

**Table No.2**

SI. No.	Name of Company/ firm	Name of common/related management/sister/associated concerns
1.	Om Containers	-Super Industries -Teekay Metals Pvt. Ltd. -Sai Cylinders Pvt. Ltd.
2.	Carbac Holdings Ltd.	-North India Wires Ltd. (Howrah Unit) -North India Wires Ltd. (Unit-II) -Haldia Precision Engineering Pvt. Ltd.
3.	Confidence Petroleum India Ltd.	-Maharashtra Cylinders Pvt. Ltd. -Khara Gas Equipments Pvt. Ltd. -Hans Gas Appliances Pvt. Ltd. (Above units amalgamated with Confidence Petroleum India Limited) -Andhra Cylinders Following are units of Confidence Petroleum India Limited: -Confidence Petroleum India Ltd. (Unit-III) -Confidence Petroleum India Ltd. (Halol) -Confidence Petroleum India Ltd. (Bazpur)
4.	Gopal Cylinders (Unit-III)	-Gopal Cylinders
5.	Krishna Cylinders	-Shri Ram Cylinders -Shri Ram Cylinders-Unit-II
6.	Kurnool Cylinders Pvt Ltd. (Unit-II)	-GDR Cylinders (P) Ltd.
7.	Him Cylinders Ltd.	-Omid Engineering Pvt. Ltd.

8.	Sahuwala Cylinders (P) Ltd	-Sahuwala Cylinders (P) Ltd. (Unit-II)
9.	Universal Cylinders Ltd	-Universal Cylinders Ltd. (Unit-II)
10.	Tirupati Cylinders Ltd.	-Tirupati LPG Industries Ltd. -International Cylinders (P) Ltd.
11.	Hyderabad Cylinders Pvt Ltd	-R.M. Cylinders Pvt. Ltd. -Sanghvi Cylinders Pvt. Ltd. -Nandi Cylinders Pvt. Ltd.
12.	S.M Cylinders	-Raghupati Synergy Pvt. Ltd. -Sai Cylinder Pvt. Ltd.

28. The Commission notes that the investigation brought out that not only the related concerns quoted identical prices in this tender, but also several different unrelated entities quoted identical rates for different States. An analysis of identical tender rates quoted by enterprises for different states, as done by the DG, is as under:

#### *State of Punjab*

- In the State of Punjab, four bidders quoted identical L1 rates of Rs.1224.12. One bidder quoted L2 rate of Rs.1224.50 and three bidders quoted L3 rate of Rs. 1225.12. The investigation revealed that the final rate was quoted by four OPs despite having factories located at different locations, which is evident from the table below. The contract was awarded by HPCL to six bidders including four L1 bidders at the rate of Rs. 1224. The table elucidating rates quoted by various bidders, is as under:

**Table No.3**

**(In Rupees)**

S.No.	Name of Bidders and Location of Factory	Quoted Rates	Rate at which contract awarded
1.	Gopal Cylinders (Unit-III), Baddi, Haryana	1224.12	1224.00
2.	International Cylinders (P) Ltd., Poanta Sahib, H.P	1224.12	1224.00
3.	Saboo Cylinders Pvt. Ltd., Nahan H.P	1224.12	1224.00
4.	Tirupati Cylinders Ltd., Muzaffarnagar, U.P	1224.12	1224.00
5.	Omid Engineering Pvt. Ltd., Una, H.P.	1224.50	-
6.	Gopal Cylinders, Baddi, H.P.	1225.12	-
7.	Krishna Cylinders, Ambala, Haryana	1225.12	1224.00
8.	Shri Ram Cylinders, Solan, H.P.	1225.12	-

- From the above table, it is clear that Gopal Cylinders (Unit-III) had quoted rate of Rs. 1224.12 which was identical with International Cylinders (P) Ltd., Saboo Cylinders Pvt. Ltd. and Tirupati Cylinders Pvt. Ltd. It was also brought out that

Gopal Cylinders quoted identical L3 rate with Krishna Cylinders and Shriram Cylinders.

- iii. The contract was awarded by HPCL at Rs. 1224 to 6 bidders including 5 existing and 1 new vendor. Out of the 5 existing vendors to whom contract was awarded 4 OPs namely, Gopal Cylinders- Unit-III, International Cylinders (P) Ltd., Saboo Cylinders Pvt. Ltd. and Tirupati Cylinders Ltd., had quoted identical L1 rates.
- iv. The said OPs were asked specific questions as to why they had quoted identical prices with other entities.
- v. Upon perusal of the statements of authorised representatives of OPs, it is noted that Mr. Rakesh Agarwal, Partner of Gopal Cylinders (Unit-III) stated that the rates quoted by their firm were identical with Krishna Cylinders and Shri Ram Cylinders as they discuss with each other about the same. It was brought out in the Investigation Report that these entities were run by related persons.
- vi. Mr. Vijay Kumar Verma, Vice President of International Cylinders (P) Ltd., in his deposition, stated that he did not know how identical rates were quoted. He, however, in his deposition, stated that Tirupati Cylinders Ltd. is a company run by Mr. Arun Goyal's (Director) brother, thus, they may have quoted bids after consultation and discussion with each other.
- vii. Mr. Pawan Kumar, Director of Saboo Cylinders Pvt. Ltd., in his testimony, could not comment on why identical prices were quoted.
- viii. Mr. Arun Kumar Aggarwal, Partner of Krishna Cylinders stated that his firm had quoted rates based on internal calculation. He, however, could not comment on the rates quoted by other entities.
- ix. Mr. Dinesh Goyal, Director of Tirupati Cylinders Ltd. stated that the company had quoted rates which was prevailing at the relevant time when the bid was submitted.

**State of Haryana**

- x. The Commission has perused the rates quoted by bidders in the State of Haryana. Table illustrating identical rates quoted by various bidders in the State of Haryana, is as under:

**Table No.4**

S.No.	Name of Bidders and Location of Factory	Quoted Rates (Rs.)	Rate at which contract awarded
1.	Daya Industries, Solan, H.P	1225.12	1225.00
2.	Mahaveer Cylinders Ltd., Ghaziabad, U.P.	1225.12	1225.00
3.	Shri Ram Cylinders, Solan, H.P.	1225.12	1225.00
4.	Universal Cylinders Ltd., Alwar, Rajasthan.	1225.12	1225.00
5.	Omid Engineering Pvt. Ltd.	1225.50	-
6.	Gopal Cylinders, Baddi, H.P.	1226.12	-
7.	Gopal Cylinders (Unit-III), Baddi, H.P.	1226.12	-

- xi. On perusal of the above table, it is seen that four OPs had quoted identical L1 rate of Rs.1225.12. One OP quoted L2 rate of Rs. 1250.50 and two OPs quoted L3 rate of 1226.12. The final rate on which contract was awarded by HPCL was Rs. 1225.00. Investigation brought out that contract was awarded to 15 bidders including 9 existing vendors and 6 new vendors. Out of the 9 existing vendors to whom contract was awarded, 4 OPs namely, Daya Industries, Mahaveer Cylinders Ltd., Shriram Cylinders, Universal Cylinders Ltd. had quoted identical L1 rates.
- xii. The investigation revealed that the four L1 bidders who had quoted identical L1 rates were located in different states, which is evident from the above table. The said OPs were questioned about their respective reasons for quotation of identical prices.
- xiii. The Commission has perused the statements of the representatives of the above said OPs. On perusal of statement of Mr. A.P. Sapra, Partner of Daya Industries, the Commission notes that he admitted to have quoted identical rates on advice of some manufacturers and his agent in Mumbai. He also stated to have consulted Mr. Dinesh Mittal, Director of Mahaveer Cylinders Ltd. and Mr. Rakesh Agarwal, Partner of Gopal Cylinders in relation to particular aspects of tenders.

- xiv. Mr. Dinesh Mittal, Director of Mahaveer Cylinders Ltd., in his statement before the DG, stated that the identical pricing was merely a coincidence. On being confronted with the statement of Mr. A.P. Sapra, Partner of Daya Industries did not deny about such discussion but stated that he could not recollect it.
- xv. Mr. Arun Kumar Aggarwal, Partner of Krishna Cylinders, who was one of the partners of Shri Ram Cylinders and Mr. Rakesh Agarwal of Gopal Cylinders had stated in their statements that since all these units are managed and controlled by relatives of their family, they quoted rates after discussion with each other.
- xvi. Mr. A.K. Sharma, Joint Managing Director of Universal Cylinders Ltd. stated that he quoted rates based on the NDP rates released by HPCL for different states for the month of October, 2011.

***State of Jammu & Kashmir***

- xvii. The Commission has perused the rates quoted by bidders for the State of Jammu and Kashmir. Table elucidating identical rates quoted by various bidders for the State of Jammu and Kashmir, is as under:

**Table No.5**

S.No.	Name of Bidders and Location of Factory	Quoted Rates (Rs.)	Rate at which contract awarded
1.	Mahaveer Cylinders Ltd, Ghaziabad, U.P.	1264.11	1264.00
2.	Daya Industries, Solan, H.P.	1264.11	1264.00
3.	Punjab Gas Cylinders Ltd., Sangrur, Punjab	1264.11	1264.00
4.	Universal Cylinders Ltd., Alwar, Rajasthan	1264.11	1264.00
5.	Omid Engineering Pvt. Ltd., Una, H.P.	1264.50	-
6.	Gopal Cylinders, Baddi, H.P.	1265.11	-
7.	Gopal Cylinders (Unit-III), Baddi, H.P	1265.11	-
8.	Shri Ram Cylinders, Solan, H.P.	1265.11	-
9.	Krishna Cylinders, Ambala, Haryana	1265.11	-

- xviii. For the State of Jammu and Kashmir, as seen from the table above, four OPs had quoted identical L1 rate of Rs. 1264.11, one OP quoted L2 rate of Rs.1264.50 and the other four OPs quoted L3 rates of Rs.1265.11. The final rate at which the contract was awarded by HPCL was Rs. 1264.00.

- xix. HPCL awarded the contract to 9 bidders including 7 existing vendors and 2 new vendors. The investigation revealed that 4 of the successful OPs namely, Mahaveer Cylinders Ltd., Daya Industries, Punjab Gas Cylinders Ltd. and Universal Cylinders Ltd. quoted identical rates despite the fact that their factories were located at different locations. The authorised representatives of the successful OPs were questioned about the reason for quotation of identical prices.
- xx. It is seen from the statements recorded before the DG that Mr. Dinesh Mittal, Director of Mahaveer Cylinders Ltd. had stated that since Punjab Gas Cylinders Ltd. is a company of his cousin, they would have discussed rates. With respect to quotation of identical rates by other OPs as that by Mahaveer Cylinders Ltd., he stated that it was a mere coincidence.
- xxi. Mr. Naveen Mittal, Director of Punjab Gas Cylinders Ltd. stated that identical pricing may have happened because of coincidence.
- xxii. Mr. A.K. Sharma, Joint Managing Director of Universal Cylinders Ltd. stated that his company quoted rates based on the NDP rates released by HPCL for the month of October, 2011.
- xxiii. Mr. A.P Sapra, Partner of Daya Industries admitted to have been in touch with various manufacturers as already discussed above.

### ***State of Rajasthan***

- xxiv. The table elucidating the identical rates quoted by bidders for the State of Rajasthan is as under:

**Table No.6**

S.No.	Name of Bidders and Location of Factory	Quoted Rates (Rs.)	Rate at which contract awarded
1.	Super Industries, Sinnar, Maharashtra	1255.00	1247.00
2.	Confidence Petroleum India Ltd. (Halol), Halol, Gujarat	1255.00	1247.00
3.	Hans Gas Appliances Pvt. Ltd., Raigarh, Maharashtra	1255.00	-
4.	Confidence Petroleum India Ltd., Nagpur, Maharashtra	1255.00	-
5.	Om Containers, Nasik, Maharashtra	1255.00	-



6.	Prestige Fabricators Pvt. Ltd., Indore, M.P.	1257.00	-
7.	Shri Ram Cylinders, Solan, H.P.	1261.12	1247.00
8.	Universal Cylinders Ltd. (Unit-II), Alwar, Rajasthan	1261.12	1247.00
9.	Tirupati LPG Industries Ltd., Dehradun, U.P.	1261.12	1247.00
10.	Punjab Gas Cylinders Ltd., Sangrur, Punjab	1261.12	1247.00
11.	Rajasthan Cylinders & Containers Ltd., Jaipur, Rajasthan	1261.12	1247.00
12.	S.M. Cylinders, G.B Nagar, U.P.	1261.12	1247.00
13.	Tirupati Cylinders Ltd., Muzaffarnagar, U.P	1261.12	1247.00

- xxv. Upon examination of the above table, the Commission notes that five OPs had quoted identical L1 rate of Rs. 1255.00, one OP quoted L2 rate of Rs. 1257.00 and seven OPs had quoted identical L3 rate of Rs. 1261.12. The rate at which contract was awarded by HPCL was Rs. 1247.00. The investigation has brought out that contract was awarded to 9 existing vendors including 2 OPs who had quoted identical L1 rates, which are Super Industries and Confidence Petroleum India Ltd. (Halol) and 7 OPs, namely, Shri Ram Cylinders, Universal Cylinders Ltd. (Unit-II), Tirupati LPG Industries Ltd., Punjab Gas Cylinders Ltd., Rajasthan Cylinders & Containers Ltd., S.M. Cylinders and Tirupati Cylinders Ltd., which had quoted identical L3 rates.
- xxvi. The investigation revealed that the said OPs had quoted identical rates, despite being at different locations. As regards, identical pricing, the authorised representatives of these OPs were questioned about justification of quotation of identical prices.
- xxvii. The Commission has taken note of the statements recorded before the DG and noted that Mr. Kishore Kela, Proprietor of Super Industries and authorised representative of Om Containers stated that since these units are related concerns there rates would be same. The investigation revealed that wife of Mr. Kela was proprietor of Om Containers.
- xxviii. Mr. Jacob Mathew, Commercial Manager of Confidence Petroleum India Ltd. stated that Maharashtra Cylinders Pvt. Ltd., Khara Gas Equipments Pvt. Ltd., Andhra Cylinders and Confidence Petroleum Ltd. (Mumbai and Halol) and Hans Gas Appliances Pvt. Ltd. were merged in Confidence Petroleum India Ltd. *vide* order passed by the Hon'ble Bombay High Court. On being questioned about

reasons for identical pricing, he had stated that it may have happened because of trade practice.

### *State of Gujarat*

xxix. The table on identical prices in the State of Gujarat is as under:

**Table No.7**

S.No.	Name of Bidders and Location of Factory	Quoted Rates (Rs.)	Rate at which contract awarded
1.	Tirupati Containers Pvt. Ltd., Bulandhsahar,U.P	1246.64	1235.00
2.	Teekay Metals Pvt. Ltd., Nasik, Maharashtra	1246.64	-
3.	Gopal Cylinders, Baddi, H.P.	1246.64	1235.00
4.	Mahaveer Cylinders Ltd., Ghaziabad, U.P.	1246.64	1235.00
5.	Omid Engineering Pvt. Ltd., Una, H.P.	1247.00	-
6.	Krishna Cylinders, Ambala, Haryana	1247.64	-
7.	Shri Ram Cylinders, Solan, H.P.	1247.64	-
8.	Gopal Cylinders (Unit-III), Baddi, H.P.	1247.64	-

xxx. On perusal of above table, it is noted that for the State of Gujarat, four OPs had quoted identical L1 rates of Rs. 1246.64, one OP quoted L2 rate of Rs.1247.00 and three OPs quoted identical L3 rates of Rs. 1247.64. The final rate at which the contract was awarded by HPCL was Rs. 1235.00.

xxxi. Investigation revealed that tender was awarded to ten bidders including 3 existing vendors and 7 new vendors. All 3 existing vendors to whom contract was awarded namely, Tirupati Containers Pvt. Ltd., Gopal Cylinders and Mahaveer Cylinders Ltd. had quoted identical rates.

xxxii. Upon perusal of the statements recorded before the DG, the Commission notes that Mr. Rakesh Singhal, Managing Director of Tirupati Containers Pvt. Ltd., Mr. Kishore Kela, Director of Teekay Metals Pvt. Ltd. and Mr. Dinesh Mittal, Director of Mahaveer Cylinders Ltd. stated that identical pricing happened due to coincidence. Mr. Rakesh Agarwal, Partner of Gopal Cylinders stated that he could not comment on identical pricing and he had quoted rates based on internal calculations.

**State of Uttar Pradesh**

xxxiii. For the State of Uttar Pradesh, the following OPs had quoted identical rates:

**Table No.8**

S.No.	Name of Bidders and Location of Factory	Quoted Rates (Rs.)	Rate at which contract awarded
1.	Mauria Udyog Ltd, Faridabad, Haryana	1254.12	1254.00
2.	Krishna Cylinders, Ambala, Haryana	1254.12	1254.00
3.	Bhiwadi Cylinders Pvt Ltd, Bhiwadi, Rajasthan	1254.12	1254.00
4.	International Cylinders (P) Ltd, Poanta Sahib,H.P	1254.12	1254.00
5.	Gopal Cylinders, Baddi	1254.12	1254.00
6.	Surya Shakti Vessel Pvt Ltd, Faridabad	1254.12	1254.00
7.	Gopal Cylinders (Unit-III), Baddi	1254.12	1254.00
8.	Sunrays Engineers Pvt Ltd, Bhiwadi	1254.12	1254.00
9.	Omid Engineering Pvt Ltd	1254.50	-

xxxiv. From the above table, it is observed that eight bidders had quoted identical L1 rate of Rs. 1254.12 and one bidder had quoted L2 rate of Rs.1254.50. The final rate at which contract was awarded by HPCL was Rs. 1254.00. The contract was awarded to 16 bidders including 8 existing and 8 new vendors. Out of the 8 existing vendors to whom contract was awarded, all of them had quoted identical L1 rates.

xxxv. In their depositions before the DG, Mr. K.M Pai, Director of Mauria Udyog Ltd., Mr. Manvinder Singh, Director of Bhiwadi Cylinders Pvt. Ltd. and Mr. Puneet Batra, Director of Surya Shakti Vessels Pvt. Ltd. stated that identical pricing happened due to mere coincidence.

xxxvi. Mr. Arun Agarwal, Partner of Krishna Cylinders and Mr. Rakesh Agarwal, Partner of Gopal Cylinders and Gopal Cylinders (Unit-III) stated that they quoted rates based on internal calculation. However, they also admitted to have quoted rates based on discussions with each other.

xxxvii. Mr. Vijay Verma, Vice President of International Cylinders (P) Ltd. did not comment on how identical pricing happened. Mr. Pradeep Mahipal of Sunrays Engineers Pvt. Ltd. stated that he had quoted his own rates and cannot comment on how rates were identical.

**State of Bihar**

xxxviii. For the State of Bihar, the following bidders had quoted identical rates:

**Table No.9**

S.No.	Name of Bidders and Location of Factory	Quoted Rates (Rs.)	Rate at which contract awarded
1.	Haldia Precision Engineering Pvt Ltd., Kolkata, West Bengal	1268.00	1260.00
2.	Carbac Holdings Ltd., Kolkata, West Bengal	1269.00	-
3.	Krishna Cylinders, Ambala, Haryana	1269.12	1260.00
4.	Gopal Cylinders Unit-III, Baddi, Himachal Pradesh	1269.12	-

xxxix. From the above table, investigation brought out that L1 and L2 rates were quoted by group companies and the rate at which contract was awarded by HPCL was Rs. 1260.

xl. Investigation revealed that tender was awarded to four bidders including 3 existing and 1 new vendor. Out of the 3 existing vendors, Haldia Precision Engineering Pvt. Ltd. and Krishna Cylinders were awarded the contract by HPCL.

xli. As discussed earlier, the representatives of Gopal Cylinders and Krishna Cylinders who had quoted identical L3 rates, admitted in their statements that they quoted rates after discussion with each other.

**State of Chhattisgarh**

xlii. The following bidders had quoted identical rates for the State of Chhattisgarh:

**Table No.10**

S.No.	Name of Bidders and Location of Factory	Quoted Rates (Rs.)	Rate at which contract awarded
1.	Tirupati Containers Pvt. Ltd., Bulandshahar, UP	1244.11	1240.00
2.	Universal Cylinders Ltd. Unit-II, Alwar, Rajasthan	1244.11	1240.00
3.	Mahaveer Cylinders Ltd., Ghaziabad, UP	1244.11	1240.00
4.	Sahuwala Cylinders (P) Ltd., Vishakhapatnam, AP	1244.50	1240.00

5.	Sahuwala Cylinders (P) Ltd. (Unit-II), Vishakhapatnam, AP	1244.50	1240.00
6.	International Cylinders (P) Ltd., Poanta Sahib, HP	1246.00	-
7.	Teekay Metals Pvt Ltd, Nasik, Maharashtra	1250.00	-
8.	Hans Gas Appliances Pvt. Ltd., Raigarh (Mah)	1250.00	-
9.	Khara Gas Equipments Pvt Ltd, Nagpur	1250.00	-
10.	Confidence Petroleum India Ltd, Nagpur	1250.00	-
11.	Om Containers, Nasik	1250.00	-

- xliii. In the state of Chhattisgarh, three bidders quoted identical L1 rates. The final rate at which tender was awarded by HPCL was Rs. 1240. The tender was awarded to the existing vendors namely, Tirupati Containers Pvt. Ltd., Universal Cylinders Ltd. (Unit-II), Mahaveer Cylinders Ltd. , which had quoted identical L1 rate and Sahuwala Cylinders (P) Ltd. (Both units), which had quoted identical L2 rates.
- xliv. On the issue of identical L1 rates, Mr. Rakesh Singhal, Managing Director of Tirupati Containers Ltd., Mr. Dinesh Mittal, Director of Mahaveer Cylinders Ltd. and Mr. Kishore Kela of Teekay Metals Pvt. Ltd. stated identical L2 rates was merely due to coincidence. Mr. Sharma, Joint Managing Director of Universal Cylinders Ltd. (Unit-II) stated that he had quoted as per the NDP rates for the state.
- xlv. However, Mr. Kela, as discussed above, admitted that since Om Containers is a related concern, the rates would be identical.
- xlvi. Mr. Jacob Mathew, Commercial Manager of Confidence Petroleum India Ltd. stated that Maharashtra Cylinders Pvt. Ltd., Khara Gas Equipments Pvt. Ltd., Andhra Cylinders and Confidence Petroleum Ltd. (Mumbai and Halol) were merged with Confidence Petroleum India Ltd.. As regards identical pricing, he could not give any specific reason but he stated that it may have happened due to industry practice.

### *State of Goa*

- xlvi. The following bidders had quoted identical rates in Tender No.1 in the State of Goa:

**Table No.11**

S.No.	Name of Bidders and Location of Factory	Quoted Rates (Rs.)	Rate at which contract awarded
1.	Teekay Metals Pvt. Ltd., Nasik, Maharashtra	1250.00	-
2.	Vidhya Cylinders Pvt. Ltd, Raisen, M.P.	1250.00	1248.00
3.	Prestige Fabricators Pvt. Ltd., Indore, M.P.	1252.00	-
4.	Super Industries, Sinnar, Maharashtra	1255.00	-
5.	Confidence Petroleum India Ltd., Halol, Gujarat	1255.00	-
6.	Khara Gas Equipments Pvt. Ltd., Nagpur, Maharashtra	1255.00	-
7.	Tirupati Containers Pvt. Ltd., Bulandshahar, U.P.	1261.77	-
8.	Krishna Cylinders, Ambala, Haryana	1261.77	-
9.	Shri Ram Cylinders, Solan, H.P.	1261.77	-
10.	Universal Cylinders Ltd. (Unit-II), Alwar, Rajasthan	1261.77	-

xlvi. From the above table, it is noted that in the State of Goa, two OPs had quoted identical L1 rates of Rs.1250. One OP had quoted L2 rate of Rs. 1252.00. The final rate at which the contract was awarded by HPCL was Rs.1248. Three OPs quoted L3 rate of Rs. 1255.00 and four OPs quoted identical L4 rates of Rs. 1261.77.

xlix. The contract was awarded to three bidders including 1 existing and 2 new vendors. The existing vendor to whom contract was awarded was Vidhya Cylinders Pvt. Ltd., which had quoted identical rates with Teekay Metals Pvt. Ltd.

1. Mr. Kishore Kela, Director of Teekay Metals Pvt. Ltd. stated that identical pricing may have happened due to coincidence. Mr. Mukesh Mittal, Director of Vidhya Cylinders Pvt. Ltd. was also not able to explain identical pricing in his deposition before the DG.

***State of Tamil Nadu***

- li. The following bidders had quoted identical rates in the State of Tamil Nadu:

**Table No.12**

S.No.	Name of Bidders and Location of Factory	Quoted Rates (Rs.)	Rate at which contract awarded
1.	Lite Containers Pvt. Ltd., Tamil Nadu	1275.00	1266.00
2.	Super Industries, Sinnar, Maharashtra	1275.12	1266.00

3.	International Cylinders (P) Ltd, Poanta Sahib, H.P.	1276.00	1266.00
4.	GDR Cylinders (P) Ltd., Chennai, Tamil Nadu	1276.00	1266.00
5.	Sahuwala Cylinders (P) Ltd, Vishakhapatnam, Andhra Pradesh	1277.00	1266.00
6.	Sahuwala Cylinders (P) Ltd Unit-II, Vishakhapatnam, Andhra Pradesh	1277.00	1266.00
7.	Balaji Pressure Vessels Ltd , Hyderabad, Telangana	1277.00	1266.00
8.	Asian Fab Tec Ltd, Bangalore, Karnataka	1277.00	1266.00
9.	Hyderabad Cylinders Pvt Ltd, Mahboobnagar, A.P.	1277.00	1266.00

- lii. From the above table, it can be seen that one OP quoted L1 rate of Rs.1275.00, one OP quoted L2 rate of Rs. 1275.12, two OPs quoted L3 rate of Rs. 1276.00 and five OPs had quoted identical L4 rates of Rs. 1277.00. The rate at which tender was awarded by HPCL was Rs.1266.00.
- liii. The investigation revealed that the tender was awarded to sixteen bidders including 13 existing vendors and 3 new vendors. Out of the 13 existing vendors, the tender was awarded to OPs including two OPs who had quoted identical L3 rates and five OPs who had quoted identical L4 rates.
- liv. Mr. Vijay Kumar Verma, Vice President of International Cylinders (P) Ltd. stated that he did not know how the identical rates were quoted. In his deposition before the DG, the representative Mr. B.S. Reddy, Managing Director of GDR Cylinders (P) Ltd. was not able to answer any question as he had taken over the company only after the impugned tender.
- lv. Mr. P.K Gupta, Director of Sahuwala Cylinders (P) Ltd. stated that he had quoted his own rates and could not comment how the rates were matching with others. Ms. Sashikala BR, Director of Asian Fab Tec Ltd stated that costing of all the bidders may have been same and this can be the reason for identical pricing. Mr. Vijay Sanghvi, Director of Hyderabad Cylinders Pvt Ltd stated that he could not explain about the identical pricing.

**State of Karnataka**

lvi. The following bidders had quoted identical rates for the State of Karnataka:

**Table No.13**

S.No.	Name of Bidders and Location of Factory	Quoted Rates (Rs.)	Rate at which contract awarded
1.	Super Industries, Sinnar, Maharashtra	1254.12	1244.00
2.	Kurnool Cylinders Pvt. Ltd. Unit-II, Mahboobnagar, Telangana	1254.12	1244.00
3.	Bhiwadi Cylinders Pvt. Ltd, Bhiwadi, Rajasthan	1254.12	1244.00
4.	Tirupati LPG Industries Ltd, Dehradun, UK	1254.12	1244.00
5.	Surya Shakti Vessels Pvt Ltd, Faridabad, Haryana	1254.12	1244.00
6.	Omid Engineering Pvt. Ltd, Una, H.P.	1254.12	1244.00
7.	R M Cylinders Pvt Ltd, Mahboobnagar, Telangana	1254.12	1244.00
8.	Asian Fab Tec Ltd , Bangalore, Karnataka	1254.12	1244.00
9.	Shri Shakti Cylinders P Ltd, Hyderabad, Telangana	1254.12	1244.00
10.	Sanghvi Cylinders Pvt Ltd, Belgaum, Karnataka	1254.12	1244.00
11.	S M Cylinders Pvt Ltd, G.B.Nagar, U.P.	1254.12	1244.00
12.	Tirupati Cylinders Ltd., Muzaffarnagar, U.P.	1254.12	1244.00
13.	BTP Structural India Pvt Ltd, Belgaum, Karnataka	1254.12	1244.00
14.	Sahuwala Cylinders (P) Ltd, Vishakhapatnam, Andhra Pradesh	1254.50	-
15.	Sahuwala Cylinders (P) Ltd (Unit-II), Vishakhapatnam, Andhra Pradesh	1254.50	-

lvii. From the above table, it can be seen that thirteen OPs had quoted identical L1 rates of Rs. 1254.12 and two OPs had quoted identical L2 rates of Rs. 1254.50. The rate at which tender was awarded by HPCL was Rs. 1244.00.

lviii. The investigation revealed that the tender was awarded to fifteen bidders including 13 existing vendors and 2 new vendors. Out of 13 existing vendors, the contract was awarded to all the OPs who had quoted identical L1 rates.

lix. On being questioned about quotation of identical rates, Mr. Kishore Kela, Proprietor of Super Industries, Mr. Manvinder Singh, Director of Bhiwadi Cylinders Pvt Ltd, Mr. Puneet Batra, Director of Surya Shakti Vessels Pvt Ltd, Mr. Ritesh Sanghvi, Director of R.M. Cylinders Pvt. Ltd., Mr. B.B. Patil, Managing Director of BTP



Structural India Pvt Ltd and Mr. Vijay Agrawal, Director of SM Cylinder stated that it was due to coincidence only.

- ix. Mr. BS Reddy, Managing Director of Kurnool Cylinders Pvt Ltd, Unit-II had no justification for identical pricing. Mr. Arun Goyal, Director of Tirupati LPG Industries Ltd stated that he had no comments to offer on the identical pricing. Mr. DV Rajasekhar, Managing Director of Shri Shakti Cylinders P Ltd stated that he was not aware how the rates were identical. Ms. Shashikala BR, Director of Asian Fab Tec Ltd stated that costing of all the bidders may have been same and that could be the reason for quoting of identical prices. Mr. Ramesh Sanghvi, Managing Director of Sanghvi Cylinders Pvt. Ltd. stated that he did not know how identical prices happened. Mr. Dinesh Goyal, Director of Tirupati Cylinders Ltd and Mr. P.K. Gupta, Director of Sahuwala Cylinders (P) Ltd stated that they had quoted at prevailing rate at relevant time.

#### *State of Kerala*

- lxi. The following bidders had quoted identical rates in the State of Kerala:

**Table No.14**

S.No.	Name of Bidders and Location of Factory	Quoted Rates (Rs.)	Rate at which contract awarded
1.	Sahuwala Cylinders (P) Ltd, Vishakhapatnam, A.P.	1302.12	1275.00
2.	Saboo Cylinders Pvt Ltd, Nahan, H.P.	1302.12	1275.00
3.	Alampally Brothers Ltd, Aluwa, Kerala	1302.12	1275.00
4.	Lite Containers Pvt Ltd, Coimbatore, T.N.	1302.12	1275.00
5.	Om Containers, Nasik, Maharashtra	1302.12	-
6.	Tirupati Cylinders Ltd, Muzaffamagar, U.P.	1302.12	1275.00
7.	Sahuwala Cylinders (P) Ltd, (Unit -II), Vishakhapatnam, A.P.	1302.50	-
8.	Kurnool Cylinders Pvt. Ltd. (Unit-II) Mahboobnagar, Telangana	1304.00	-
9.	Hyderabad Cylinders Pvt. Ltd. Mahboobnagar, Telangana	1304.00	-
10.	Teekay Metals Pvt Ltd, Nasik, Maharashtra	1310.00	-
11.	Super Industries, Sinnar, Maharashtra	1310.00	-
12.	Confidence Petroleum India Ltd.(Halol), Halol, Gujarat	1310.00	-

13.	Khara Gas Equipments Pvt Ltd, Nagpur, Maharashtra	1310.00	-
14.	R M Cylinders Pvt Ltd, Mahboobnagar, Telangana	1310.00	-
15.	Confidence Petroleum India Ltd, Nagpur, Maharashtra	1310.00	-
16.	Shri Shakti Cylinders P Ltd, Hyderabad, Telangana	1310.00	-
17.	Sanghvi Cylinders Pvt Ltd, Belgaum, Karnataka	1310.00	-

lxii. From the above table, it is noted that six OPs had quoted identical L1 rates of Rs. 1302.12, one OP quoted L2 rate of Rs. 1302.50, two OPs quoted L3 rate of Rs. 1304.00 and eight OPs had quoted identical L4 rates of Rs. 1310. The rate at which tender was awarded by HPCL was Rs. 1275.00. The investigation revealed that the tender was awarded to five existing vendors namely, Alampally Brothers Ltd, Lite Containers Pvt Ltd, Saboo Cylinders Pvt Ltd, Sahuwala Cylinders (P) Ltd and Tirupati Cylinders Ltd., who had quoted identical L1 rates.

lxiii. Mr. PK Gupta, Director of Sahuwala Cylinders (P) Ltd stated on the question of identical pricing by certain bidders that his company was supplying cylinders to HPCL at the quoted rate only therefore, he had quoted the same rate.

lxiv. Mr. Pawan Kumar, Director of Saboo Cylinders Pvt Ltd stated that his company quoted the rates based on internal costing and cannot comment about the identical pricing.

lxv. Mr. E.K. Jaleel, Chief Administrative Officer of Alampally Brothers Ltd stated that he could not comment as to how the rates of other bidders matched with the rates of the said company. He also stated that there could be chances of leakage of rates when he discussed regarding Tender No.1 with Mr. Kulandhaisamy of Lite Containers Pvt Ltd. The investigation brought out that Mr. Kulandhaisamy did not appear before the DG despite opportunity given to him.

lxvi. Mr. Dinesh Goyal, Director of Tirupati Cylinders Ltd stated that he had quoted the prevailing rate in the tender.

lxvii. Mr. Kishore Kela, Director of Teekay Metals Pvt. Ltd. stated on the issue of identical pricing that it was due to coincidence only. However, he admitted that

since Om Containers and Super Industries were his related concerns therefore, their rates had been quoted after discussion.

- lxviii. Mr. Jacob Mathew, Commercial Manager of Confidence Petroleum India Ltd. (Halol) could not give any specific explanation about the identical pricing. Both Confidence Petroleum India Ltd and Confidence Petroleum India Ltd. (Halol) are part of the same group.
- lxix. Mr. Ramesh Sanghvi, Managing Director of Sanghvi Cylinders Pvt. Ltd. stated that he did not know how the identical pricing happened.
- lxx. Mr. Ritesh Sanghvi, Director of R.M. Cylinders Pvt Ltd stated that identical pricing may have happened due to coincidence. The investigation, however, brought out that the representatives of R.M. Cylinders Pvt. Ltd., Hyderabad Cylinders Pvt. Ltd. and Sanghvi Cylinders Pvt. Ltd. admitted in their depositions that since all these companies were managed and operated by members of a common family therefore, they quoted the rates after discussion with each other.
- lxxi. Mr. DV Rajasekhar, Managing Director of Shri Shakti Cylinders P Ltd, on being questioned by the DG on his reasons for identical prices, stated that he was not aware how the rates quoted by his company were identical to others. He, however, stated that he had quoted rates based on own costing. The investigation brought out that no such details about costing were filed by him during the course of investigation.

#### ***State of Andhra Pradesh***

- lxxii. The table elucidating identical rates for the State of Andhra Pradesh is as under:

**Table No.15**

S.No.	Name of Bidders and Location of Factory	Quoted Rates (Rs.)	Rate at which contract awarded
1.	Krishna Cylinders, Ambala, Haryana	1250.12	1242.00
2.	Kurnool Cylinders Pvt. Ltd., Unit-II, Hyderabad, Telangana	1250.12	1242.00

3.	International Cylinders (P) Ltd, Poanta Sahib, H.P.	1250.12	1242.00
4.	Gopal Cylinders, Baddi, H.P.	1250.12	1242.00
5.	Sahuwala Cylinders (P) Ltd, Vishakhapatnam, A.P.	1250.12	1242.00
6.	Sahuwala Cyls. Pvt. Ltd. Unit-11, Vishakhapatnam, A.P.	1250.12	1242.00
7.	Surya Shakti Vessels Pvt Ltd, Faridabad, Haryana	1250.12	1242.00
8.	Omid Engineering Pvt. Ltd, Una, H.P.	1250.12	1242.00
9.	Sunrays Engineers Pvt Ltd, Bhiwadi, Rajasthan	1250.12	1242.00
10.	R M Cylinders Pvt Ltd, Mahboobnagar, A.P.	1250.12	1242.00
11.	Shri Shakti Cylinders, Hyderabad, Telangana	1250.12	1242.00
12.	Om Containers, Nasik, Maharashtra	1250.12	1242.00
13.	Balaji Pressure Vessels Ltd., Hyderabad, Telangana	1250.12	1242.00
14.	Hyderabad Cylinders Pvt Ltd, Mahboobnagar, Telangana	1250.12	1242.00
15.	Sanghvi Cylinders Pvt Ltd, Belgaum, Karnataka	1250.12	1242.00
16.	Prathima Industries Pvt Ltd, Nalgonda, Telangana	1250.12	1242.00
17.	BTP Structural India Pvt. Ltd., Belgaum, Karnataka	1250.12	1242.00
18.	Shri Ram Cylinders, Chandigarh, Haryana	1251.12	-
19.	Gopal Cylinders, Unit III, Baddi, H.P.	1251.12	-
20.	Tirupati LPG Industries Ltd., Dehradun, UK	1255.00	-
21.	S.M. Cylinders, New Delhi	1255.12	-
22.	Teekay Metals Pvt Ltd, Nasik, Maharashtra	1260.00	-
23.	Super Industries, Sinnar, Maharashtra	1260.00	-
24.	Vidhya Cylinders Pvt. Ltd, Raisen, M.P	1260.00	-
25.	Confidence Petroleum India Ltd. (Halol), Halol, Gujarat	1260.00	-
26.	Hans Gas Appliances Pvt. Ltd., Raigar, Maharashtra	1260.00	-
27.	Khara Gas Equipments Pvt. Ltd, Nagpur, Maharashtra	1260.00	-
28.	Mahaveer Cylinders Ltd, Ghaziabad, U.P.	1260.00	-
29.	Confidence Petroleum India Ltd, Nagpur, Maharashtra	1260.00	-

lxxiii. From the above table it is clear that 17 OPs had quoted identical L1 rates of Rs. 1250.12, two OPs quoted L2 rate of Rs. 1251.12, one OP quoted L3 rate of Rs. 1255.00, one OP quoted L4 rate of Rs. 1255.12 and eight OPs quoted identical L5 rate of Rs. 1260.00.

lxxiv. The tender was awarded to 21 bidders including 18 existing vendors and 3 new vendors. Out of 18 existing vendors, 17 OPs who were awarded the contract had quoted identical L1 rates.

- lxxv. The authorised representatives of the OPs were questioned by the DG to seek their justification for quoting of identical rates in the State of Andhra.
- lxxvi. Krishna Cylinders, Gopal Cylinders and Gopal Cylinders (Unit III) admitted to have quoted rates in discussion with each other.
- lxxvii. Kurnool Cylinders Pvt. Ltd., Unit II, International Cylinders (P) Ltd., Sunrays Engineers Pvt. Ltd., Shri Shakti Cylinders (P) Ltd., Prathima Industries Pvt. Ltd. and J.K.B. Gas Pvt. Ltd., in their statements could not explain about how identical prices were quoted.
- lxxviii. Sahuwala Cylinders (P) Ltd. and Sahuwala Cylinders (P) Ltd., Unit –II, stated that they quoted same rates at which they were supplying to HPCL at the relevant time.
- lxxix. Surya Shakti Vessels Pvt. Ltd., Om Containers, Super Industries, Teekay Metals Pvt. Ltd., Vidhya Cylinders Pvt. Ltd. and BTP Structural India Pvt. Ltd. stated that identical prices happened due to coincidence.
- lxxx. R.M. Cylinders Pvt. Ltd., Hyderabad Cylinders Pvt. Ltd., Sanghvi Cylinders Pvt. Ltd. admitted to have discussed with each other about identical rates.
- lxxxi. Confidence Petroleum India Ltd. (Halol), Hans Gas Appliances Pvt. Ltd., Khara Gas Equipments Pvt. Ltd. and Confidence Petroleum India Ltd., in their depositions, stated that it was a trade practice.

### *State of Maharashtra*

- lxxxii. The bidders had quoted the following identical rates in the State of Maharashtra:

**Table No.16**

S.No.	Name of Bidders and Location of Factory	Quoted Rates (Rs.)	Rate at which contract awarded
1.	Super Industries, Sinnar, Maharashtra	1238.28	1237.00
2.	Teekay Metals Pvt. Ltd., Nasik, Maharashtra	1239.30	1237.00
3.	Confidence Petroleum India Ltd., Nagpur, Maharashtra	1239.30	1237.00
4.	Om Containers, Nasik, Maharashtra	1239.30	1237.00
5.	Hans Gas Appliances Pvt. Ltd., Raigarh Maharashtra	1239.30	1237.00

6.	Confidence Petroleum India Ltd. (Halol), Halol Gujarat	1240.32	1237.00
7.	Khara Gas Equipments P Ltd., Nagpur, Maharashtra	1240.32	1237.00

- lxxxiii. From the above table, it is noted that L1 rate was quoted by one OP. However, L2 rates quoted by four OPs were identical. L3 rates quoted by two OPs were also identical. The final rate at which tender was awarded by HPCL was Rs. 1237.00.
- lxxxiv. Investigation brought out that tender was awarded to 18 bidders including 12 existing and 6 new vendors. Out of 12 existing vendors to whom contract was awarded, the OPs including, Teekay Metals Pvt. Ltd, Confidence Petroleum India Ltd., Om Containers and Hans Gas Appliances Pvt. Ltd. quoted identical L2 rates whereas Confidence Petroleum India Ltd. (Halol) and Khara Gas Equipments Pvt. Ltd. quoted identical L 3 rates, as illustrated from the table above.
- lxxxv. Om Containers, Super Industries and Teekay Metals Pvt. Ltd, are related concerns. Confidence Petroleum India Ltd., Confidence Petroleum India Ltd. (Halol), Hans Gas Appliances Pvt. Ltd. and Khara Gas Equipments Pvt. Ltd. belong to the same group.
- lxxxvi. Mr. Kishore Kela of Teekay Metals Pvt Ltd, Super Industries and Om Containers stated that since these were related concerns therefore, their rates were identical. Mr. Jacob Mathew of Confidence Petroleum India Ltd. stated that he could not give any specific reason for identical rates and his company quoted the rates based on existing supply rates to different oil companies.

29. Based on above, the DG found a particular pattern of bidding in different states, which is as under:

- (i) The orders were placed on 51 successful bidders from existing vendor category. Successful bids were quoted by different bidders in groups collectively.
- (ii) The manufacturing units of the different OPs are located at different places and in different States. While the respective costing provided by the OPs did not match with each other, their final quoted rates were either identical or within a narrow range. Most of the OPs stated that freight was one of the most important determinants of cost in submission of a bid. Therefore, freight cost for supply of

cylinders cannot be same to a particular station from different manufacturing plants situated across different States. Also, other components such as tax credit (which is not available in every state), excise duty exemption, power supply tariff etc. which affect costs of a firm, are also different in different states. Despite the above, the bidders had quoted identical rates for different states. This points out to collusion and understanding among the bidders.

- (iii) Several OPs quoted not only identical L1 rates, but also identical L2, L3, L4 and L-5 rates without any justification or basis.

30. The investigation also brought out that although the OPs were located at different places across the country, they were in contact with each other and exchanged vital information. Most of the OPs during their depositions before the DG have admitted to be in touch with each other and meeting them on various occasions. Several OPs comprised family members and relatives with business and financial dealings with each other. Various OPs admitted during the course of investigation to have met at social gatherings.

31. The Commission notes that during investigation, the DG identified that apart from HPCL, IOCL and BPCL were other market players in the market for '*procurement of empty LPG cylinders for further retail and distribution of LPG filled cylinders*'. It was also found that as per the figures provided by PESO, there were 155 authorized LPG cylinders manufacturers whereas the yearly demand by HPCL was approximately between 50,00,000-60,00,000 (excluding IOCL and BPCL), and vendors who participated were around 60-80 in number, which as per investigation remains the same for every OMC.

32. Upon assessment of the profile of various enterprises, the investigation revealed that they were connected either as a group, or had common or related management. This, as per the DG, reduced the number of effective competitors in the market. The DG noted that the limited number of players in a market which consisted of only one product which was identical, and unique design and specification, with no substitute made the exchange of information and collusion easier. Further, the demand of the OMCs for the product could be easily estimated and markets could be allocated and shared between

them. The investigation also brought out that the bidding took place between same and limited group of entities on repetitive basis, which gave a chance to such suppliers of LPG Cylinders to reach an agreement for allocation of contracts amongst themselves. These factors were attributed by the DG to be ‘*meeting of minds*’ among the suppliers. Moreover, the DG observed that the presence of an industry association provided a common platform for the manufacturers to meet and indulge in anti-competitive activities. Accordingly, DG, found the market for supply of LPG cylinders to the OMCs to be conducive for LPG cylinder manufacturers to form a cartel.

33. The OPs, during the course of hearing and in their submissions to the Investigation Report, contended that there are only three buyers of 14.2 Kg LPG cylinders, *i.e.* IOCL, BPCL and HPCL. Apart from supply of LPG Cylinders to the OMCs, the OPs do not have any market as 14.2 Kg cylinders cannot be manufactured/supplied to any other person other than OMCs. As a result, OMCs including HPCL have bargaining power. It was further contended that nature of market is an “Oligopolistic Market” and price parallelism is common in such markets. As there are few sellers, each seller is likely to be aware of actions and decisions of others and are influenced by each other. Further, essential cost pertaining to manufacturing of cylinders are regulated and fixed by law. Price of steel constitutes more than 50 percent of manufacturing cost and fluctuates every month. All the essential costs of the product are well known to OMCs and to each bidder. This has been admitted by HPCL, in its submissions dated 26.04.2019. Moreover, the bidders on the date of tender know the rates at which last supplies have been made as these are published by HPCL.

34. The judgment of the Hon’ble Supreme Court in the case of *Rajasthan Cylinders and Containers Ltd. Versus Union of India & Anr.* with other connected cases (Civil Appeal No. 3546 of 2014) was also referred to, wherein it has been held that despite presence of identical prices, exchange of information among bidders, pre-bid meetings prior to tender, active association, it was found that there was no cartelisation, as the nature of market was an oligopsony.

35. Most of the OPs, during the course of hearing and in their objections/submissions to the Investigation Report, with respect to findings of investigation in respect of identical pricing in Tender No.1 stated that mere quotation of identical prices cannot lead to an



inference that parties have formed a cartel or indulged in bid rigging. It was contended that parallel pricing alone is insufficient to establish an allegation of cartelisation or bid rigging. Parallel pricing can only lead to a suspicion and cannot lead to positive conclusion regarding bid rigging. Reliance was placed upon the judgment of the Hon'ble Supreme Court in the case of *Union of India Vs. Hindustan Development Corporation* reported in AIR 1994 SC 980 in support of this submission. Reliance was also placed upon other decisions of the Commission and erstwhile COMPAT in this regard. It was contended that there was no direct evidence of any 'agreement' or 'meeting of minds' between the OPs except that there has been identical pricing in the bids submitted by them. No evidence has been collected by the DG that any price bids were discussed and agreed to be fixed before quoting for Tender No.1.

36. Mr. Pradeep Agarwal, the authorised representative of Tirupati Containers Pvt. Limited and several other OPs, during the course of arguments vehemently contended that the bidders know the rates at which the last supplies have been made by the cylinder manufacturers and the rates of last tender and profit margin, which each manufacturer has taken into account. Further, substantial portion of costing is the same for all the parties and accordingly, the price quotes for all the parties remain in same range. It was argued that bidders quoted for supplies in different states of India as per their installed capacity and rates for supplies were fixed by HPCL after negotiation with L-1 bidder. In case, L-1 could not supply the required number of cylinders, the order for supply would go to L-2 and also to L-3 bidder, depending upon the requirement in State as per fixed formula mentioned in the bid documents. Thus, according to OPs, although bids were invited from bidders, HPCL had internally established a benchmark price based on report of a consultant approved by it. Based on its benchmark price, HPCL worked out an estimated rate per state based on factors peculiar to that state. The lowest bid was then rationalised and brought in line with HPCL's estimated rate. In this manner, finalised rate is determined. Therefore, the actual bid submitted by a bidder is rendered meaningless as entire determination was based on HPCL's estimated price. Thus, in view of the stringent tender conditions and monitoring mechanism, there was no possibility of any bid rigging or price manipulation on part of the bidders.

37. It was contended that mere existence of a trade association is not enough to find contravention against the OPs. The Association is defunct. Moreover, the Association

was formed with the legitimate objective of encouraging competitive spirit and efficiency among members. Further, the investigation has not revealed any evidence to show that all the bidders were members of the association. Even bidders, who were not members of association also had identical prices with others. It was argued that there is nothing in law which prohibits OPs from having discussions and meetings with each other. On the contrary, in a small industry, as in the present case, meetings and friendships are quite natural. Further, there was no discussion of prices in the said meetings. It was contended that the error in the Investigation Report was the failure to examine HPCL to prove that the bidding process was adversely impacted. Since HPCL did not make any statement that there was any adverse impact, the findings of the Investigation Report were totally misconceived.

38. The Commission has taken note of the findings of the investigation, submissions of the OPs and reply filed by HPCL dated 26.04.2019. The Commission observes that identical prices were quoted by different bidders in groups collectively, despite the fact that different parties were located at different locations in different states, having different costs. As per DG, the OPs were in contact with each other and exchanged vital information, which was evidenced by admission by the OPs before the DG, to be in touch with each other and meeting each other on various occasions. In this regard, the Commission notes that in a catena of decisions, it has been held that price parallelism in itself is not sufficient to hold the bidders in contravention of the provisions of the Act. The Commission agrees with the submissions of the OPs that parallel pricing can only lead to a strong suspicion of existence of a cartel and cannot lead to positive conclusion regarding bid rigging. Further, the investigation has nowhere revealed that quotation of identical prices by the OPs was with the objective of sharing of market amongst each other. Apart from quotation of identical prices in Tender No.1, the other evidence which was relied upon by the DG was interaction between the OPs. In this regard, it is apposite to mention OECD Policy Roundtable in relation to Prosecuting Cartels without Direct Evidence, which discusses the nature of evidence that is required for proving the cartel agreement. Relevant extracts of the said OECD Policy are as under:

*“Common types of direct evidence include:*

*- A document or documents (including email messages) essentially embodying the agreement, or parts of it, and identifying the parties to it.*

*- Oral or written statements by co-operative cartel participants describing the operation of the cartel and their participation in it.*

*There are different types of circumstantial evidence. One is evidence that cartel operators met or otherwise communicated but does not describe the substance of their communications. It might be called communication evidence for purposes of this discussion.*

*It includes:*

*- Records of telephone conversations between competitors (but not their substance), or of travel to a common destination or of participation in a meeting, for example during a trade conference.*

*- other evidence that the parties communicated about the subject e.g., minutes or notes of a meeting showing that prices, demand or capacity utilisation were discussed; internal documents evidencing knowledge or understanding of a competitors pricing strategy, such as an awareness of a future price increase by a rival.*

*A broader category of circumstantial evidence is often called economic evidence. Economic evidence identifies primarily firm conduct that suggests that an agreement was reached, but also conduct of the industry as a whole, elements of market structure which suggest that secret price fixing was feasible, and certain practices that can be used to sustain a cartel agreement.”*

39. The Commission has also taken note of the guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union (TEFU) to horizontal cooperation agreements which records as under:

*“60. Information exchange can only be addressed under Article 101 if it establishes or is part of an agreement, a concerted practice or a decision by an association of undertakings. The existence of an agreement, a concerted practice or decision by an association of undertakings does not prejudice whether the agreement, concerted practice or decision by an association of undertakings gives rise to a restriction of competition within the meaning of Article 101(1). In line with the case-law of the Court of Justice of the European Union, the concept of a concerted practice refers to a form of coordination between undertakings by which, without it having reached the stage where an agreement properly so-called has been concluded, practical cooperation between them is knowingly substituted for the risks of competition. The criteria of coordination and cooperation necessary for determining the existence of a concerted practice, far from requiring an actual plan to have been worked out, are to be understood in the light of the concept inherent in the provisions of the Treaty on competition, according to which each company must determine independently the policy which it intends to adopt on the internal market and the conditions which it intends to offer to its customers.*

*61. This does not deprive companies of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors. It does, however, preclude any direct or indirect contact between competitors, the object or effect of which is to create conditions of competition which do not correspond to the normal competitive conditions of the market in question, regard being had to the nature of the products or services offered, the size and number of the undertakings, and the volume of the said market. This precludes any direct or indirect contact between competitors, the object or effect of which is to influence conduct on the market of an actual or potential competitor, or to disclose to such competitor the*

*course of conduct which they themselves have decided to adopt or contemplate adopting on the market, thereby facilitating a collusive outcome on the market. Hence, information exchange can constitute a concerted practice if it reduces strategic uncertainty in the market thereby facilitating collusion, that is to say, if the data exchanged is strategic. Consequently, sharing of strategic data between competitors amounts to concentration, because it reduces the independence of competitors' conduct on the market and diminishes their incentives to compete.*

62. A situation where only one undertaking discloses strategic information to its competitor(s) who accept(s) it can also constitute a concerted practice. Such disclosure could occur, for example, through contacts via mail, emails, phone calls, meetings etc. It is then irrelevant whether only one undertaking unilaterally informs its competitors of its intended market behaviour, or whether all participating undertakings inform each other of the respective deliberations and intentions. When one undertaking alone reveals to its competitors strategic information concerning its future commercial policy that reduces strategic uncertainty as to the future operation of the market for all the competitors involved and increases the risk of limiting competition and of collusive behaviour. For example, mere attendance at a meeting where a company discloses its pricing plans to its competitors is likely to be caught by Article 101, even in the absence of an explicit agreement to raise prices. When a company receives strategic data from a competitor (be it in a meeting, by mail or electronically), it will be presumed to have accepted the information and adapted its market conduct accordingly unless it responds with a clear statement that it does not wish to receive such data.

40. The Commission notes that information exchanged between competitors could constitute a concerted practice if it involves sharing of strategic data between them such as details about prices, demand, capacity utilisation, and internal documents evidencing knowledge or understanding of competitors pricing strategy, awareness of future price increase by a rival, *etc.* Such sharing of information reduces the independence of competitors conduct on the market and diminishes their incentives to compete. In the present case, there is no doubt that the most of authorised representatives of the OPs knew each other and admitted to have been interacting with each other on regular basis. However, investigation has not brought out any evidence of exchange of any strategic information in relation to discussion of quotation of bid prices in Tender No.1 or any other evidence discussed above.

41. The Commission also observes that in Rajasthan Cylinders case (*supra*), the procurer being IOCL was not examined. The Hon'ble Supreme Court, on the role of procurer, i.e IOCL in the above said case observed that "*the manner in which tenders are floated by IOCL and the rates at which these are awarded, are an indicator that it is IOCL which calls the shots in so far as price control is concerned. It has come in evidence that the IOCL undertakes the exercise of having its internal estimates about the cost of these cylinders.....That apart, the modus adopted by the IOCL is that the final price is negotiated by it and the contract is not awarded at the rate quoted by the bidder who*

*turns out to be L-1.....Thus, ultimately, all the bidders supply the goods at the same rate which is fixed by the IOCL”.*

42. In the present case, the Commission notes that views of HPCL were sought on the factors taken into consideration by it, prior to finalisation of prices for award of tender, which has been discussed above.
43. The Commission notes that as stated by HPCL, existing procurement cost of HPCL and the industry rates as compared to the price bids submitted by the parties to HPCL is taken into consideration, besides other factors. Thus, it is not that HPCL does not take into consideration the rate quoted by the bidders. Rather what emerges from HPCL’s response is that it is just one of the factors and that too taken into account or in comparison with the industry rates. Thus, HPCL is neither constrained nor dependent on the rates quoted by the bidders and acts independently regardless of the rates quoted by the bidders. In fact HPCL for finalising the L-1 rate also enters into negotiation with the bidders. HPCL is also not oblivious to the fact that there can be identical rates offered by bidders and for which precise reason it has introduced the concept of integrity pact in its tenders. But in the present case, it has stated to have not invoked this pact despite there being existence of price parallelism in the bids of many OPs. Thus, considering the submissions of HPCL and in the light of the judgment passed by the Hon’ble Supreme Court in Rajasthan Cylinders case, the Commission decides not to further examine the conduct of the following OPs identified by the DG (except ECP Industries Ltd., Ginni Industries, Haldia Precision Engineering Pvt. Ltd., Sarthak Industries Ltd. and Prestige Fabricators Pvt. Ltd.), in Tender No. 1, in the present case to hold them in contravention of the provisions of Section 3(3)(d) read with Section 3(1) of the Act, a list of which, is as follows:

**Table No.17**

1.	Allampally Brothers Ltd.
2.	Asian Fab Tec Ltd.
3.	Bhiwadi Cylinders Pvt. Ltd.
4.	Balaji Pressure Vessels Ltd
5.	BTP Structural India Pvt. Ltd.
6.	Confidence Petroleum India Ltd.
7.	Confidence Petroleum India Ltd. (Halol)
8.	Carbac Holdings Ltd.
9.	Daya Industries
10.	Faridabad Metal Udyog Pvt. Ltd.
11.	Gopal Cylinders (Unit-III)

12.	Gopal Cylinders
13.	GDR Cylinders (P) Ltd.
14.	Hans Gas Appliances Pvt. Ltd.
15.	Hyderabad Cylinders Pvt. Ltd.
16.	International Cylinders (P) Ltd.
17.	J.K.B. Gas Pvt Ltd.
18.	Kurnool Cylinders Pvt. Ltd (Unit-II)
19.	Krishna Cylinders.
20.	Khara Gas Equipments Pvt Ltd.
21.	Lite Containers Pvt. Ltd
22.	Mahaveer Cylinders Ltd.
23.	Mauria Udyog Ltd.
24.	North India Wires Ltd
25.	North India Wires Ltd (Unit-II)
26.	Omid Engineering Pvt. Ltd
27.	Om Containers
28.	Punjab Gas Cylinders Ltd.
29.	Prathima Industries Pvt. Ltd.
30.	Rajasthan Cylinders & Containers Ltd.
31.	R. M. Cylinders Pvt. Ltd.
32.	Saboo Cylinders Pvt. Ltd.
33.	Sanghvi Cylinders Pvt. Ltd.
34.	Sahuwala Cylinders (P) Ltd
35.	Sunrays Engineers Pvt. Ltd.
36.	S.M. Cylinders
37.	Shri Shakti Cylinders P Ltd.
38.	Shri Ram Cylinders.
39.	Surya Shakti Vessels Pvt. Ltd.
40.	Super Industries
41.	Tirupati Cylinders Ltd.
42.	Tirupati Containers Pvt. Ltd.
43.	Tirupati LPG Industries Ltd
44.	Teekay Metals Pvt. Ltd.
45.	Universal Cylinders Ltd (Unit-II)
46.	Vidhya Cylinders Pvt. Ltd.
47.	Universal Cylinders Ltd.
48.	Sahuwala Cylinder Pvt. Ltd (Unit-II)

***Issue 2: Whether the bidders while bidding/withdrawing the bids for Tender No.2 acted in a concerted manner and manipulated the process of bidding and thus are in contravention of the provisions of Section 3(3)(d) read with Section 3(1) of the Act?***

44. The Commission notes that 66 LPG cylinder manufacturers had participated in Tender No.2. A list of 66 LPG cylinder manufacturers including 10 new vendors and 1 disqualified new vendor who participated in Tender No.2 is as under:

**Table No.18**

S.No.	Details of the participating company	Vendor Category
1.	Pankaj Gas Cylinders Ltd.	Existing vendor
2.	Krishna Cylinders	Existing vendor



3.	Gopal Cylinders	Existing vendor
4.	ECP Industries Ltd. (Cylinder Division)	Existing vendor
5.	Winfab Equipments Pvt. Ltd	Existing vendor
6.	Omid Engineering Pvt. Ltd	Existing vendor
7.	Sri Sai Balaji Gas Cylinders Pvt. Ltd.	Existing vendor
8.	Southern Cylinders Pvt. Ltd.	Existing vendor
9.	Raghupati Synergy Pvt Ltd.	Existing vendor
10.	Nandi Cylinders Pvt. Ltd.	Existing vendor
11.	Konark Cylinders and Containers Pvt. Ltd.	Existing vendor
12.	Jesmajo Industrial Fabrications Karnataka Pvt. Ltd.	Existing vendor
13.	Intel Gas Gadgets (P) Ltd.- Unit-II	Existing vendor
14.	Him Cylinders Ltd.	Existing vendor
15.	A.K. M.N. Cylinders (P) Ltd.	Existing vendor
16.	North India Wires Ltd. (Howrah Unit)	Existing vendor
17.	MauriaUdyog Ltd.	Existing vendor
18.	Mahaveer Cylinders Ltd.	Existing vendor
19.	Lite Containers Pvt. Ltd	Existing vendor
20.	J.K.B. Gas Pvt. Ltd.	Existing vendor
21.	Kurnool Cylinders Pvt. Ltd. (Unit II)	Existing vendor
22.	International Cylinders (P) Ltd.	Existing vendor
23.	Haldia Precision Engineering Pvt. Ltd	Existing vendor
24.	Hyderabad Cylinders Pvt. Ltd	Existing vendor
25.	GDR Cylinders (P) Ltd.	Existing vendor
26.	Faridabad Metal Udyog Pvt. Ltd.	Existing vendor
27.	Daya Industries	Existing vendor
28.	Confidence Petroleum India Ltd.	Existing vendor
29.	Carbac Holdings Ltd	Existing vendor
30.	BTP Structural India Pvt. Ltd.	Existing vendor
31.	Balaji Pressure Vessels Ltd.	Existing vendor
32.	Bhiwadi Cylinders Pvt. Ltd.	Existing vendor
33.	Asian Fab Tec Ltd.	Existing vendor
34.	Allampally Brothers Ltd.	Existing vendor
35.	Om Containers	Existing vendor
36.	Prestige Fabricators Pvt. Ltd.	Existing vendor
37.	Punjab Gas Cylinders Ltd.	Existing vendor
38.	Prathima Industries Pvt. Ltd.	Existing vendor
39.	R. M. Cylinders Pvt. Ltd.	Existing vendor
40.	Saboo Cylinders Pvt. Ltd.	Existing vendor
41.	Sanghvi Cylinders Pvt. Ltd.	Existing vendor
42.	Sahuwala Cylinders (P) Ltd.	Existing vendor
43.	Sunrays Engineers Pvt. Ltd.	Existing vendor
44.	Sarthak Industries Ltd.	Existing vendor
45.	S.M. Cylinders	Existing vendor
46.	Shri Shakti Cylinders P Ltd.	Existing vendor
47.	Surya Shakti Vessels Pvt. Ltd.	Existing vendor
48.	Super Industries	Existing vendor
49.	Tirupati Cylinders Ltd.	Existing vendor
50.	Tirupati Containers Pvt. Ltd.	Existing vendor
51.	Tirupati LPG Industries Ltd.	Existing vendor
52.	Teekay Metals Pvt. Ltd.	Existing vendor
53.	Universal Cylinders Ltd. Unit-II	Existing vendor
54.	Vidhya Cylinders Pvt. Ltd.	Existing vendor
55.	Andhra Cylinders	Existing vendor
56.	Sai Cylinders Pvt Ltd.	New vendor
57.	Dharmaja Cylinders Pvt Ltd.	New vendor

58.	Bihar Cylinders	New vendor
59.	Indo Cylinders	New vendor
60.	Prakash Heavy Metal Pvt Ltd.	New vendor
61.	Sapphire (India) Pvt Ltd.	New vendor
62.	Suburban Industries	New vendor
63.	Tirupati Cylinders Ltd - (Unit-II)	New vendor
64.	Ami Cylinders	New vendor
65.	Asian Pressure Vessels	New vendor
66.	Gopal Cylinders (Unit-III) (Party disqualified)	Disqualified New Vendor

45. From the aforesaid vendors, 51 OPs withdrew their bids out of which 46 OPs withdrew their bids simultaneously on 04.03.2013, while the technical evaluation of bids by HPCL of the said tender was in progress.

46. After collective withdrawal, HPCL proceeded with the tender with balance of available bids. On technical evaluation 15 bidders were found to have submitted valid quotations out of which 5 bidders were from 'existing vendor' category and rest were from 'new vendor' category. One bidder from existing vendor category was rejected. Further, 10 new vendors were not required to quote price bids. The rates were finalised by HPCL based on L-1 rates obtained from price bids of four bidders from 'existing vendor category', namely, Pankaj Gas Cylinders, Krishna Cylinders, Gopal Cylinders and ECP Industries Ltd. The price bids were opened on 31.05.2013. During the intervening period of opening of price bids till finalising of L-1 price, repeat purchase orders were placed on 'existing vendors' at old L-1 rates to ensure uninterrupted supplies in the market.

47. To analyse the bids submitted in Tender No.2, the DG adopted a two step approach. While the first part relates to analysis of bid patterns of four qualified bidders/OPs in Tender No.2 from the 'existing vendor' category to unearth any manipulation in the bidding process, the second part dealt with analysis of collective withdrawal from Tender No.2 by 51 OPs. The Commission now proceeds to analyse each of the parts of Tender No.2 in the succeeding paragraphs.

#### **Part A: Quotation of identical rates**

48. The investigation revealed that identical rates were quoted by two qualified bidders, i.e. Krishna Cylinders and Gopal Cylinders out of four qualified bidders from the 'existing vendor category'. These two bidders had quoted identical/similar prices for



8 states out of a total of 10 states in which they submitted their bids. A table elucidating the identical/similar prices quoted by the aforesaid parties in 8 States is as under:

**Table No.19: Rates quoted by Krishna Cylinders and Gopal Cylinders in 8 states**

S.No.	Name of the State	Price quoted by Krishna Cylinders	Price quoted by Gopal Cylinders
1.	Bihar	1165.90	1165.90
2.	Gujrat	1145.90	1145.90
3.	J&K	1158.90	1158.90
4.	Madhya Pradesh	1155.90	1155.89
5.	Maharashtra	1165.90	1165.90
6.	Punjab	1125.90	1125.90
7.	Rajasthan	1135.90	1135.90
8.	U.P.	1135.90	1135.90

49. As regards identical/similar pricing by Gopal Cylinders and Krishna Cylinders, Mr. Rakesh Agarwal, Partner of Gopal Cylinders, in his statement before the DG, stated that partners of Krishna Cylinders and Shri Ram Cylinders are his relatives and their rates generally remain identical as they discuss with each other about the same. Mr. Arun Kumar Agarwal, Partner of Krishna Cylinders in his statement before the DG deposed that his firm quoted the rates based on internal estimates and he could not comment on the rates of other companies. However, in replies to many other questions, he admitted that his firm generally discusses rates to be quoted in a tender with Gopal Cylinders as it is his relative's firm and the partners of Gopal Cylinders were also partners of Krishna Cylinders till mid-2005. Further, Mr. Rakesh Agarwal of Gopal Cylinders confirmed whatever was stated by Mr. Arun Kumar Agarwal, Partner of Krishna Cylinders, when he was confronted with the statement.
50. Krishna Cylinders also stated that its rates were similar to Gopal Cylinders on account of them being related firms, being run by family members. Further, it was stated that they do not have anything common/similar/identical to any of 66 bidders except with Gopal Cylinders. This, as per its claim was very well known to OMCs and other cylinder manufacturers.
51. Upon perusal of findings of investigation and responses of these OPs to the Investigation Report, the Commission notes that these OPs had quoted rates in Tender No.2 after discussing with each other and accepted the fact in unequivocal terms that they always talked to each other before quoting in tenders. However, in view of the findings of the Commission in relation to Tender No.1 discussed in preceding

paragraphs and also considering the fact that there is no corroborative evidence of collusive bidding or coordinated action, apart from quotation of identical prices by the said OPs, the Commission decides not to proceed any further with respect to the said OPs, *i.e.* Gopal Cylinders and Krishna Cylinders.

### **Part B: Collective withdrawal of bids by 51 OPs**

52. Before dealing with the individual cases of each of the parties, the Commission at the outset notes that it is an undisputed fact unearthed by the investigation that not one or two but 51 bidders simultaneously withdrew their bids out of which, 46 withdrew their bids on the same date, *i.e.* on 04.03.2013. This act of the OPs is quite unusual more so as the reasons furnished by many of the OPs are identical or many a times common, despite the fact that such bidders were located through the length and breadth of the country and had bid for different States and could not be said to have been faced with identical circumstances. The evidences brought out by investigation strongly suggest a common intent that prevailed among the 51 OPs to act in concert in withdrawing their bids rather than acting independently.

53. During the course of investigation, these 51 OPs were asked to explain their reasons for withdrawal of bids from Tender No.2. Table illustrating the reasons given by the OPs to HPCL in their letters seeking withdrawal and in their deposition before the DG or written replies filed, is as under:

**Table No.20: Reasons stated by OPs for withdrawal of bids in Tender No.2**

S.No.	Name of the OP	Reasons stated by the OP for withdrawal in letter submitted to HPCL	Reasons stated by the OP during the course of investigation
1.	Asian Fab Tec Ltd.	No reasons	Costing was not workable
2.	North India Wires Ltd.	No reasons	Increase in steel prices
3.	Daya Industries	No reasons	Withdrew as per information from Mr. Prashant Bhatt, agent from Mumbai
4.	Faridabad Metal Udyog Pvt. Ltd.	No reasons	Existence of family dispute among the directors of the Company
5.	Him Cylinders Ltd.	No reasons	Rates quoted by mistake

6.	International Cylinders (P) Ltd.	No reasons	Rates found unworkable, Company had work orders from other oil companies, no discounts given by steel companies, hike in diesel prices and transportation cost
7.	Intel Gas Gadgets (P) Ltd. Unit-II	No reasons	Do not remember, rates unworkable, calculation mistake on part of accounts department
8.	Mahaveer Cylinders Ltd.	No reasons	Increase in steel prices
9.	Mauria Udyog Ltd.	No reasons	Could not recollect
10.	Omid Engineering Pvt. Ltd.	No reasons	Rates quoted by mistake
11.	Punjab Gas Cylinders Ltd.	No reasons	Own decision of the company. No other manufacturer had asked them or requested to withdraw their bid
12.	Raghupati Synergy Pvt. Ltd.	No reasons	Did not appear before the DG
13.	Saboo Cylinders Pvt.Ltd.	No reasons	Repeat orders received from BPCL and HPCL, no other manufacturer had asked them or requested to withdraw bids
14.	S.M. Cylinders	No reasons	Increase in steel prices
15.	Sunrays Engineers Pvt. Ltd.	No reasons	Increase in steel prices
16.	Surya Shakti Vessels Pvt. Ltd.	No reasons	Increase in steel prices, telephone calls from various manufacturers, emails from Mr. Dinesh Mittal of Mahaveer Cylinders Ltd. wherein format of withdrawal letter was attached
17.	Tirupati Containers Pvt. Ltd.	No reasons	Someone else withdrew the bid
18.	Tirupati Cylinders Pvt. Ltd.	No reasons	Change in market dynamics, unexpected hike in fuel prices
19.	Tirupati LPG Industries Ltd.	No reasons	Change in market dynamics, unexpected hike in fuel prices
20.	Universal Cylinders Ltd. (Unit-II)	No reasons	Increase in steel prices
21.	Bhiwadi Cylinders Pvt. Ltd.	No reason	Bids were withdrawn due to acceptance of repeat order of existing tender, increase in steel prices
22.	BTP Structural India Pvt. Ltd.	Unavoidable circumstances	Increase in steel prices
23.	Carbac Holdings Ltd.	Unavoidable circumstances	Increase in steel prices
24.	Haldia Precision Engineering Pvt. Ltd.	Unavoidable circumstances	Increase in steel prices

25.	Confidence Petroleum India Ltd.	Uncertainties and unavoidable circumstances	CCI had imposed penalty of Rs. 28 Crores on the company and also liability of sales tax department.
26.	Hyderabad Cylinders Pvt. Ltd.	Unavoidable circumstances	Withdrawal of discounts on steel by SAIL
27.	Jesmajo Industrial Fabrications Karnataka Pvt. Ltd.	Unavoidable circumstances	Fluctuation in steel prices
28.	J.K.B. Gas Pvt. Ltd.	Unavoidable circumstances	Rebate on steel prices withdrawn
29.	Konark Cylinders & Containers Pvt Ltd	Unavoidable circumstances	Did not appear before the DG
30.	Nandi Cylinders Pvt. Ltd.	Unavoidable circumstances	Labour problem
31.	Om Containers	Unavoidable circumstances	Less discount in steel prices
32.	R.M. Cylinders Pvt. Ltd.	Unavoidable circumstances	Quoted after discussion with other group companies
33.	Sahuwala Cylinders (P) Ltd.	Unavoidable circumstances	Increase in steel and electricity prices
34.	Sanghvi Cylinders Pvt. Ltd.	Unavoidable circumstances	Withdrawal of discounts by SAIL, Mr. Ramesh Sanghvi, MD of the company discussed reasons for withdrawal with Mr. Vijay Sanghvi and Mr. R.M. Sanghvi
35.	Southern Cylinders Pvt. Ltd.	Unavoidable circumstances	Erratic supply of steel, Increase in power tariff
36.	Super Industries	Unavoidable circumstances	Less discount by SAIL
37.	Teekay Metals Pvt. Ltd.	Unavoidable circumstances	Same reason as Om Containers and Super Industries, less discount in steel prices, less discount by SAIL
38.	WinfabEquipments Pvt. Ltd.	Unavoidable circumstances	Less installed capacity, Company had stopped manufacturing
39.	Kurnool Cylinders Pvt. Ltd. (Unit –II)	Unexplainable circumstances	Increase in steel prices
40.	Andhra Cylinders	Compelling circumstances	Same reason as provided by Confidence Petroleum India Ltd.
41.	Prestige Fabricators Pvt. Ltd.	Calculation mistake	Hike in steel prices
42.	Sarthak Industries Ltd.	Calculation mistake	Calculation mistake
43.	Vidhya Cylinders Pvt. Ltd.	Calculation error	Calculation error, no other manufacturer asked them to withdraw
44.	Lite Containers Pvt. Ltd.	Calculation error	Did not appear before the DG

45.	AKMN Cylinders (P) Ltd.	Manpower shortage and inadequate power supply	Did not appear before the DG
46.	Allampaly Brothers Ltd.	Severe power cuts and labour problem	Reiterated the reason provided in letter to HPCL
47.	GDR Cylinders (P) Ltd.	Power problem and labour problem	Company taken over by new management
48.	Shri Shakti Cylinders P Ltd.	Acute shortage of electricity	Bad law and order situation, acute power shortage
49.	Sri Sai Balaji Gas Cylinders Pvt Ltd.	Power problem, and labour problem	Did not appear before the DG
50.	Balaji Pressure Vessels Ltd.	Connectivity problem, technical issues and force majeure conditions	Did not appear before the DG
51.	Prathima Industries Pvt. Ltd.	New developments in the sector, power scenario drastically changed and hike in diesel prices	Calculation mistake, power and fuel price hike

#### ***Common reasons in withdrawal letters***

54. The above table illustrates that 21 OPs provided no reasons to HPCL in their withdrawal letters (S.No.1 to 21). Further, from S.No. 22 to 40, 9 OPs stated ‘*unavoidable reasons/compelling circumstances*’ as their explanation for withdrawal of their bids. ‘*Calculation error*’ was provided as the reason for withdrawal in Tender No.2 by 4 OPs mentioned at S.No. 41 to 44. The rest of the 7 OPs (S.No. 45 to 51), provided an explanation of manpower shortage, labour problem, powers cuts, *force majeure*, etc., as their reason for withdrawal of their bids.

55. Investigation brought out that some of the OPs cited the reason of increase in steel prices/reduction in rebate by SAIL before the DG. This according to the DG appeared to be an afterthought as these reasons were not provided by them to HPCL at the time of the withdrawal of their bids from Tender No.2. Further, the said OPs could not substantiate before the DG as to how such an increase in steel prices affected their delivery price considering that HPCL comes out with monthly Net Delivered Price of LPG cylinders after considering escalation/de-escalation of steel prices (**NDP rates**).

Investigation further revealed that the OPs who had given the reason of “*calculation mistake/error*” for withdrawal of their bids from Tender No.2 in their deposition/replies before the DG could not explain in any manner as to what type of calculation mistake was committed by them.

***Exchange of withdrawal letter through email and common format of withdrawal letter***

56. It was revealed during the course of investigation that several OPs had discussions amongst themselves before withdrawing their respective bids in Tender No.2. There was exchange of a format of withdrawal letter through e-mails between several OPs which is discussed hereunder.

57. Investigation revealed that an email was received by Mahaveer Cylinders Ltd. and Tirupati Cylinders Ltd. from Bhiwadi Cylinders Pvt. Ltd. on 23.02.2013 containing an attachment *i.e.* a letter of Bhiwadi Cylinders Pvt. Ltd. to HPCL pertaining to withdrawal of its bid from Tender No.2. It was also revealed that Mahaveer Cylinders Ltd. forwarded the withdrawal letter on 23.02.2013 to the following LPG cylinder manufacturers:

- i. Universal Cylinders Ltd.
- ii. Surya Shakti Vessels Pvt. Ltd.
- iii. Faridabad Metal Udyog Pvt. Ltd.
- iv. Sunrays Engineers Pvt. Ltd.
- v. Him Cylinders Ltd.
- vi. S.M. Cylinders
- vii. Tirupati Tube India Ltd. (not involved in Tender No.2)
- viii. Punjab Gas Cylinders Ltd.
- ix. Intel Gas Gadgets (P) Ltd., Unit-II
- x. Mauria Udyog Ltd.

58. While forwarding the email dated 23.02.2013, to the above mentioned LPG cylinder manufacturers mentioned above, Mr. Dinesh Mittal of Mahaveer Cylinders Ltd. stated as follows:

*“Please see the attachment be ready with your letter further action will be conveyed shortly.”*

59. Investigation also brought out that on receipt of email dated 23.02.2013 from Mahaveer Cylinders Ltd., one of the LPG Cylinder manufacturers, namely Him Cylinders Ltd., in compliance with the instructions so received, sent its bid withdrawal letter to Mahaveer Cylinders Ltd. *vide* email dated 28.02.2013.

60. Investigation further revealed that the format and language of the withdrawal letters of the following OPs were common:

- i. Bhiwadi Cylinders Pvt. Ltd.
- ii. Mahaveer Cylinders Ltd.
- iii. Universal Cylinders Ltd.-Unit-II
- iv. Surya Shakti Vessels Pvt. Ltd.
- v. Faridabad Metal Udgog Pvt. Ltd..
- vi. Sunrays Engineers Pvt. Ltd.
- vii. Punjab Gas Cylinders Ltd.
- viii. Intel Gas Gadgets (P) Ltd., Unit-II
- ix. Mauria Udyog Ltd.
- x. Raghupati Synergy Pvt. Ltd.
- xi. Him Cylinders Ltd.
- xii. Omid Engineering Pvt. Ltd.
- xiii. Daya Industries
- xiv. Tirupati Cylinders Ltd.
- xv. Tirupati LPG Industries Ltd.
- xvi. International Cylinders (P) Ltd.
- xvii. Saboo Cylinders Pvt. Ltd.
- xviii. S.M. Cylinders
- xix. Tirupati Containers Pvt. Ltd.

61. Except for the letter of Faridabad Metal Udyog Pvt. Ltd., which was nevertheless worded similarly, the letters of all above mentioned OPs were exactly identical both in format and language and were based on the withdrawal letter of Bhiwadi Cylinders Pvt. Ltd. which was circulated *vide* email dated 23.02.2013.

62. Another instance of exchange of withdrawal letter format was found during the investigation between Asian Fab Tec Ltd., Lite Containers Pvt. Ltd. and GDR Cylinders (P) Ltd. The DG found from the email account of Ms. Shashikala B.R, Director, Asian Fab Tec Ltd. that she had received an email dated 02.03.2013, from Lite Containers Pvt. Ltd. wherein draft letter for the withdrawal of bid from Tender No.2 was enclosed. The said email was also sent to AKMN Cylinders (P) Ltd..

63. During the course of investigation, the aforementioned OPs to whom e-mail dated 23.02.2013 was sent, were confronted with the said e-mail. The OPs whose withdrawal letter(s) were in the same format and language as that of Bhiwadi Cylinders Pvt. Ltd. were also asked specific questions about the justification for such similarities. The OPs to whom email dated 02.03.2013 was sent were also confronted with the said emails. Investigation found that the said OPs gave evasive replies in this regard.

64. Apart from the OPs who had exchanged withdrawal letter format in email or had identical letters, the rest of the OPs had cited similar reasons of manpower shortage, electricity problems, labour problems, calculation mistake, increase in steel prices, etc. as their reasons for withdrawal. These reasons were not found to be plausible by the DG in the Investigation Report as such OPs were not found to be in similar circumstances.

***OPs with common IP addresses***

65. The Commission notes that investigation has brought out that IP addresses of many OPs who submitted bids for Tender No.2 were identical, a list of which, is as under:

**Table No.21: IP Addresses of bidders**

S.No.	IP Address	Name of bidder
1.	114.143.214.171	1. Southern Cylinders Pvt. Ltd. 2. International Cylinders (P) Ltd.* 3. Sahuwala Cylinders (P) Ltd. 4. Tirupati Cylinders Ltd.* 5. Sunrays Engineers Pvt. Ltd. 6. Tirupati LPG Industries Ltd.* 7. Balaji Pressure Vessels Ltd.
2.	114.143.214.170	1. S.M. Cylinders* 2. Bhiwadi Cylinders Pvt. Ltd. 3. Tirupati Cylinders Pvt. Ltd. (Unit-II)



		4. Sri Sai Balaji Gas Cylinders Pvt. Ltd. 5. Raghupati Synergy Pvt. Ltd.* 6. GDR Cylinders (P) Ltd. 7. Faridabad Metal Udyog Pvt. Ltd. 8. Prathima Industries Pvt. Ltd. 9. Universal Cylinders Ltd.
3.	183.82.128.55	1. Dharmraja Cylinders Pvt. Ltd. 2. Kurnool Cylinders Pvt. Ltd. (Unit-II)
4.	122.175.37.76	1. Hyderabad Cylinders Pvt. Ltd.* 2. Sanghvi Cylinders Pvt. Ltd.* 3. R.M. Cylinders Pvt. Ltd.* 4. Nandi Cylinders Pvt. Ltd.*
5.	115.111.207.100	1. North India Wires Ltd. (Howrah Unit)* 2. Carbac Holdings Ltd.* 3. Haldia Precision Engineering Pvt. Ltd.*
6.	14.96.169.24	1. Him Cylinders Ltd.* 2. Omid Engineering Pvt. Ltd.*
7.	106.66.118.190	1. Sai Cylinders Pvt. Ltd.* 2. Super Industries*
8.	210.56.102.124	1. Gopal Cylinders (Unit-III)* 2. Gopal Cylinders*
<i>*Entities having related or common management as discussed in Table 2 above</i>		

66. In view of the identical IP addresses of OPs as aforementioned, these OPs were investigated by the DG about the place/location from which bids for Tender No.2 were uploaded. In their depositions, all the OPs stated that the bids were uploaded from their office or factory premises.

67. From the above table, it is clear that the OPs, namely, Southern Cylinders Pvt. Ltd., International Cylinders (P) Ltd., Sahuwala Cylinders (P) Ltd., Tirupati Cylinders Ltd., Sunrays Engineers Pvt. Ltd., Tirupati LPG Industries and Balaji Pressure Vessels Ltd. uploaded their bids from common IP address. However, in their depositions before the DG, they stated to have uploaded the bids from different locations. The investigation also revealed that S.M. Cylinders, Bhiwadi Cylinders Pvt. Ltd., Faridabad Metal Udyog Pvt. Ltd., Sri Sai Balaji Gas Cylinders Pvt. Ltd., Raghupati Synergy Pvt. Ltd., GDR Cylinders (P) Ltd., Prathima Industries Pvt. Ltd. and Universal Cylinders Ltd. uploaded their bids from same IP address.

68. The Commission also notes that the OPs mentioned at S.No. (3), (4), (5), (6), (7) and (8) of the above table have common/related management and these OPs have uploaded their bids from common IP addresses which is clear from the table above.

69. In their respective responses to the Investigation Report, International Cylinders (P) Ltd., Tirupati Cylinders Ltd., Tirupati LPG Industries Ltd., S.M. Cylinders and Raghupati Synergy Pvt. Ltd. have not provided a specific reply in this regard. However, it has been stated that each and every electronic record whether it is emails, record containing IP addresses or other electronic record which has been used against the said OPs by the DG in the Investigation Report is in violation of Section 65B of the Evidence Act, 1872.
70. Sunrays Engineers Pvt. Ltd., Bhiwadi Cylinders Pvt. Ltd. and GDR Cylinders (P) Ltd., in their respective responses to the Investigation Report have denied that the allegation of ‘uploading of online bids from the IP addresses’ is not related to them as there is no observation of the DG that IP address of the said OPs was similar to any cylinder manufacturers. It has been stated that reliance by the DG upon the electronic evidence in the form of IP addresses is in violation of Section 65B of the Evidence Act, 1872. Thus, the said OPs have contended that any conclusion on the basis of such IP addresses is not admissible and is liable to be discarded.
71. Sahuwala Cylinders (P) Ltd., in its submission, has stated that alleged submissions of bids from same IP address is irrelevant to present proceedings since these relate to withdrawal of bids and not submission of bids. It has been contended that submission of bids from same IP address is duly explained by the fact that parties have appointed agents in various places in India who work for other parties as well and carry out actual submission based on instruction of such parties. As such, it would be quite natural for the agents to use their own single IP address/machine for submitting the bids for all parties.
72. In its response to the Investigation Report, Faridabad Metal Udyog Pvt. Ltd., has stated that as there is non-compliance with Section 65B of the Evidence Act, 1872 the evidence in the form of IP addresses is inadmissible. Further, information with respect to common IP addresses has not been provided along with other information such as location, ownership, *etc.* of the IP address. Further, Tata teleservices, *vide* its replies dated 17.08.2016 and 29.08.2016, informed the DG that they did not have information with respect to IP addresses on which information was sought. Thus, according to the said OP any reliance on such IP addresses is inadmissible in law.

73. Upon examination of the findings of investigation and objections filed by the OPs, who had uploaded their bids in Tender No.2 from common IP addresses, the Commission notes that apart from related OPs, several unrelated OPs mentioned above uploaded their bids from common IP addresses, which by no stretch of imagination would be possible without there existing a prior understanding between them. The Commission finds no merit in the submissions of the OPs in this regard. In fact, the Commission notes that Sahuwala Cylinders (P) Ltd., in its submissions has admitted that common agents uploaded the bids from same computers. As regards the contention of the OPs that the information in relation to IP addresses is inadmissible in evidence, the Commission has already dealt with the same in the preceding paragraphs and the contention of the OPs is rejected.

#### ***Common Agents***

74. The investigation has revealed that there are six common agents working for all the cylinder manufacturers. As per the DG, the main job of these agents was to receive and submit documents from/to OMCs for their principal(s) and convey important information to principal(s). During the course of investigation, it was revealed that these agents met one another frequently and were aware of the decisions of other companies. At times, the agents also worked for other agents in their absence. Further, sometimes OPs authorised the other's agent instead of their own to represent their company before the OMCs. This suggests that information among the cylinder manufacturers regarding tenders and other issues passed quickly through their agents. Further, the agents did not have any confidentiality agreements with their principal(s) which facilitated dissemination of information easily among bidders. The following table enlists common agents appointed by the OPs:

**Table No.22: Agents of OPs**

S.No.	Name of Agent	Name of Opposite Party
1.	Mr. Prashant Bhatt	1. Andhra Cylinders 2. Nandi Cylinders Pvt Ltd. 3. Hyderabad Cylinders Pvt. Ltd. 4. Sanghvi Cylinders Pvt. Ltd. 5. R.M. Cylinders Pvt. Ltd. 6. ECP Industries Ltd. 7. Daya Industries 8. Prathima Industries Pvt. Ltd. 9. Southern Cylinders Pvt. Ltd.

		1 0. Winfab Equipments Pvt. Ltd.
2.	Mr. Rajkumar Upadhyay	1. Bhiwadi Cylinders Pvt. Ltd. 2. Sunrays Engineers Pvt. Ltd. 3. Surya Shakti Vessels Pvt. Ltd. 4. Pankaj Gas Cylinders Ltd. 5. Carbac Holdings Ltd. 6. North India Wires Ltd. 7. Haldia Precision Engineering Pvt. Ltd. 8. Balaji Pressure Vessels Ltd.
3.	Mr. K.Laxman	1. Rajasthan Cylinders & Containers Pvt. Ltd. 2. Mauria Udyog Ltd. 3. Punjab Gas Cylinders Ltd. 4. Super Industries 5. Om Containers 6. Sai Cylinders Pvt. Ltd. 7. Teekay Metals Pvt. Ltd. 8. Jesmajo Industrial Fabrications Karnataka Pvt. Ltd. 9. J.K.B. Gas Pvt. Ltd. 10. Him Cylinders Ltd. 11. Omid Engineering Pvt. Ltd. 12. Saboo Cylinders Pvt. Ltd. 13. Sahuwala Cylinders (P) Ltd.
4.	Mr. V.M. Bhandari	1. Kurnool Cylinders Pvt. Ltd., Unit-II 2. GDR Cylinders (P) Ltd. 3. Tirupati Containers Pvt. Ltd. 4. Asian Fab Tec Ltd.
5.	Mr. M. Rajagopalan Nair	1. Vidhya Cylinders Pvt. Ltd. 2. Prestige Fabricators Pvt. Ltd. 3. Sarthak Industries Ltd. 4. Intel Gas Gadgets (P) Ltd.-Unit-II
6.	Mr. N. Swaminathan	1. A.K.M.N. Cylinders Pvt. Ltd. 2. Alampally Brothers Ltd. 3. Faridabad Metal Udyog Pvt. Ltd. 4. Mahaveer Cylinders Ltd. 5. Universal Cylinders Ltd. 6. S.M. Cylinders 7. Krishna Cylinders 8. Sri Ram Cylinders 9. Gopal Cylinders 10. Raghupati Synergy Pvt. Ltd. 11. Konark Cylinders Pvt. Ltd. (Not representing currently)

75. Most of the OPs, in their respective responses to the Investigation Report, have submitted that depositions of the agents nowhere state that they were called upon to withdraw the bids in Tender No.2 by way of common instructions. The agents have explained their duties to their principal(s) as handing over of the document to the concerned OMCs, as they are not allowed beyond reception areas of the OMCs. It has been submitted that conclusion of the DG is based on the reason that various manufacturers engage the service of some common agents. Certain OPs have also submitted that the fact that agents were appointed by the OPs to collect market

information itself shows that OPs were not in touch with each other and had to resort to appointment of outsiders to collect information regarding other bidders. If the OPs were in touch with each other, there would be no need for the agents to provide information regarding the actions of other bidders. Prathima Industries Pvt. Ltd., in its response to the Investigation Report, stated that they did not have any agents who participated in their business. It has been submitted that they retained Mr. Prashant Bhatt as their part time representative at Mumbai with authority to only receive cheques at that point of time or any correspondence with HPCL/IOCL/BPCL addressed to them to ensure prompt delivery.

76. Upon perusal of the statements and replies of agents collected during investigation and responses of OPs to the Investigation Report, the Commission notes that all the agents admitted of talking and meeting each other regularly. Further, each agent worked for the other in their absence. It is clear from the testimony of Mr. Laxman that in absence of Mr. Prashant Bhatt, he attended negotiation meeting with HPCL on behalf of ECP Industries Ltd. in another tender of HPCL. It is pertinent to mention here that Mr. Bhatt admitted to have informed some of his clients about withdrawal of bids by other bidders from Tender No.2. Mr. Bhatt also admitted that most of his clients forwarded withdrawal letters to him on the same date by courier or email, which again goes on to prove that the bidders acted in concert while withdrawing their bids and thereby manipulated the process of bidding by reducing the competition for bids. The agents, at the instructions of the OPs, facilitated the above anti-competitive behaviour.

***Email exchange between certain OPs***

77. The investigation also revealed that during the course of recording of statement of representative of Him Cylinders Ltd., he was requested to open the email account of the company from where certain emails were retrieved. The details of some of the relevant emails are as below:
- Email dated 07.05.2012 sent by Mr. Arun Goyal of Tirupati LPG Industries Ltd. to Him Cylinders Ltd. forwarding documents pertaining to BPCL Tender due on 28.05.2012;
  - Email dated 07.07.2012 sent by Bhiwadi Cylinders Pvt. Ltd. to many other manufacturers seeking comments on the gas cylinder rules.

- c. Email dated 26.06.2013 was sent by Mr. Arun Goyal of International Cylinders (P) Ltd. to Him Cylinders Ltd. whereby a calculation sheet for BPCL tender of LPG cylinders was attached.
- d. Email dated 19.12.2013 was sent by Mahaveer Cylinder Ltd. to Universal Cylinders Ltd, Tirupati Cylinders Ltd, Surya Shakti Vessels Pvt Ltd, Faridabad Metal Udyog Pvt Ltd and Mauria Udyog Ltd., wherein these OPs decided not to negotiate further in relation to a tender.

78. With regard to the emails mentioned above, the investigation brought out that there was regular exchange of information and communication between the OPs including strategic information pertaining to bids and negotiations.

79. The investigation has also brought to light some other emails which proved that the OPs were regularly coordinating and communicating with each other. Some of those emails were extracted from the email account of Mahaveer Cylinders Ltd. during the course of investigation. Mr. Dinesh Mittal, Director of Mahaveer Cylinders Ltd. was also confronted with some of the emails and specific questions were put forth to him which are detailed below:

***“Q.31 I am showing you email dated 17.12.2013 which has been taken from the email account opened by you before this office. The said email has been sent by Sh. N. Swantinathan from his mail id s-----5@gmail.com to you and some other manufacturers wherein one attachment in relation to revised offer of HPCL tender was forwarded. Please clarify about this email?”***

***Ans. The attachment is the format on which we had to submit the revised offer to HPCL for acceptance.***

***Q.32 I am showing you email dated 02.07.2011 sent by you to u-----l@yahoo.com whereby you forwarded a letter of ILPGA, brochure, membership form 2011 and WLPGA, Doha forum brochures. Please clarify about this email?”***

***Ans. These papers relate to participation of Indian LPG association in the World LPG Forum at Doha in September, 2011. I had attended the same. The ILPGA had its office at Faridabad.***

***Q.33 I am showing you an email dated 06.02.2012 whereby you forwarded an email received from Universal Cylinders Ltd. to Sh. Dinesh Goyal of M/s***

***Tirupati Cylinders wherein rates of certain parties in relation to HPCL tender were exchanged. Please Clarify about this email?***

*Ans. These appear to be party wise quoted rates for HPCL tender However, I do not recollect as to which tender it relates to.*

***Q.34 I am showing you email dated 14.11.2013 which has been taken from the email account opened by you before this office. The said email has been sent by Sh. Dinesh Goyal from his mail id t-----1@gmail.com to you and some other manufacturers wherein one attachment in relation to revised offer of HPCL tender no. 13000054 was forwarded. Please clarify about this entail?***

*Ans. The attachment is the format on which we had to submit the revised offer to HPCL for acceptance.*

***Q.35 I am showing you email dated 26.05.2012 which has been taken from the email account opened by you before this office. The said email has been sent by Sh. Dinesh Goyal from his mail id t-----1@gmail.com to you and some other manufacturers wherein he has forwarded details of Hotel booking at Mumbai for Sh. A.K. Sharma, Sh. Mittal, Sh. Pradeep Mahipal and Sh. Nitush. Please clarify about this email?***

*Ans. I recollect that this is in relation to some meeting in OMCs. The Hotel confirmation was sent by Sh. Dinesh Goyal."*

80. The above emails show that Mahaveer Cylinders Ltd. was in regular touch with Universal Cylinders Ltd., Tirupati Cylinders Ltd. and Sunrays Engineers Pvt. Ltd..
81. During the deposition of Mr. Puneet Batra of Surya Shakti Vessels Pvt. Ltd., it was brought out by investigation that an email dated 13.03.2012, was sent by Faridabad Metal Udyog Pvt. Ltd. to Mr. Batra wherein he was requested not to accept the rates for Gujarat offered by HPCL in Tender of HPCL dated 23.11.2011. This email was also sent by Faridabad Metal Udyog Pvt. Ltd. to Sanghvi Cylinders Pvt. Ltd., Vidhya Cylinders Pvt. Ltd. and Saboo Cylinders Pvt. Ltd.. Mr. Batra was asked a specific question on the said email and his reply was as under:

***"Q20 It is seen that on 13.03.2012 Faridabad Metal Udyog Pvt Ltd (FMU) had sent you an email (Annexure 1 of Certificate) wherein he has requested you to not accept the rates of Gujarat offered by HPCL in Tender No. 11000083-HD-12001 due on 23.11.2011. Sh Adarsh Jain of FMU also attached a draft letter in this regard.***



*Ans. So far as I remember, Sh. Jain requested me not to accept the negotiated rates for the state of Gujarat in the said tender so that he may get that state as he would not have received the quantities as per the priorities under the quoted rates. It can be observed from the said email that the same request has also been made by him to some other bidders who had the priority in getting the supplies for that state."*

82. The investigation brought out that the bidders namely Faridabad Metal Udyog Pvt. Ltd., Sanghvi Cylinders Pvt. Ltd., Vidhya Cylinders Pvt. Ltd., Saboo Cylinders Pvt. Ltd. and Surya Shakti Vessels Pvt. Ltd. were acting in concert for distributing quantities amongst themselves in relation to tender due on 23.11.2011. During cross-examination of Mr. Puneet Batra by Mr. Adarsh Jain of Faridabad Metal Udyog Pvt. Ltd., Mr. Batra stated that he was aware of the price quoted by Faridabad Metal Udyog Pvt. Ltd. i.e. Rs.1413.13. Mr. Batra was not aware about their ranking but he was aware that their chances of getting order in Gujarat will be minimal even after rejecting the negotiated rates. In this regard, the Commission observes that the response of Mr. Batra that chance of getting order by Faridabad Metal Udyog Pvt. Ltd. were minimal even after rejecting the negotiated rates was an afterthought as the same was based on the information contained in the Investigation Report. It appears that Faridabad Metal Udyog Pvt. Ltd. wanted to prove that even if Mr. Batra had rejected the negotiated rate as requested by Mr. Adarsh Jain, Faridabad Metal Udyog Pvt. Ltd., it still would not have got an order for the state of Gujarat and exchange of information between Mr. Batra and Mr. Jain was thus not of any consequence. The Commission notes that at the time of finalization of tender, it was not possible for any manufacturer to know the bid rates of other manufacturers unless there was sharing of information of bid rates among them. However, the fact remains that Faridabad Metal Udyog Pvt. Ltd. did try to influence the outcome of supply order of LPG cylinders for Gujarat by asking Mr. Batra to reject negotiated price offer.

83. Another email dated 11.11.2013 from the account of Mr. Puneet Batra is noteworthy. The Commission notes an email dated 11.11.2013 was sent by Mr. Dinesh Mittal to Mr. Dinesh Goyal of Tirupati Cylinders Ltd., Bhiwadi Cylinders Pvt. Ltd., S.M Cylinders Ltd. and Surya Shakti Vessels Pvt. Ltd. forwarding a format of power of attorney and resolution in favour of Mr. Dinesh Goyal. The said email was also forwarded to Intel Gas Gadgets (P) Ltd., Unit-II.



84. During the course of investigation, Mr. Dinesh Mittal was confronted with the said email. The relevant extract of his deposition is as under:

***“Q.28 I am showing you an email dated 11.11.2013 (Exhibit-6) sent by you to Sh. Dinesh Goyal, Sh. Manvinder Singh, Sh. Gagan Aggarwal and Sh. Puneet Batra wherein a draft power of attorney and resolution in favor of Sh. Dinesh Goyal was attached. As per the attached resolution of your company for the meeting of 01.11.2013, your company had authorized Sh. Dinesh Goyal to attend the meeting with HPCL on 13.11.2013 in relation to tender no. 13000054-HD-12001 dated 01.10.2013. Further in the attached power of attorney Sh. Dinesh Goyal was made attorney on behalf of your company. What do you say on this?*”**

***Ans. I remember that the said power of attorney and resolution was made in favor of Sh. Dinesh Goyal of M/s Tirupati Cylinders Ltd to negotiate on behalf of our company with HPCL with regard to the said tender as he was also going to attend the meeting on behalf of his company.”***

85. The Commission notes that admission by Mr. Dinesh Mittal makes it amply clear that there was an understanding between the aforesaid OPs to manipulate the process of bidding not only for the Tender No.2 but for other tenders as well.
86. It is pertinent to mention that Mr. Dinesh Goyal of Tirupati Cylinders Ltd. was also confronted with the said email and he admitted to have represented his competitors in negotiations with OMCs. The relevant part of his statement before the DG is as under:

***“Q23 Whether for any price negotiation meeting in any OMC you have asked other manufacturer to attend meeting on your behalf or you have attended such meeting on behalf of other manufacturer. Please comment.*”**

***Ans. Occasionally, Sh. Manvinder Singh, Sh. Puneet Batra, Sh. Dinesh Mittal and my company do represent each other on such meetings for acceptance of price offered by OMCs.***

***Q.24 I am showing you aboard resolution dated 01.11.2013 passed by the board of M/s Mahaveer Cylinders whereby you were authorized to represent the company on their behalf in respect to HPCL tender No. 13000054-HD-12001 dated 01.10.2013. What do you say on this?***

***Ans. I have already explained the same in reply to Q23 above.”***

87. In their responses to the Investigation Report, most of the OPs have stated that exchange of emails among OPs showing their regular interaction and co-ordination is of no consequence. According to them, most of the emails concerned general discussion as to the various matters related to the industry and could not be regarded as anti-competitive. It was further contended that the emails exchanged being electronic evidence could not be looked upon as evidence as the same are in violation of Section 65B of the Indian Evidence Act, 1872.
88. A collective reading of the above emails leaves no doubt in the mind of the Commission that the OPs namely, Tirupati Cylinders Ltd., Bhiwadi Cylinders Pvt. Ltd., S.M Cylinders Ltd. and Surya Shakti Vessels Pvt. Ltd., were regularly communicating with each other and coordinating their conduct. The OPs used to share sensitive and confidential information in relation to tenders and have acted in concert and not independently, while making their decisions in relation to tenders floated by OMCs including Tender No.2. The contention with respect to violation of Section 65B of the Indian Evidence Act, 1872 has already been dealt with in the preceding paragraphs and the contentions of the OPs in this regard is rejected.

***Association as a platform for exchange of information***

89. The Commission notes that during the course of investigation, OPs were specifically asked whether they were members of Indian LPG Cylinders Manufacturers Association or any other association and whether they had received or sent any communication from/to the said association in the last five years. The DG, in this regard, found that except a few OPs, everyone denied of having received any email/letter/fax from the said association in the last five years. However, the investigation revealed that many emails were exchanged between the OPs under the banner of the said association and several representations were also given by the said association to the government and/or OMCs on different issues.
90. The investigation revealed that Mr. Dinesh Mittal of Tirupati Cylinders Ltd. had sent email dated 31.05.2013 to several LPG Cylinder manufacturers on behalf of the Indian LPG Cylinders Manufacturers Association about preponing of a vendor conference. Another email dated 03.06.2013, was sent by Mr. Dinesh Mittal informing the LPG cylinder manufacturers about cancellation of said conference. The said email was sent

to vendors, namely, Bhiwadi Cylinders Pvt. Ltd., Carbac Holdings Ltd., Confidence Petroleum India Ltd., Gopal Cylinders, Him Cylinders Ltd., Mauria Udyog Ltd., Om Containers, Rajasthan Cylinders and Containers Ltd., S.M. Cylinders and Sanghvi Cylinders Pvt. Ltd..

91. During the investigation, Mr. Dinesh Goyal was asked specific questions about email dated 03.06.2013. The Commission notes that Mr. Dinesh Goyal was not able to justify why he sent such an email and also why he used the name of association in the email. The investigation also revealed that recipients of the said emails admitted to having received such emails but gave vague and evasive answers about the status of the association.
92. The investigation revealed that the association was active and had sent several representations to government and HPCL regarding tender related issues. The investigation has also brought out that letters dated 20.05.2013 and 16.05.2013 sent by the association were signed by Mr. P.K. Gupta of Sahuwala Cylinders (P) Ltd.. Letters dated 12.02.2013 and 08.12.2013, were signed by Mr. Dinesh Goyal of Tirupati Cylinders and letter dated 24.12.2012 was signed by Mr. Manvinder Singh of Bhiwadi Cylinders Pvt. Ltd.. The investigation brought out that the association was still active and gave them a platform for discussion and information sharing.
93. It is pertinent to mention here that Mr. B. T. Patil of BTP Structural India Pvt. Ltd. admitted that he was a member of Indian LPG Cylinder Manufacturers Association and Mr. P.K. Gupta of Sahuwala Cylinders (P) Ltd. was the President of the association.
94. The investigation has also revealed that apart from all India level association, certain manufacturers had also formed regional associations to raise their issues with OMCs. The DG observed that most of the manufacturers have denied being members of any LPG Cylinder Manufacturer Association. The Commission notes that HPCL, in its reply dated 26.07.2016, had provided certain letters sent by manufacturers under the names of different associations.
95. The Commission notes that the deposition of Mr. Dinesh Goyal, Director of Tirupati Cylinders Ltd. shows that he admitted to formation of Association at regional level. Further, there were signatures of several cylinder manufacturers including Mr. Dinesh

Goyal of Tirupati Cylinders Ltd., Mr. Avinash Bajoria of Rajasthan Cylinders and Containers Ltd., Mr. Dinesh Mittal of Mahaveer Cylinders Ltd., Mr. A.K. Sharma of Universal Cylinders Ltd., Mr. Rajesh Mittal of Punjab Gas Cylinders Ltd., Mr. Puneet Batra of Surya Shakti Vessels Pvt. Ltd., Mr. Rakesh Singhal of Tirupati Containers Pvt. Ltd., Mr. Adarsh Jain of Faridabad Metal Udyog Pvt. Ltd., Mr. Manvinder Singh of Bhiwadi Cylinders Pvt. Ltd., Mr. Vijay Agarwal of S.M. Cylinders and Mr. Gagan Agarwal of Sai Cylinders Pvt. Ltd. and Raghupati Synergy Pvt. Ltd..

96. In view of the foregoing, the Commission notes that there was an active Association of LPG Cylinder manufacturers namely, Indian LPG Cylinders Manufacturers Association and regional associations namely, North India LPG Cylinders Manufacturers Association and Rajasthan LPG Cylinders Manufacturers Association. Even though most of the OPs that most of the OPs denied the existence of such associations, investigation conducted by the DG unearthed certain evidence, discussed above substantiates that these associations existed.
97. Most of the OPs, in their responses, have stated that right to form an association is a fundamental right and may not be regarded as anticompetitive.
98. The Commission notes that certainly forming a trade association is not anti-competitive *per se*, but when such trade association transgress its legal contours and facilitates collusive or collective decision making with the intention of limiting or controlling the production, distribution, sale or price of or trade in goods or provision of services, by its members, it violates the provisions of the Act as has been also been observed by the Hon'ble Supreme Court in the case of *Competition Commission of India Vs. Coordination Committee of Artists and others* (2017) SCC 5 SCC.
99. Based on above, the Commission is of the view that there is evidence that there was a platform available to the OPs to get together and facilitate coordination of their conduct. Further there is strong likelihood that the OPs used this platform for taking common decisions for manipulating the bid process of OMCs including that of HPCL. The contention of the OPs that right to form an association is a fundamental right, is acknowledged. But in light of the conduct of the members and the facts and circumstances of the present case, is found that aegis of the association was used for improper purposes.

100. The fact that the OPs were using the aegis of the association(s) to discuss their business affairs is evident from the findings of the investigation. These meetings had taken place prior to impugned tenders as well as in subsequent tenders too. The Commission is thus of the view that actions of OPs cannot be said to be independent, rather they were result of meetings and negotiations *inter-se*.

101. Most of the OPs, in their responses to the Investigation Report have also averred that no analysis of AAEC in India has been carried out by the DG to establish the alleged collusive conduct. To deal with the aforementioned submission, it is pertinent to take into account the relevant extract of “*Coordination Committee of WB Case*” (*supra*) in which the Hon’ble Supreme Court has dealt with agreements falling under Section 3(3) and has observed as under:-

*“As can be seen from the bare reading of the aforesaid provision, sub-section (1) of Section 3 puts an embargo on an enterprise or association of enterprises or person or association of persons from entering into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provisions of services which causes or is likely to cause an appreciable adverse effect on competition within India. Thus, agreements in respect of distribution or provisions of services, if they have adverse effect on competition, are prohibited and treated as void by virtue of sub-section (2). Sub-section (3), with which we are directly concerned, stipulates four kinds of agreements which are presumed to have appreciable adverse effect on competition. Therefore, if a particular agreement comes in any of the said categories, it is per se treated as adversely affecting the competition to an appreciable extent and comes within the mischief of sub-section (1). There is no further need to have actual proof as to whether it has caused appreciable effect on competition. Proviso thereto, however, exempts certain kinds of agreements, meaning thereby if a particular case falls under the proviso, then such a presumption would not be applicable.”*

102. Thus, it is clear from the above that if, the collusive conduct of the OPs falls within the provisions of Section 3(3) of the Act, it is presumed to have AAEC and no further analysis is required. Under the scheme of the Act, bid rigging or collusive bidding shall be presumed to have AAEC. Once such presumption is raised against the OPs in a

matter, it is for them to rebut the same. In the present case, OPs in the face of clinching and irrefutable evidence against them, have not been able to discharge the onus which lay upon them to rebut such presumptions. As aforementioned, OPs have not been able to disprove the clear evidence that exists against them. Hence, the Commission rejects the contention of OPs in this respect.

103. The Commission notes that the Hon'ble Supreme Court in its judgment in *Rajasthan Cylinders and Containers Ltd. v. Union of India and Another* (CA No. 3546 of 2014), has discussed the stage when the factors under Section 19(3) are required to be considered by the Commission in respect of agreements falling under Section 3(3) of the Act. The relevant excerpt from the judgment is produced below:

*“73) We may also state at this stage that Section 19(3) of the Act mentions the factors which are to be examined by the CCI while determining whether an agreement has an appreciable adverse effect on competition under Section 3. However, this inquiry would be needed in those cases which are not covered by clauses (a) to (d) of sub-section (3) of Section 3. Reason is simple. As already pointed out above, the agreements of nature mentioned in sub-section (3) are presumed to have an appreciable effect and, therefore, no further exercise is needed by the CCI once a finding is arrived at that a particular agreement fell in any of the aforesaid four categories. We may hasten to add, however, that agreements mentioned in Section 3(3) raise a presumption that such agreements shall have an appreciable adverse effect on competition. It follows, as a fortiori, that the presumption is rebuttable as these agreements are not treated as conclusive proof of the fact that it would result in appreciable adverse effect on competition. What follows is that once the CCI finds that case is covered by one or more of the clauses mentioned in sub-section (3) of Section 3, it need not undertake any further enquiry and burden would shift upon such enterprises or persons etc. to rebut the said presumption by leading adequate evidence. In case such an evidence is led, which dispels the presumption, then the CCI shall take into consideration the factors mentioned in Section 19 of the Act and to see as to whether all or any of these factors are established. If the evidence collected by the CCI leads to one or more or all factors mentioned in Section 19(3), it would again be treated as an agreement which may cause or is likely to cause an appreciable*



*adverse effect of competition, thereby compelling the CCI to take further remedial action in this behalf as provided under the Act. That, according to us, is the broad scheme when Sections 3 and 19 are to be read in conjunction.”*

104. Thus, the Commission notes that the applicability of factors under Section 19(3) arise for consideration by the Commission, only when the parties covered under Section 3(3) of the Act lead adequate evidence to rebut the presumption that exists against them under Section 3(3) of the Act.

105. The threshold of applicability of factors under Section 19(3) of the Act and for the Commission to thereafter examine it from the prism of “*rule of reason*” as opposed to “*per se*” rule, requires that the party charged with has to give some evidence which is adequate enough to dispel the presumption against it. This requirement has to be satisfied before the Commission can be called upon to examine the conduct further under Section 19(3) of the Act. Thus, invocation of factors under Section 19(3) is not axiomatic in case of conduct falling under Section 3(3) of the Act. The Commission observes that in its defence the OPs, other than making some perfunctory remarks against the evidence, have not been able to give any evidence much less any adequate evidence to rebut the presumption that exists against them under Section 3(3) of the Act.

106. Having discussed the aspect of common IP addresses amongst the OPs, exchange of emails amongst them and association providing a platform for these OPs, the Commission now proceeds to analyse the conduct of each of the 51 OPs who had submitted withdrawal letters collectively.

107. The Commission observes that out of 51 OPs, who withdrew collectively, 19 OPs as discussed in Para 60 above had used common language and format in their withdrawal letters to HPCL.

- a. The Commission notes that upon perusal of the statements of officials of Bhiwadi Cylinders Pvt. Ltd. and Mahaveer Cylinders Ltd, the DG found that Mr. Manvinder Singh of Bhiwadi Cylinders Pvt. Ltd. tried to justify his conduct of coordination by stating that since Mahaveer Cylinders Ltd. also wanted to withdraw its bid, he forwarded his letter to Mahaveer Cylinders Ltd.. When Mr. Dinesh Mittal of



Mahaveer Cylinders Ltd. was confronted with the e-mail dated 23.02.2013, he replied “*I cannot comment*”. The DG noted that Mr. Mittal gave evasive answers when being confronted with the said email. Further, the language used in the e-mail dated 23.02.2013 is categorical and self-speaking to establish that the OPs to whom email was forwarded acted in concert in withdrawing their bids. It is pertinent to mention that Mr. Dinesh Mittal instructed the OPs to act upon the letter sent as an attachment. The DG, in its Investigation Report, found that Mr. Dinesh Mittal was one of the key coordinators of the OPs who withdrew the bids. As regards exchange of withdrawal letter format through email, Mahaveer Cylinders Ltd., in its response to the Investigation Report, submitted that the alleged email was never sent to it. As per Mahaveer Cylinders Ltd., said emails being electronic evidence could not be relied upon as it is in violation of Section 65B of the Evidence Act, 1872. As regards withdrawal letter in same format, it has been submitted that withdrawal of bid as per tender conditions was not subject to assigning any reasons. Thus, when the objective of letter was same, similarity of words is of no consequence as the words used in the communication would be limited. Hence, this cannot be regarded as collusive action on part of Mahaveer Cylinders Limited. The Commission notes that Bhiwadi Cylinders Pvt. Ltd. has furnished reasons similar to Mahaveer Cylinders Ltd., in its response, to the Investigation Report.

- b. The Commission notes that when Mr. A.K. Sharma of Universal Cylinders Unit- II was asked a specific question whether he received any email from any manufacturer regarding tender issues in the last five years, to which he answered in the negative. However, when email dated 23.02.2013 was confronted to him, he stated that he did not remember. The Commission notes that Universal Cylinders Ltd., Unit-II has also given a similar response to the Investigation Report, as given by Bhiwadi Cylinders Pvt. Ltd. and Mahaveer Cylinders Ltd..
- c. The Commission has also taken note of the statement of Mr. Puneet Batra of Surya Shakti Vessels Pvt. Ltd.. Mr. Batra, in his deposition, has admitted that the bid was withdrawn by his company after discussion with other manufacturers. In his deposition, he has stated that he had received email dated 23.02.2013, from Mr. Dinesh Mittal regarding withdrawal of the bid and withdrawal of bid by Surya Shakti Vessels Pvt. Ltd. from the said tender was based on the said email. It is

interesting to point out that when Mr. Dinesh Mittal was confronted with the statement of Mr. Puneet Batra recorded before the DG, he did not offer any comments. In his response to the Investigation Report, Mr. Batra provided a response similar to Bhiwadi Cylinders Pvt. Ltd., Mahaveer Cylinders Ltd. and Universal Cylinders Ltd. Unit-II. The Commission notes that Mr. Puneet Batra confirmed what was stated by him during his deposition in his cross-examination before the DG.

- d. The Commission notes that the statement of Mr. Adarsh Jain of Faridabad Metal Udyog Pvt. Ltd. is also vague and misleading on the point that he denied using the hotmail email id. for the last ten years. The DG has noted that when he was directed to file email dump of the said email account, he, in his affidavit dated 23.03.2016, stated that his family members were using this account and he has not opened the said account for several years. He further stated that only emails from February, 2016 onwards were available. The Commission notes that it is highly improbable that he was not using the said account for the last ten years and his family alone was using it. The fact that emails only from February, 2016 onwards were available makes it abundantly clear that emails prior to the said period were purposefully deleted. In its response to the Investigation Report, it was contended that the said OP withdrew from the Tender No. 2 due to family disputes which started in 2010, which was ignored by the DG in his Investigation Report. In this regard, the Commission observes if that was the case, then Faridabad Metal Udyog Pvt. Ltd. should not have participated in Tender No. 2 in the first place by submitting its bid. However, the reasons were not cited by the said OP and the format of withdrawal letter was similar to the format of letter shared by Bhiwadi Cylinders Pvt. Ltd. with it and other OPs.
- e. The Commission observes that the statement of Mr. Pradeep Mahipal of Sunrays Engineers Pvt. Ltd. is also vague and contradictory as on one hand he stated that he had no knowledge about the email dated 23.02.2013, however, on the other hand he admitted that the email dated 23.02.2013, was sent to him. Further, in his response to the Investigation Report, he could not prove to the contrary and filed submissions which were similar to those of Bhiwadi Cylinders Pvt. Ltd., Mahaveer Cylinders Ltd. and Universal Cylinders Ltd. Unit-II.

- f. Further, Mr. Naveen Mittal of Punjab Gas Cylinders Ltd. also provided an evasive answer in his deposition before the DG that since the email dated 23.02.2013 was related to year 2013, he could not recollect. Further, in his response to the Investigation Report, he filed submissions similar to Bhiwadi Cylinders Pvt. Ltd., Mahaveer Cylinders Ltd. and Universal Cylinders Ltd. (Unit-II).
- g. Mr. Pankaj Gupta of Intel Gas Gadgets (P) Ltd., Unit-II, when confronted with the email dated 23.02.2013, during investigation, admitted to have received the said email but stated that the decision to withdraw the bid was independent. In its response to the Investigation Report, no specific reason has been provided for similarity of the format of withdrawal letter or email received. One of the reasons cited for withdrawal of bid was increase in price of steel and rates being unworkable, which would push them to losses.
- h. It is observed that Mr. K.M. Pai of Mauria Udyog Ltd. admitted to have withdrawn the bid pursuant to receiving the above discussed email dated 23.02.2013, from Mahaveer Cylinders Ltd., which is clear from his deposition. He has filed a response similar to that of Intel Gas Gadgets (P) Ltd., Unit-II.
- i. The authorised representatives of Raghupati Synergy Pvt. Ltd. did not appear before the DG during investigation. However, in its response to the Investigation Report, no specific reason has been provided for similarity of its withdrawal letter with the format provided in the email dated 23.02.2013.
- j. Similarly, Him Cylinders Ltd. and Omid Engineering Pvt. Ltd. have also not provided any justification for similarity of their withdrawal letters with the format provided in the email dated 23.02.2013.
- k. Mr. A.P. Sapra, Partner of Daya Industries admitted that he was informed by his agent, Mr. Prashant Bhatt that other manufacturers have decided to withdraw their bids and accordingly, Mr. Sapra also withdrew the bid. The admission of withdrawal and the format of withdrawal letter leaves no iota of doubt that manufacturers had done such act based on prior understanding between them.

- l. Mr. Arun Goyal, Director of International Cylinders (P) Ltd. and Tirupati LPG Industries Ltd., in his deposition before the DG, stated that the withdrawal of bid was done due to change in market dynamics due to unexpected hike in fuel prices as well as allotted quantities to be delivered to other OMCs. As nothing was placed on record in support of such assertion, such explanation seems to be an afterthought in the matter.
- m. Mr. Dinesh Goyal of Tirupati Cylinders Ltd. also admitted to have discussed with Mr. Manvinder Singh of Bhiwadi Cylinders Pvt. Ltd. about withdrawal of the bids.
- n. During investigation, Saboo Cylinders Pvt. Ltd. stated that it withdrew because of repeat orders received from BPCL and HPCL. However, similar reasons were provided in the objections to the Investigation Report as that of Bhiwadi Cylinders Pvt. Ltd. and Mahaveer Cylinders Ltd..
- o. Mr. V.K. Aggarwal, Director of S.M. Cylinders was also the recipient of email dated 23.02.2013, sent by Mr. Manvinder Singh to Mr. V.K. Aggarwal's son, Shri Gagan Aggarwal. During investigation, S.M. Cylinders provided the reason of increase in steel prices as their justification for withdrawal of bid in Tender No.2. In its response to the Investigation Report, however, S.M. Cylinders did not provide any justification for similarity of its withdrawal letter with the format provided in the email dated 23.02.2013.
- p. The Commission observes that Tirupati Containers Pvt. Ltd. tried to justify its conduct of withdrawal by stating that some unknown person had submitted withdrawal letter on behalf of the company. The investigation revealed that Mr. Rakesh Singhal of Tirupati Containers Pvt. Ltd. could not substantiate the same as no police complaint was lodged by him. Further, the external independent monitors of HPCL also did not take any action on his complaint. The investigation further revealed that in another letter dated 16.05.2013, it was mentioned that an unscrupulous person had submitted withdrawal letter and the company was in the process of taking disciplinary action against him. This, as per the DG, showed that withdrawal letter was filed by an employee of the company. HPCL, in its response to the DG, stated that the withdrawal letter was signed by employee of the company. In its response to the Investigation Report as well as to the Cross-Examination

Report, Tirupati Containers Pvt. Ltd. submitted that it had not withdrawn its bid but HPCL had allowed an unauthorized person to withdraw the bid. Tirupati Containers Pvt. Ltd. also could not prove the said fact even during the cross-examination of officers of HPCL that withdrawal of bid was done by unauthorised person. Upon being examined by the DG, Mr. Singhal failed to disclose the name of the employee, who was suspected to have withdrawn the bid. In this regard, the Commission does not find merit in the unsubstantiated submissions of the said OP and agrees with the DG that Tirupati Containers Pvt. Ltd. is in contravention of the provisions of the Act.

108. The Commission notes that 19 OPs at Para 60, except for Raghupati Synergy Pvt. Ltd. filed these letters on 04.03.2013, which once again establishes that the above mentioned OPs were acting in concert. Even though the OPs gave evasive and contrary replies during their deposition, the fact remains that all these letters were filed with HPCL on the same day 04.03.2013, coupled with the fact that the letter carried identical/similar language. This cannot be a sheer coincidence considering the fact that OPs are in constant touch with each other or through their agents.

109. The Commission notes that the OPs namely, Bhiwadi Cylinders Pvt. Ltd., Sunrays Engineers Pvt. Ltd. and Surya Shakti Vessels Pvt. Ltd. had common agent namely, Mr. Rajkumar Upadhayay. Further, Mr. K. Laxman was the common agent for Mauria Udyog Ltd., Punjab Gas Cylinders Ltd. and Saboo Cylinders. Mr. N. Swaminathan was the common agent for Faridabad Metal Udyog Pvt. Ltd., Mahaveer Cylinders Ltd. and SM Cylinders. As discussed earlier, presence of common agents could have led to passing of information for withdrawal of bids from Tender No.2 amongst the said Opposite Parties. The Commission notes that International Cylinders (P) Ltd., Tirupati Cylinders Ltd., Sunrays Engineers Pvt. Ltd. and Tirupati LPG Industries Ltd. had uploaded their bids of Tender No.2 from the same IP address. SM Cylinders, Bhiwadi Cylinders Pvt. Ltd., Raghupati Synergy Pvt. Ltd. also uploaded their bids of Tender No. 2 from the same IP address.

110. The Commission notes that even though the said OPs mentioned at Para 60 above submitted that their decision for withdrawal of bids was independent, the evidence discussed above proves to the contrary. Further, the explanation provided by the said OPs in their objections to the Investigation Report, Cross-Examination Report and

written submissions filed subsequently does not appear to be tenable to suggest that their decisions were independent. Based on the above, the Commission observes that Bhiwadi Cylinders Pvt. Ltd., Mahaveer Cylinders Ltd, Faridabad Metal Udyog Pvt. Ltd., Him Cylinders Ltd, Omid Engineering Pvt. Ltd, Intel Gas Gadgets (P) Ltd (Unit-II), Mauria Udyog Ltd., Punjab Gas Cylinders Ltd., Sunrays Engineers Pvt. Ltd., S.M. Cylinders, Surya Shakti Vessels Pvt. Ltd., Universal Cylinders Ltd (Unit-II), Daya Industries, Tirupati Cylinders Ltd., Tirupati LPG Industries Ltd., International Cylinders (P) Ltd., Raghupati Synergy Pvt.Ltd., Saboo Cylinders Pvt. Ltd. and Tirupati Containers Pvt. Ltd. manipulated the process of bidding and are, thus, in contravention of the provisions of the Act.

111. The Commission now discusses the case of 4 other OPs namely, Asian Fab Tec Ltd., Lite Containers Pvt. Ltd. and GDR Cylinders (P) Ltd and AKMN Cylinders (P) Ltd., who had also exchanged withdrawal letter format through email with each other:

- a. The Commission notes that during the course of investigation, the DG found from the email account of Ms. Shashikala B.R, Director, Asian Fab Tec Ltd. that she had received an email dated 02.03.2013 from Lite Containers Pvt. Ltd. wherein draft letter for the withdrawal of bid from Tender No. 2 was enclosed. The said email was also sent to AKMN Cylinders (P) Ltd. and GDR Cylinders (P) Ltd..
- b. When Ms. Shashikala was confronted with this letter during investigation and was questioned whether her company received any email from other manufacturers regarding tender issues, she stated that “*Nobody approached to me in this regard*”. When she was confronted with the email dated 02.03.2013, she stated as under:  
  
*“My Manager Sh. Prakash would have informed him about the withdrawal by our company therefore, he would have asked Lite Container to share their withdrawal letter for his information. Sh Prakash is good friend of Sh. R Srinivasan and they regularly talk as M/s Lite Container is our suppliers for valves. Sh. Prakash is GM in the company.”*
- c. The Commission notes that Asian Fab Tec Ltd., in its response to the Investigation Report, submitted that Ms. Shashikala B.R., Director of the said company, through her manager, was in touch with Mr. Srinivasan of Lite

Containers Pvt. Ltd. for supply of valves. It has also been stated that since they were planning to withdraw from the tender, Mr. Prakash, the manager of company would have sought for format of withdrawal letter from Mr. Srinivasan of Lite Containers Pvt. Ltd..

- d. As regards AKMN Cylinders (P) Ltd., the Commission notes that witness did not appear before the DG. Further, Lite Containers Pvt. Ltd. showed their inability to appear because of alleged financial crisis.
- e. The representative of GDR Cylinders (P) Ltd. was not able to clarify the factual position before the DG as it was stated that he had taken over the management of GDR Cylinders (P) Ltd. after one time settlement with promoters and the bank in 2014 and he did not know anything which happened prior to that. The Commission notes that GDR Cylinders (P) Ltd. has filed a response similar to Bhiwadi Cylinders Pvt. Ltd., Mahaveer Cylinders Ltd., Universal Cylinders Ltd. Unit-II, Punjab Gas Cylinders Ltd. and Sunrays Engineers Pvt. Ltd..
- f. The Commission notes that even though the reasons for withdrawal of bids in Tender No. 2 of two of the OPs, *i.e.* Asian Fab Tec Ltd. and Lite Containers Pvt. Ltd. were different, the fact remains that the format of withdrawal letter was shared by Lite Containers Pvt. Ltd. with Asian Fab Tec Ltd., AKMN Cylinders (P) Ltd. and GDR Cylinders (P) Ltd.. The said withdrawal letters were sent to HPCL on the same date, *i.e.* 04.03.2013, except for GDR Cylinders (P) Ltd., which filed its withdrawal letter on 05.03.2013. This proves that the decision to withdraw the bids was result of an action in concert and not an independent decision of each of these OPs. The Commission further notes that GDR Cylinders Pvt. Ltd. and Asian Fab Tec Ltd. had a common agent Mr. V.M Bhandari, which could have led to passing of information for withdrawal of bids from Tender No.2 amongst the said Opposite Parties. In view of the above, the Commission finds that the said OPs have acted in concert amongst themselves and thus, are in contravention of the provisions of the Act.

112. Having analysed the OPs which had exchanged email with each other or had identical formats, the Commission now proceeds to analyse those OPs (in groups) which had not



exchanged emails, but had similar format of withdrawal letters or provided similar reasons.

*Vidhya Cylinders Pvt. Ltd., Sarthak Industries Ltd. and Prestige Fabricators Pvt. Ltd.:*

- a. The Commission notes that Vidhya Cylinders Pvt. Ltd., Sarthak Industries Ltd. and Prestige Fabricators Pvt. Ltd. are located in the State of Madhya Pradesh. At the time of submitting their withdrawal letters to HPCL, these OPs had given a common reason of ‘*calculation error/mistake*’. However, the said OPs, in their objections to the Investigation Report, had provided different reasons for withdrawal of their bids. Sarthak Industries Ltd. and Prestige Fabricators Pvt. Ltd., in their similar responses to the Investigation Report, have stated that prices of steel had become unworkable due to which they had to withdraw from Tender No.2. Vidhya Cylinders Pvt. Ltd., in its response, has stated that it was fully entitled to withdraw the bid in terms of the conditions of Tender No. 2 and there was no requirement for providing a specific reason for withdrawing the bids. The explanation given for withdrawal of bid was based on their commercial wisdom and not motivated by any extraneous factors. In this regard, the Commission notes that reasons for withdrawal of bid given by these parties were common. Further, even if there was no requirement of providing a specific reason for withdrawal of bids, the fact that same reason was provided by the said OPs points towards the fact that action of withdrawal from the bids was not an independent action but taken in concert. The Commission in this regard agrees with the finding of the DG that common understanding between them was also facilitated by the fact that all these three OPs had a common agent, Mr. M. Rajagopalan Nair, which could have led to exchange of information between them.

*Southern Cylinders Pvt. Ltd., Winfab Equipments Pvt. Ltd., Sanghvi Cylinders Pvt. Ltd., Hyderabad Cylinders Pvt. Ltd., Nandi Cylinders Pvt. Ltd. and R.M. Cylinders Pvt. Ltd.*

- b. The Commission observes that Southern Cylinders Pvt. Ltd., Winfab Equipments Pvt. Ltd., Sanghvi Cylinders Pvt. Ltd., Hyderabad Cylinders Pvt. Ltd., Nandi Cylinders Pvt. Ltd. and R.M. Cylinders Pvt. Ltd. withdrew their bids from Tender

No. 2 *vide* letters dated 01.03.2013 submitted to HPCL. In the said letters, the said OPs had provided similar reason of ‘unavoidable circumstances’ for withdrawing the bid. Further, the language and format of the said letters submitted by the said OPs to HPCL appears to be identical. Upon being questioned by the DG for similarity in their reasons for withdrawal of the bids in Tender No.2, Sanghvi Cylinders Pvt. Ltd., Hyderabad Cylinders Pvt. Ltd. and R.M. Cylinders Pvt. Ltd. gave reasons of withdrawal of discount by Steel Authority of India Ltd. as their reason for withdrawal of bid. Nandi Cylinders Pvt. Ltd, however, gave the reason of labour problem at the factory for withdrawal of bid. In the responses to the Investigation Report, Sanghvi Cylinders Pvt. Ltd., Hyderabad Cylinders Pvt. Ltd., R.M. Cylinders Pvt. Ltd. and Nandi Cylinders Pvt. Ltd submitted that the bids were withdrawn due to an independent decision taken by them on account of the fact that a substantial increase in steel prices was apprehended, which would have made it impossible to perform at the quoted rates. As such the withdrawal of bid was a valid justification and not a result of collusion. It has been submitted that the said OPs, being related enterprises, had discussions amongst themselves to withdraw the bids in order to avoid losses in future due to hike in steel prices. It has also been submitted that there was no evidence whatsoever of the OPs having shared its withdrawal letter with any other party or having communicated with any person regarding this decision.

- c. Winfab Equipments Pvt. Ltd. and Southern Cylinders Pvt. Ltd., in their depositions before the DG gave different reason for withdrawal of bids. Southern Cylinders Pvt. Ltd. stated that they withdrew their bids because of erratic supply of steel and on account of increase in power tariff. Southern Cylinders Pvt. Ltd., however, did not file its response to the Investigation Report. Winfab Equipments Pvt. Ltd., in its deposition before the DG, stated that they had stopped manufacturing cylinders between 2005-2006 and 2009-2010 due to financial problems. As they did not have capacity, they withdrew their bids from Tender No. 2. Winfab Equipments Pvt. Ltd. reiterated its stand taken before the DG in its response to the Investigation Report.
- d. The Commission notes that a bare perusal of the withdrawal letters filed by the said OPs brings out that the format and language used in the letters was identical. Even though Sanghvi Cylinders Pvt. Ltd., Hyderabad Cylinders Pvt. Ltd., R.M. Cylinders

Pvt. Ltd. and Nandi Cylinders Pvt. Ltd, in their responses to the Investigation Report, have submitted that there was no evidence whatsoever of the OPs having shared its withdrawal letter with any other party or having communicated with any person regarding the decision, it is apparent from the contents of the letters that the format of the letter was shared with each other to produce identical contents of the withdrawal letter of each of such parties which is also of the same date, being 01.03.2013. Further, except for Winfab Equipments Pvt. Ltd., the rest of the said OPs gave the reason for increase in steel prices/erratic supply of steel before the DG, which appears to be an afterthought for the reasons discussed in preceding paragraphs. Winfab Equipments Pvt. Ltd. has stated that it withdrew from Tender No. 2 as it did not have installed capacity. This also appears to be an afterthought. If Winfab Equipments Pvt. Ltd. did not have capacity to supply cylinders to HPCL, there was no reason for it to have bid for supply of cylinders in the first place. Thus, the Commission finds no merit in the submissions of the said OPs and is of the view that the above said OPs manipulated the process of bidding. Furthermore, the said OPs had a common agent viz Mr. Prashant Bhatt, which raises a very strong presumption as suggested by the DG of passing of information for withdrawal of bids in Tender No. 2 amongst the said OPs. Thus, the Commission finds no merit in the submissions of the said OPs and is of the view that the above said OPs are in contravention of the provisions of the Act.

*North India Wires Ltd. (Howrah Unit), Carbac Holdings Ltd. and Haldia Precision Engineering Pvt. Ltd.*

- e. The Commission notes that North India Wires Ltd. (Howrah Unit), Carbac Holdings Ltd. and Haldia Precision Engineering Pvt. Ltd. submitted their withdrawal letters with HPCL on 04.03.2013. While, the letter submitted by North India Wires Ltd. (Howrah Unit) bears date of 04.03.2013, letters submitted by Carbac Holdings Ltd. and Haldia Precision Engineering Pvt. Ltd. are undated. Further, North India Wires Ltd. (Howrah Unit) gave no reason for withdrawal of its bid in its letter. Carbac Holdings Ltd. and Haldia Precision Engineering Pvt. Ltd. provided the reason of ‘unavoidable circumstances’ in their letter. The Commission notes that during the course of investigation, the reason given by all the said OPs for withdrawal of bids was increase in steel prices. In their objections to the Investigation Report and during the course of arguments, it was submitted that rates quoted by some of the

parties were unworkable and would push them to financial losses. The Commission notes that even though there is no evidence of sharing of withdrawal letter by any of the OPs in the present case, the fact remains that the withdrawal letter of Carbac Holdings Ltd. and Haldia Precision Engineering Pvt. Ltd. contained similar reason of ‘unavoidable circumstances’ in the letter to HPCL. Further, the reason given by all the three OPs in their deposition as well in the objections to the Investigation Report was increase in price of steel and rates being unworkable which would push them to losses, which was again a common reason given by many OPs, which is discussed in the preceding paragraphs. Further, the withdrawal letters were submitted by these OPs on a common date, *i.e.* 04.03.2013. The said OPs had an agent namely Mr. Rajkumar Upadhyay, who was also serving as an agent for many other OPs, as discussed in preceding paragraphs. Thus, the Commission finds no merit in the submissions of the OPs and is of the view that the said OPs had not acted independently in withdrawing their bids but pursuant to concerted action and thus, are in contravention of the provisions of the Act.

*Super Industries, Om Containers and Teekay Metals Pvt. Ltd.*

- f. The Commission notes that Super Industries, Om Containers and Teekay Metals Pvt. Ltd. submitted their withdrawal letters dated 03.03.2013 with HPCL on 04.03.2013. In their withdrawal letters submitted to HPCL, the said OPs provided the common reason of ‘unavoidable circumstances’. The Commission notes that during the course of investigation and in their objections to the Investigation Report, the reason given by all the said OPs for withdrawal of bids was less discount on steel by SAIL, thereby making it difficult for the OPs to operate in loss inducing conditions. Even though there is no evidence of sharing of withdrawal letter by any of the OPs with these OPs in the present case by way of email, the fact remains that the withdrawal letters dated 03.03.2013 of all the said OPs contained similar reason of ‘unavoidable circumstances’ in the letter to HPCL. Further, the reason given by all the three OPs in their deposition as well in the objections to the Investigation Report was reduction in discount on steel by SAIL, which was again a common reason given by many OPs, which is discussed in preceding paragraphs. Further, the withdrawal letter was submitted on a common date, *i.e.* 04.03.2013. The said OPs had an agent namely, Mr. K.Laxman who was also serving as an agent for

many other OPs and could have led to information exchange between the OPs. The Commission does not find any merit in the submissions of the OPs and is of the view that the said OPs have not acted independently but acted in concert with other OPs for withdrawal of bids.

*Andhra Cylinders and Confidence Petroleum India Ltd.*

- g. The Commission notes that Andhra Cylinders and Confidence Petroleum India Ltd. submitted their withdrawal letters dated 04.03.2013 with HPCL on 04.03.2013. In their withdrawal letters submitted to HPCL, the said OPs provided the common reason of compelling/unavoidable circumstances. During the course of investigation, the reason given by the said OPs for withdrawal of bids was that the Commission had imposed a penalty of Rs. 28.00 crores on the companies and also sales tax department had created a liability of Rs. 3.51 crores. Therefore, their Director, Mr. Elesh Khara in consultation with the finance department of the Company decided to withdraw the bid because of the adverse attitude of financial institutions/banks for further financing.
- h. In their response to the Investigation Report and the subsequent written submissions, the said OPs stated that Tender No. 2 was due for opening on 15.02.2013, however, the price bids had not been opened by HPCL on 15.02.2013. Further, no reasons were provided by HPCL for not opening of price bids of Tender No. 2 on 15.02.2013. Even in its reply dated 26.4.2019, the reasons for not opening price bids on 15.02.2013 were not given by HPCL. As per the said OPs, bidders were not informed when price bids would be opened or whether it would not be opened at all. Bidders could not have kept their price bids indefinitely when no communication was received from HPCL seeking extension or informing them that price bids would not be opened by it at all. It has been submitted that on the one hand HPCL did not open the price bids on 15.02.2013 and on the other hand they approached all the manufacturers including the said OPs to supply the cylinders on the existing price thereby extending Tender No. 1. As the price bids were not opened and Tender No.1 was extended, the said OPs withdrew their bids in Tender No. 2. Such conduct on the part of the said OPs was natural as they could not keep their price bids in Tender No. 2 open when Tender No. 1 was extended and the orders were placed by HPCL on that basis even after the due date of Tender No. 2,

*i.e.* 15.02.2013. Thus, no fault can be found with the OPs in withdrawing their bids from Tender No. 2. It has also been stated that withdrawal of bids had been accepted by HPCL and there was no breach of terms and conditions of the tender and no action had been taken by HPCL against the bidders. The fact that withdrawal letter was sent in the same format was normal as the bidder can withdraw the bid without assigning any reasons.

- i. The Commission notes that even though there is no evidence of sharing of withdrawal letter by any of the other OPs in the present case by way of email with the said OPs, the fact remains that the withdrawal letters of the said OPs contained similar reason of ‘unavoidable circumstances/compelling circumstances’ in the letter to HPCL, which was stated by many other OPs, as discussed in preceding paragraphs. Further, the withdrawal letter was submitted on a common date, *i.e.* 04.03.2013. Further, the argument taken by the said OPs before the DG and in their objections that they withdrew their bids because the Commission had imposed penalty on them is not tenable as the penalty was imposed on them *vide* order dated 24.02.2012 and withdrawal of bids in Tender No.2 took place much after, *i.e.* on 04.03.2013, which was almost after a gap of more than one year. If that was the case, the said OPs should not have even submitted their bids for participation in Tender No.2. Further, the Commission finds no merit in the submissions of the OPs that they were not informed by HPCL when price bids would be opened or would not be opened and in these circumstances they withdrew their respective bids. Further, the explanation provided by the said OPs for withdrawal of bids that Tender No. 1 was extended and the orders were placed by HPCL on that basis even after the due date of Tender No. 2, *i.e.* 15.02.2013 is also not acceptable. If the reasons now provided by the said OPs were in fact genuine, the said OPs could have given the same reasons in their letters to HPCL and in their deposition before the DG that they chose to withdraw because of uncertainty of opening of bids of Tender No.2 by HPCL, even though there was no requirement of citing any reason for withdrawal as per the terms and conditions of the tender. These reasons provided now clearly appear to be an afterthought and the Commission is convinced that the said OPs have not acted independently but in concert with other OPs for manipulating the process of bidding in Tender No.2.

*Prathima Industries Pvt. Ltd, Allampally Brothers Ltd. and Sri Sai Balaji Gas Cylinder Pvt. Ltd*

- j. The reason cited by all these OPs is common, *i.e.* manpower shortage and inadequate power supply, in their letters to HPCL. As discussed earlier, GDR Cylinders Pvt. Ltd. and AKMN Cylinders Pvt. Ltd. had also given the reason of manpower shortage and labour problem for withdrawal of their bids from Tender No.2. Even though there is no evidence of sharing of withdrawal letter format by GDR Cylinders Pvt. Ltd. with Sri Sai Balaji Gas Cylinders Pvt. Ltd., a bare reading of withdrawal letters of the said OPs shows that the said letters have identical format and language. Further, these letters were submitted with HPCL on 04.03.2013 and 05.03.2013, respectively. Moreover, there is no plausible explanation provided by either Prathima Industries Pvt. Ltd. or Allampally Brothers, during investigation and in their objections to the Investigation Report about manpower problem and labour shortage. The Commission also notes that Prathima Industries Pvt. Ltd., Sri Sai Balaji Gas Cylinders Pvt. Ltd. and GDR Cylinders Pvt. Ltd. had submitted their bids from same IP address. In view of the foregoing, the Commission is of the view that Prathima Industries Pvt. Ltd, Allampally Brothers Ltd, and Sri Sai Balaji Gas Cylinder Pvt. Ltd. have acted in concert amongst themselves and with other OPs and thus are in contravention of the provisions of the Act.

113. The Commission now examines rest of the OPs which have been identified by the DG in contravention of the provisions of the Act:

*Kurnool Cylinders Pvt. Ltd., Unit-II*

- a. The Commission notes that Kurnool Cylinders Pvt. Ltd. withdrew its bid by stating the reason “*unexplainable circumstances*” in its letter dated 02.03.2013 to HPCL. The said letter was submitted to HPCL on 04.03.2013. During investigation, it was submitted that it had withdrawn from Tender No.2 due to increase in steel prices. In its objections to the Investigation Report, it was contended that it was entitled to withdraw its bid in terms of the conditions specified in the tender and there was no requirement of providing a specific reason for the same. It was contended that Kurnool Cylinders had given a plausible reason for withdrawal of bid which was based on commercial wisdom. Further, there was no evidence of exchange of



withdrawal letter format by email between the said OP and other OPs and IP address of Kurnool Cylinders was not found to be common with any of the OPs. The deposition of agents nowhere states that they were called to withdraw the bids in Tender No. 2 by way of common instructions.

- b. In this regard, the Commission notes that even though there is no evidence of sharing of withdrawal letter format with Kurnool Cylinders by any of the OPs in the present case and the IP address from which bids were uploaded was not common with other OPs, the fact remains that the withdrawal letter contained similar reason of ‘unexplainable circumstances’ and was submitted on the same date as many other OPs, *i.e.* on 04.03.2013. Further, the reason given before the DG as increase in steel prices was a common reason given by many OPs, which is discussed earlier. The Commission notes that the OP had hired an agent Mr. V.M. Bhandari, who was working as an agent for other OPs, namely, GDR Cylinders (P) Ltd., Tirupati Containers Pvt. Ltd. and Asian Fab Tec Ltd, as discussed above in preceding paragraphs, which could have led to passing of information for withdrawal of bids from Tender No.2 amongst the said OPs. Thus, the Commission finds no merit in the submissions of the said OP and is of the view that the said OP is in contravention of the provisions of the Act.

*Jesmajo Industrial Fabrication Karnataka Pvt. Ltd.*

- c. The Commission notes that Jesmajo Industrial Fabrication Pvt. Ltd. withdrew its bid by stating the reason “*unavoidable circumstances*” in its letter dated 05.03.2013 to HPCL. The said letter was submitted to HPCL on 06.03.2013. During the course of investigation and in its objections to the Investigation Report, it was submitted by the company that it had withdrawn its bid as the steel supplier had withdrawn the applicable rebates which would have resulted in steep price escalation at the time of manufacturing of cylinders. It was further submitted that the said OP had withdrawn on its own and without knowledge or consultation with any other manufacturer. The Commission observes that even though there is no evidence of sharing of withdrawal letter by any of the OPs in the present case, the fact remains that the withdrawal letter contained similar reason of ‘unavoidable circumstances’ in the letter addressed by it to HPCL. Further, the reason given in the deposition as well in the objections to the Investigation Report was erratic supply of steel and

withdrawal of rebates by steel supplier, which was given by many OPs. The Commission notes that the OP had a common agent viz. Mr. K. Laxman, who was acting in that capacity for other OPs, as discussed in preceding paragraphs, which could have led to passing of information of withdrawal of bids from Tender No. 2 to the said OP. Thus, the Commission finds no merit in the submissions of the OP and is of the view that the said OP had not acted independently in withdrawing its bid in Tender No.2 but in concert with others and thus, is in contravention of the provisions of the Act.

*BTP Structural India Pvt. Ltd.*

- d. The Commission notes that BTP Structural India Pvt. Ltd. withdrew its bid by stating the reason “*unavoidable circumstances*” in its letter dated 02.03.2013 to HPCL. The said letter was submitted to HPCL on 04.03.2013. During the course of investigation, the reason given for withdrawal was increase in steel prices. In its objections to the Investigation Report and during the course of arguments, it was submitted that rates quoted by some of the parties were unworkable and would push them to financial losses. The Commission is of the view that even though there is no evidence of sharing of withdrawal letter by any of the OPs with BTP Structural India Pvt. Ltd., in the present case, the fact remains that the withdrawal letter contained similar reason of ‘unavoidable circumstances’ in the letter to HPCL and was submitted on the same date as was done by many other OPs, i.e. on 04.03.2013. Further, the reason given in the deposition as well in the objections to the Investigation Report as increase in price of steel and rates being unworkable which would push them to losses, was again a common reason given by certain other OPs, as discussed earlier. Further, the withdrawal letter was submitted on a common date, i.e. 04.03.2013. Thus, the Commission finds no merit in the submissions of the OP and is of the view that the said OP had not acted independently in withdrawing its bid but pursuant to concerted action and thus, is in contravention of the provisions of the Act.

*Balaji Pressure Vessels Ltd.*

- e. The Commission notes that Balaji Pressure Vessels Ltd. withdrew its bid by stating the reason ‘*due to force majeure conditions and connectivity problems*’ in its letter dated 02.03.2013 to HPCL. The said letter was submitted to HPCL on 04.03.2013.

Balaji Pressure Vessels Ltd. did not appear before the DG. Further, objections to the Investigation Report was also not filed by the said OP. The Commission finds that even though there is no evidence of sharing of withdrawal letter by any of the OPs with the said company in the present case, it is a matter of record that the withdrawal letter was submitted on the same date, *i.e.* 04.03.2013. Further, the said OP uploaded its price bid from the same IP address as was used for upload by other OPs namely, Southern Cylinders Pvt. Ltd., International Cylinders (P) Ltd., Sahuwala Cylinders Pvt. Ltd., Tirupati Cylinders Ltd., Sunrays Engineers Pvt. Ltd. and Tirupati LPG Industries Ltd.. The Commission notes that the said OP had a common agent *viz.* Mr. Upadhyay, which could have led to passing of information for withdrawal of bids from Tender No. 2 amongst the said OPs. Thus, the Commission finds no merit in the submissions of the OP and is of the view that the said OP had not acted independently in withdrawing its bid but pursuant to concerted action and thus, is in contravention of the provisions of the Act.

*Konark Cylinders and Containers Pvt. Ltd.*

- f. The Commission notes that Konark Cylinders and Containers Pvt. Ltd. withdrew its bid by stating the reason “*unavoidable circumstances*” in its letter dated 28.02.2013 to HPCL. The said letter was submitted to HPCL on 04.03.2013. Konark Cylinders and Containers Pvt. Ltd. did not appear before DG. In its objections to the Investigation Report and during the course of arguments, it was submitted that it had withdrawn from Tender No.2 because the rates quoted by some of the parties were unworkable and would push them to financial losses. Even though there is no evidence of sharing of withdrawal letter by any of the OPs in the present case, the fact remains that the withdrawal letter contained similar reason of ‘unavoidable circumstances’ in the letter to HPCL and was submitted on the same date as many other OPs, *i.e.* on 04.03.2013. Further, the reason given in the objections to the Investigation Report as rates being unworkable, which was again a common reason given by certain other OPs, as discussed earlier. The Commission notes that the OP had a common agent *viz.* Mr. N. Swaminathan who was an agent for other OPs, which could have led to passing of information for withdrawal of bids from Tender No.2 amongst the said OPs and the said OP. Thus, the Commission finds no merit in the submissions of the OP and is of the view that the

said OP had not acted independently in withdrawing its bid but pursuant to concerted action and thus is in contravention of the provisions of the Act.

*JKB Gas Pvt. Ltd.*

- g. The Commission notes that JKB Gas Pvt. Ltd. withdrew its bid by stating the reason “*unavoidable circumstances*” in its letter dated 28.02.2013 to HPCL. The said letter was submitted to HPCL on 04.03.2013. In its statement before the DG, objections to the Investigation Report and submissions made during the course of arguments, it was contended that the said OP withdrew because of withdrawal of rebate on steel. It was also submitted that there was no exchange of format of withdrawal letter with other OPs. Further, IP addresses from which bids were submitted were also not common in the case of said OP. It has also been submitted that withdrawal letter was dated 28.02.2013 although the submission date was 04.03.2013. The said letter was sent to the agent almost four days prior to the date when it was submitted. The said letter was submitted by the agent along with the letters of other cylinder manufacturers. The decision of agent to submit the letter on same date cannot lead to an inference that there was collusion between the OPs.
- h. The Commission notes that even though there is no evidence of sharing of format of withdrawal letter by any of the OPs with JKB Gas Pvt. Ltd. in the present case, the fact remains that the withdrawal letter sent by it to HPCL contained similar reason of ‘unavoidable circumstances’ and was submitted on the same date as that by many other OPs, *i.e* on 04.03.2013. Further, the reason given in the objections to the Investigation Report *viz.* withdrawal of rebate on steel, was again a common reason given by some other OPs, which is discussed earlier. The Commission notes that the OP had common agent *viz.* Mr. K. Laxman with other OPs, who was acting in that capacity for other OPs and this could have led to passing of information for withdrawal of bids from Tender No.2 amongst the said OPs. Thus, the Commission finds no merit in the submissions of the OP and is of the view that the said OP had not acted independently in withdrawing its bid but pursuant to concerted action and thus is in contravention of the provisions of the Act.

*Shri Shakti Cylinders P Ltd.*

- i. The Commission notes that Shri Shakti Cylinders Pvt. Ltd. withdrew its bid by stating the reason “*acute electricity problem*” in its letter dated 02.03.2013, to HPCL. The said letter was submitted to HPCL on 04.03.2013. During the investigation, the reason provided for withdrawal of bid was bad law and order situation and acute shortage of power. The DG found that Allampally Brothers Ltd. and Asian Fab Tec Ltd. also cited ‘electricity problem’ as their reason for withdrawal of the bid. As discussed earlier, when the authorized representative of Shri Shakti Cylinders P Ltd. was questioned about contrary stand taken by him, he stated that he had sent a letter or email to HPCL communicating ‘law and order’ problem as the reason for withdrawal of bid. As per the DG, no such letter was ever filed with HPCL.
- j. The Commission notes that even though there is no evidence of sharing of format of withdrawal letter by any of the OPs with Shri Shakti Cylinders Pvt. Ltd., the fact remains that the withdrawal letter contained a similar reason of electricity problem in the letter to HPCL as cited by Allampally Brothers Ltd. and Asian Fab Tec Ltd.. Further, one of the reasons given in the objections to the Investigation Report was increase in price of steel and rates being unworkable which would push them to losses, which was again a common reason given by many OPs, as discussed in preceding paragraphs. Thus, the Commission finds no merit in the submissions of the OP and is of the view that the said OP did not act independently but in concert for manipulating the process of bidding.

*Sahuwala Cylinders (P) Ltd.*

- k. The Commission notes that Sahuwala Cylinders (P) Ltd. withdrew its bid by stating the reason “*unavoidable circumstances*” in its letter dated 04.03.2013 to HPCL. The letter was submitted to HPCL on 04.03.2013. In its statement before the DG and objections to the Investigation Report, the reason provided for withdrawal of its bid was increase in steel and electricity prices. It was also submitted that there was no evidence whatsoever of the said OP having shared its withdrawal letter with any other party or even its having communicated the decision with any other person. The Commission notes that even though there is no direct evidence of sharing of format of withdrawal letter by any of the OPs with Sahuwala Cylinders

(P) Ltd. in the present case, the fact remains that the withdrawal letter contained similar reason of ‘unavoidable circumstances’ in the letter to HPCL and was submitted on the same date as was done by many other OPs, *i.e.* on 04.03.2013. Further, one of the reasons given by the said OP in the objections to the Investigation Report as to increase in prices of steel was again a common reason given by many OPs, which has been discussed earlier. It has been contended that, submission of bids from same IP address is explained by the fact that the parties have appointed agents in various places in India who work for other parties as well and submit bids based on instructions of such parties. As such it is quite natural for the agents to use their own single IP address/machine for submitting the bids of all parties. The Commission notes that the OP had common agent Mr. K. Laxman with other OPs, as discussed in preceding paragraphs, which could have led to passing of information for withdrawal of bids from Tender No.2 amongst the said OPs. As regards uploading of bids from common IP address, the Commission notes that said OP itself has admitted the fact that they have common agents and agents had uploaded bids from one computer. Thus, the Commission finds no merit in the submissions of the OP and is of the view that the said OP has not acted independently but in concert with other OPs and thus is in contravention of the provisions of the Act.

1. The Commission has also taken note of an email dated 15.02.2013 sent by Mr. D.V. Raja Sekhar of Shri Shakti Cylinders P Ltd. to Mr. P.K. Gupta of Sahuwala Cylinders (P) Ltd. brought out during investigation wherein Mr. Raja Sekhar had shared information in relation to bid price with Mr. Gupta. It is pertinent to mention that in his statement recorded on oath before the DG, Mr. Raja Sekhar had stated that he does not talk with other manufacturers. It is, however, evident from email dated 15.02.2013 that the testimony given by him was false. The Commission notes that this is also evident from several emails which were exchanged between him and other LPG cylinder manufacturers such as BTP Structural India Pvt. Ltd., Bhiwadi Cylinders Pvt. Ltd., Sahuwala Cylinders (P) Ltd., *etc.*, which were revealed during investigation. The Commission notes that Mr. Raja Sekhar of Shri Shakti Cylinders P Ltd. has neither in his response to the Investigation Report nor in his written submissions, specifically controverted the above said e-mail dated 15.02.2013 and other emails referred to in the Investigation Report. As regards

exchange of emails, with respect to email dated 15.02.2013 sent by Shri Shakti Cylinders P Ltd. to Sahuwala Cylinders (P) Ltd., Sahuwala Cylinders (P) Ltd. submitted that the said email was a unilateral email sent by Shri Shakti Cylinders P Ltd. and was not relied upon by it. The email id of Sahuwala Cylinders (P) Ltd. is in public domain and it has no control over the incoming emails. In this regard, the Commission notes that even if the email dated 15.02.2013 was not relied upon or no action was taken by Sahuwala Cylinders (P) Ltd., the fact remains that there was an exchange of strategic information pertaining to price bids of Tender No.2 between these OPs, which points towards the fact that the said OPs were not acting independently but in concert with each other to manipulate the process of bidding. Thus, in presence of direct communication evidence, the Commission observes that there is no iota of doubt that Mr. Raja Sekhar of Shri Shakti Cylinders P Ltd. and Mr. P.K. Gupta of Sahuwala Cylinders (P) Ltd. had acted in contravention of provisions of the Act.

114. In view of foregoing, the Commission finds the following OPs in contravention of provisions of Section 3(3)(d) read with Section 3(1) of the Act:

**Table No.23**

S.No.	Name of Opposite Party
1.	Bhiwadi Cylinders Pvt. Ltd.
2.	Mahaveer Cylinders Ltd.
3.	Faridabad Metal Udyog Pvt. Ltd.
4.	Him Cylinders Ltd.
5.	Omid Engineering Pvt. Ltd.
6.	Intel Gas Gadgets (P) Ltd (Unit-II)
7.	Mauria Udyog Ltd.
8.	Punjab Gas Cylinders Ltd.
9.	Sunrays Engineers Pvt. Ltd.
10.	S.M. Cylinders
11.	Surya Shakti Vessels Pvt. Ltd.
12.	Universal Cylinders Ltd. (Unit-II)
13.	Daya Industries
14.	Tirupati Cylinders Ltd.
15.	Tirupati LPG Industries Ltd.
16.	International Cylinders (P) Ltd.
17.	Raghupati Synergy Pvt. Ltd.
18.	Saboo Cylinders Pvt. Ltd.
19.	Tirupati Containers Pvt. Ltd.
20.	Asian Fab Tec Ltd.
21.	Lite Containers Pvt. Ltd.
22.	GDR Cylinders (P) Ltd.
23.	AKMN Cylinders (P) Ltd.
24.	Vidhya Cylinders Pvt. Ltd.
25.	Sarthak Industries Ltd.



26.	Prestige Fabricators Pvt. Ltd.
27.	Southern Cylinders Pvt. Ltd.
28.	Winfab Equipments Pvt. Ltd.
29.	Sanghvi Cylinders Pvt. Ltd.
30.	Hyderabad Cylinders Pvt. Ltd.
31.	Nandi Cylinders Pvt. Ltd.
32.	R. M. Cylinders Pvt. Ltd.
33.	North India Wires Ltd. ( Howrah Unit)
34.	Carbac Holdings Ltd.
35.	Haldia Precision Engineering Pvt. Ltd.
36.	Super Industries
37.	Om Containers
38.	Teekay Metals Pvt. Ltd.
39.	Andhra Cylinders
40.	Confidence Petroleum India Ltd.
41.	Prathima Industries Pvt. Ltd.
42.	Allampally Brothers Ltd.
43.	Sri Sai Balaji Gas Cylinder Pvt. Ltd
44.	Kurnool Cylinders Pvt. Ltd. (Unit —II)
45.	Jesmajo Industrial Fabrication Karnataka Pvt. Ltd.
46.	BTP Structural India Pvt. Ltd.
47.	Balaji Pressure Vessels Ltd.
48.	Konark Cylinders & Containers Pvt. Ltd.
49.	J.K.B. Gas Pvt. Ltd.
50.	Shri Shakti Cylinders P Ltd.
51.	Sahuwala Cylinders (P) Ltd.

***Issue 3: If the bidders are found to have contravened the provisions of Section 3(3)(d) read with Section 3(1) of the Act, then who are the persons in charge thereof and responsible for the conduct of business of the respective enterprises under Section 48 of the Act?***

115. Section 48(1) of the Act is triggered when the party in contravention is a company (including a firm or an association of individuals) and a person/individual officer/office bearer is found to be in-charge of, and responsible for the conduct of the business of the contravening company/firm/association. Once Section 48(1) of the Act is triggered, it is for such person/officer/office bearer to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention, in order to be absolved of liability under Section 48(1) of the Act.

116. As no contravention of the provisions of the Act have been found against the OPs in Tender No.1 for the reasons aforementioned, consequently determination of liability of the officers/individuals of the said OPs under Section 48 of the Act does not arise.

Further, as no contravention has been found against Gopal Cylinders and Krishna Cylinders in Tender No.2, no question of determination of liability in respect of the individuals of the said OPs under Section 48 arises.

117. Having found 51 OPs discussed above to be responsible for the contravention of provisions of Section 3(3)(d) read with Section 3(1) of the Act in Tender No.2, the next issue is to determine whether the officers of these firms/enterprises, as identified by the DG, are liable under the provisions of the Section 48(1) of the Act.

118. The DG has identified the following individuals to be liable under Section 48(1) of the Act for the conduct of their respective enterprises in relation to Tender No.2 :

**Table No.24: Officers identified by the DG**

S No.	Name of the Officer	Name of the OP	Position held
1.	Mr. M.B. Koyakutty	Allampally Brothers Ltd.	Managing Director
2.	Mr. K.H. Puttaswami Gowda	Asian Fab Tec Ltd.	Managing Director
3.	Ms. Shashikala BR	Asian Fab Tec Ltd.	Director
4.	Mr. N. Ravindran	AKMN Cylinders (P) Ltd	Managing Director
5.	Mr. Elesh Khara	Andhra Cylinders	Director
6.	Mr. Manvinder Singh	Bhiwadi Cylinders Pvt. Ltd.	Director
7.	Mr. Ramesh Kumar	Balaji Pressure Vessels Ltd.	Chairman and Managing Director
8.	Mr. P.N. Vinaykumar	Balaji Pressure Vessels Ltd.	Executive Director
9.	Mr. B.B. Patil	BTP Structural India Pvt. Ltd.	Chairman & Managing Director
10.	Mr. C.P. Bhartia	Carbac Holdings Ltd.	Director
11.	Ms. Aradhna Bhartia	Carbac Holdings Ltd.	Director
12.	Mr. Sanjay Bhartia	Carbac Holdings Ltd.	Director
13.	Mr. Sandeep Bhartia	Carbac Holdings Ltd.	Director
14.	Mr. Elesh Khara	Confidence Petroleum India Ltd.	Director
15.	Mr. A.P. Sapra	Daya Industries	Partner
16.	Mr. Adarsh Jain	Faridabad Metal Udyog Pvt. Ltd.	Managing Director
17.	Mr. Rakesh Agarwal	Gopal Cylinders	Partner
18.	Mr. Cedric Fernandez	Jesmajo Industrial Fabrication Karnataka Pvt. Ltd.	Director
19.	Mr. Nand Kishore Ladda	Winfab Equipments Pvt. Ltd.	Managing Director
20.	Mr. M. Muruganandam	GDR Cylinders (P) Ltd.	Managing Director
21.	Mr. Ashok Raja	Him Cylinders Ltd.	Chairman and Director
22.	Mr. N Suresh	Southern Cylinders Pvt. Ltd.	Managing Director

S No.	Name of the Officer	Name of the OP	Position held
23.	Mr. Vijay Sanghvi	Hyderabad Cylinders Pvt. Ltd.	Managing Director
24.	Mr. C.P. Bhartia	Haldia Precision Engineering Pvt. Ltd.	Director
25.	Mr. Sanjay Bhartia	Haldia Precision Engineering Pvt. Ltd.	Director
26.	Mr. Sandeep Bhartia	Haldia Precision Engineering Pvt. Ltd.	Director
27.	Mr. Arun Goyal	International Cylinders (P) Ltd.	Director
28.	Mr. K.K. Gupta	J.K.B. Gas Pvt. Ltd.	Director
29.	Mr. B.S. Reddy	Kurnool Cylinders Pvt. Ltd. (Unit-II)	Director
30.	Mr. Arun Kumar Aggarwal	Krishna Cylinders	Partner
31.	Shri Gulshan Kumar Aggarwal	Krishna Cylinders	Partner
32.	Mr. Gagan Agarwal	Raghupati Synergy Pvt. Ltd.	Director
33.	Mr. Nishant Mittal	Raghupati Synergy Pvt. Ltd.	Director
34.	Mr. Kushagra Agarwal	Raghupati Synergy Pvt. Ltd.	Director
35.	Mr. Pankaj Gupta	Intel Gas Gadgets (P) Ltd. (Unit-II)	Managing Director
36.	Mr. Puneet Gupta	Intel Gas Gadgets (P) Ltd. (Unit-II)	Director
37.	Mr. Kulandhaiswamy	Lite Containers Pvt. Ltd.	Managing Director
38.	Mr. Dinesh Mittal	Mahaveer Cylinders Ltd.	Director
39.	Mr. N.K. Sureka	Mauria Udyog Ltd.	Managing Director
40.	Mr. Yogesh Sanghvi	Nandi Cylinders Pvt. Ltd.	Director
41.	Mr. Rajkumar Bhartia	North India Wires Ltd (Howrah Unit)	Director
42.	Mr. Naveen Bhartia	North India Wires Ltd (Howrah Unit)	Director
43.	Mr. Sandeep Bhartia	North India Wires Ltd (Howrah Unit)	Director
44.	Mr. Ashok Raja	Omid Engineering Pvt. Ltd.	Chairman and Director
45.	Mr. Davish Jain	Prestige Fabricators Pvt. Ltd.	Chairman
46.	Mr. Sanjay Rathi	Prestige Fabricators Pvt. Ltd.	Director
47.	Mr. Rajesh Mittal	Punjab Gas Cylinders Ltd.	Director
48.	Mr. Naveen Mittal	Punjab Gas Cylinders Ltd.	Director
49.	Mr. Viprendar Aggarwal	Punjab Gas Cylinders Ltd.	Director
50.	Mr. Chenadi Ramu	Prathima Industries Pvt. Ltd.	Director
51.	Ms. B. Usharani	Prathima Industries Pvt. Ltd.	Director
52.	Ms. I. Savitri	Prathima Industries Pvt. Ltd.	Director
53.	Mr. Dev Prakash Mahapatra	Konark Cylinders & Containers Pvt. Ltd.	Managing Director
54.	Mr. Ritesh Sanghvi	R.M. Cylinders Pvt. Ltd.	Director

S No.	Name of the Officer	Name of the OP	Position held
55.	Mr. Ramesh Sanghvi	Sanghvi Cylinders Pvt. Ltd.	Managing Director
56.	Mr. P.K. Gupta	Sahuwala Cylinders (P) Ltd.	Ex- Director
57.	Mr. Vimal Mahipal	Sunrays Engineers Pvt. Ltd.	Director
58.	Mr. Vijay Kumar Aggarwal	S.M. Cylinders	Director
59.	Mr. Kamal Goyal	S.M. Cylinders	Director
60.	Mr. Pankaj Goel	S.M. Cylinders	Director
61.	Ms. Neelam Aggarwal	S.M. Cylinders	Director
62.	Mr. D.V. Rajasekhar Reddy	Shri Shakti Cylinders P Ltd.	Managing Director
63.	Mr. M. Muruganandam	Sri Sai Balaji Gas Cylinders Pvt. Ltd.	Managing Director
64.	Mr. Puneet Batra	Surya Shakti Vessels Pvt. Ltd.	Director
65.	Mr. Dinesh Goyal	Tirupati Cylinders Ltd.	Director
66.	Mr. Rakesh Singhal	Tirupati Containers Pvt. Ltd.	Managing Director
67.	Mr. Arun Goyal	Tirupati LPG Industries Ltd.	Director
68.	Mr. Kishor Kela	Teekay Metals Pvt. Ltd.	Director
69.	Mr. A.K. Sharma	Universal Cylinders Ltd. (Unit-II)	Joint Managing Director
70.	Mr. Mukesh Kumar Mittal	Vidhya Cylinders Pvt. Ltd.	Director
71.	Late V.K. Gupta	Sarthak Industries Ltd.	Director
72.	Late B.L. Sahoo	Saboo Cylinders Pvt. Ltd.	Managing Director

119.The Commission now proceeds to analyse the liability, if any, of the individuals, identified by the DG, under Section 48(1) of the Act, in respect of the contravention of the provisions of the Act by 51 OPs. In this regard, the liability of each of such individuals of OPs is discussed as under:

- (i) In case of Allampally Brothers Ltd., Mr. M.B. Koyakutty, Managing Director of the company has been found to take all the decisions of the company. Therefore, being the Managing Director of the company he is incharge of and responsible for the conduct of the business affairs of the company as well as responsible to the company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by Mr. M.B. Koyakutty in the present case.

- (ii) In case of Asian Fab Tec Ltd, the DG found that the decision making authority of the company is Mr. Mr. K.H. Puttaswami Gowda, who is the Managing Director of the company. Further, Ms. Shashikala B.R., Director, in her deposition before the DG has stated that she looks after the day to day affairs of the company with the concurrence of the Managing Director. Accordingly, the Commission is in agreement with the DG that Mr. Gowda and Ms. Shashikala are incharge and responsible for the conduct of the business of the company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by these persons.
- (iii) In case of AKMN Cylinders (P) Ltd, the Commission is in agreement with the DG that Mr. N. Ravindran, being the Managing Director of the company, is said to be incharge and responsible for the conduct of the business of the company as well as responsible for the company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by Mr. N. Ravindran in the present case.
- (iv) In case of Confidence Petroleum India Ltd. and Andhra Cylinders, the Commission notes that as per the statement of Mr. Jacob Mathew, the Commercial Manager of the company, all the decisions regarding quotation in tenders etc. are taken by Mr. Elesh Khara, Director of both the companies. In response to the Investigation Report, it has been submitted that the DG has merely stated that the person who is in charge of the company is liable to prosecuted and there is no clinching evidence in support of such claim. It has been further stated that to prosecute the director in vicarious capacity, it is mandatory to produce clinching evidence to the effect that director was not only involved in the day to day affairs of the company but had direct nexus with the alleged non-compliance of the Competition Act. The Commission notes that Mr. Elesh Khara is incharge of and responsible for the conduct of the business affairs of the company as well as responsible to the

company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by Mr. Elesh Khara in the present case.

- (v) With respect to Bhiwadi Cylinders Pvt. Ltd., the DG found that Mr. Manvinder Singh, Managing Director, is involved in finalization of tender documents and related decisions. In response to the Investigation Report, it has been stated that the DG has not produced clinching evidence to the effect that director was not only involved in the day to day affairs of the company but had direct nexus with the alleged non-compliance of the competition Act. Being the Managing Director of the company, the Commission is in agreement with the DG that Mr. Manvinder Singh is in charge and responsible for the conduct of the business of the company as well as responsible for the affairs of the company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by Mr. Manvinder Singh.
- (vi) In relation to Mr. Ramesh Kumar, Chairman and Managing Director (CMD) and Mr. P.N. Vinay Kumar, Executive Director of Balaji Pressure Vessels Ltd., investigation has revealed that as per organizational chart submitted by the company, all the divisions of the company reports to the Chairman and Managing Director and all the decisions are taken by the Chairman and Managing Director and Executive Director of the company. Accordingly, the Commission is in agreement with the DG that both of them are in charge and responsible for the conduct of the business of the company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by these persons in the present case.

- (vii) With regard to Mr. B.B. Patil, Chairman and Managing Director (CMD) of BTP Structural India Pvt Ltd., investigation has revealed that Mr. B.B. Patil, CMD of the company, in his deposition has stated that he was looking after the day to day affairs of the company till 2013-14. Being the CMD of the company and being responsible for looking after day to day affairs of the company, Mr. Patil is in incharge and responsible for the conduct of the business of the company as well as responsible for the affairs of the company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by Mr. B.B. Patil, in the present case.
- (viii) In relation to Mr. C.P. Bhartia, Ms. Aradhna Bhartia, Mr. Sanjay Bhartia and Mr. Sandeep Bhartia, Directors of Carbac Holdings Ltd., the DG noted that Mr. C.P. Bhartia, Director, in his deposition has stated that all the decisions in the company regarding tenders etc. are taken by all the Directors jointly and thus they are jointly in charge of and responsible for the conduct of the business of the company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by these persons in the present case.
- (ix) With respect to Mr. C.P. Bhartia, Mr. Sanjay Bhartia, and Mr. Sandeep Bhartia, Directors of Haldia Precision Engineering Pvt. Ltd., the DG has noted that Mr. C.P. Bhartia, Director, in his deposition has stated that all the decisions in the company regarding tenders etc. are taken by all the Directors jointly and thus they are jointly in charge of and responsible for the conduct of the business of the company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by these persons in the present case.



- (x) As regards Daya Industries, the Commission notes that the investigation has revealed that Mr. A.P. Sapra, Partner, in his statement before the DG, has submitted that he was solely looking after the day to day affairs of the firm till 2014 and was responsible for the conduct of its business. Therefore, the Commission is in agreement with the DG that Mr. A.P. Sapra was the person who was in charge of and responsible for the conduct of the business of the firm being its Partner. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by Mr. A.P. Sapra, in the present case.
- (xi) With respect to Faridabad Metal Udyog Pvt. Ltd, the Commission notes that as per the reply dated 12.05.2015, Mr. Adarsh Jain takes all business decisions being the Managing Director of the Company and is looking after the day to day affairs of the company. In response to the Investigation Report, it has been stated that to prosecute the director in vicarious capacity it is mandatory to produce clinching evidence to the effect that director was not only involved in the day to day affairs of the company but had direct nexus with the alleged non-compliance of the Act. The Commission notes that Mr. Adarsh Jain was the person who was in charge of and responsible for the conduct of the business of the company being it's Managing Director. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by Mr. Adarsh Jain in the present case.
- (xii) As regards Mr. Cedric Fernandez, Director of Jesmajo Industrial Fabrication Karnataka Pvt Ltd., investigation revealed that Mr. Cedric Fernandez, Director of the company, in his statement before the DG stated that he is looking after day affairs of the company and responsible for conduct of its business. Therefore, the Commission is in agreement with the DG that he is in charge of and responsible for the conduct of the business of the company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention

was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by Mr. Cedric Fernandez.

- (xiii) With respect to Mr. Nand Kishor Ladda, Managing Director of Winfab Equipments (P) Ltd., investigation has revealed that Mr. Ladda, in his deposition, has stated that he is responsible for the day to day affairs of the company and looking after its conduct of business. Accordingly, the Commission is in agreement with the DG that Mr. Nand Kishor Ladda is in charge of and responsible for the conduct of the business of the company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by Mr. Nand Kishor Ladda in the present case.
- (xiv) In relation to Mr. M. Muruganandam, MD of GDR Cylinders Pvt Ltd., the investigation has brought out that the company was taken over by Mr. B.S. Reddy of Kurnool Cylinders Pvt Ltd through MoU between the promoters of GDR and him. The loans to company had become the non-performing asset of Canara Bank and due to one-time settlement, the same has been taken over by Mr. B.S. Reddy. However, the said agreement was entered into on 06.05.2014 but the tender in question was related to 2013. Therefore, the Commission is in agreement with the DG that Mr. M. Muruganandam who was the MD of the company at that relevant time was in charge of and responsible for the conduct of the business of the company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by Mr. M. Muruganandam, in the present case.
- (xv) With respect to Mr. Ashok Raja, Chairman and Director of Him Cylinders Ltd. and Omid Engineering Pvt. Ltd., investigation revealed that as per the statement of Mr. Rajesh Harith, Commercial Manager, Mr. Ashok Raja in consultation with the accounts departments takes the decision regarding quotation in tenders. Being the

Chairman and the Director of the company, the Commission is in agreement with the DG that Mr. Ashok Raja was in charge of and responsible for the conduct of the business of the companies. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by Mr. Ashok Raja, in the present case.

(xvi) With respect to Mr. N. Suresh, Managing Director of Southern Cylinders Pvt Ltd, investigation revealed that Mr. N. Suresh, Managing Director, is the final authority to take all decisions on behalf of the company. Accordingly, the Commission is in agreement with the DG in this respect that Mr. N. Suresh was in charge of and responsible for the conduct of the business of the company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by Mr. N. Suresh, in the present case.

(xvii) As regards Mr. Vijay Sanghvi, Managing Director of Hyderabad Cylinders Pvt. Ltd. and Director of Nandi Cylinders Pvt. Ltd., the investigation revealed that Mr. Vijay Sanghvi, in his statement has stated that he is responsible for the day to day affairs of Hyderabad Cylinders and Nandi Cylinders and looking after conduct of business. Accordingly, the Commission is in agreement with the DG that Mr. Vijay Sanghvi was in charge of and responsible for the conduct of the business of the companies. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by Mr. Vijay Sanghvi, in the present case.

(xviii) In relation to Mr. Ritesh Sanghvi, Director of R.M. Cylinders Pvt Ltd., investigation has revealed that Mr. Ritesh Sanghvi, Director of the company, in his deposition has stated that Mr. Ramnik Lal Sanghvi was looking after the day to day affairs of

the company till Jan'2013 but due to his deteriorating health condition, after Jan'2013 Mr. Ritesh Sanghvi is looking after the aforesaid work. Accordingly, the Commission is in agreement with the DG that Mr. Ritesh Sanghvi was in charge of and responsible for the conduct of the business of the company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by Mr. Ritesh Sanghvi, in the present case.

(xix) With respect to Mr. Ramesh Sanghvi, Managing Director of Sanghvi Cylinders Pvt. Ltd., the Commission notes that Mr. Ramesh Sanghvi, in his statement before the DG has stated that he is responsible for the day to day affairs of the company and looking after its conduct of business. Accordingly, the Commission is in agreement with the DG in this regard that Mr. Ramesh Sanghvi was in charge of and responsible for the conduct of the business of the company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by Mr. Ramesh Sanghvi, in the present case.

(xx) As regards, Tirupati LPG Industries Ltd. and International Cylinders Pvt. Ltd., Mr. Arun Goyal, Director, in his deposition before the DG stated that he is looking after the day to day affairs of the company. Accordingly, the Commission is in agreement with the DG that Mr. Goyal was in charge of and responsible for the conduct of the business of the companies. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by Mr. Arun Goyal, in the present case.

(xxi) In relation to J.K.B. Gas Pvt. Ltd., investigation has revealed that Mr. K.K. Gupta, in his deposition before the DG stated that he is looking after day to day affairs of

the company and responsible for conduct of its business. In response to the Investigation Report, it has been contended that Mr. K.K. Gupta has been identified for the purpose of proceedings under Section 48 of the Act, on the basis of the fact that he was looking after day to day affairs of the company. However, no investigation was conducted by the DG to link the role of individual with the impugned conduct and accordingly the liability of Mr. K.K. Gupta is not established under the provisions of the Act. The Commission does not find any merit in this submission and agrees with the findings of the DG that Mr. K.K. Gupta was in charge of and responsible for the conduct of the business of the company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by Mr. K.K. Gupta, in the present case.

(xxii) In relation to Mr. B. S. Reddy, Director of Kurnool Cylinders Pvt. Ltd. (Unit-II), the Commission notes that as per the statement of Mr. B.S. Reddy recorded before the DG, he was looking after day to day affairs of the company and is responsible for conduct of its business. In response to the Investigation Report it has been stated that to prosecute the director in vicarious capacity it is mandatory to produce clinching evidence to the effect that director was not only involved in the day to day affairs of the company but had direct nexus with the alleged non-compliance of the Competition Act. The Commission agrees with the findings of the DG that Mr. B. S. Reddy, Director of Kurnool Cylinders Pvt. Ltd. (Unit-II) was in charge of and responsible for the conduct of the business of the company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by Mr. B.S. Reddy, in the present case.

(xxiii) As regards, Mr. Gagan Agarwal, Mr. Nishant Mittal, and Mr. Kushagra Aggarwal, Directors of Raghupati Synergy Pvt. Ltd., investigation brought out that despite service of summons, Mr. Gagan Aggarwal, Director of the company did not appear

for his deposition before the DG. There are three directors in the company namely Mr. Gagan Aggarwal, Mr. Nishant Mittal and Mr. Kushagra Aggarwal. As per the DG, in absence of any specific delineation of the duties, the board of directors of the company are collectively responsible for conduct of company's business. The Commission is in agreement with the DG in this regard and thus all the three directors was in charge of and responsible for the conduct of the business of the company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by these persons, in the present case.

(xxiv) With respect to Mr. Pankaj Gupta, Managing Director and Mr. Puneet Gupta, Director of Intel Gas Gadgets Pvt. Ltd. (Unit-II), investigation has revealed that Mr. Pankaj Gupta in his deposition before the DG stated that he and his brother Mr. Puneet Gupta look after day to day affairs of the company. Accordingly, the Commission agrees with the DG and finds both of them to be in charge of and responsible for the conduct of the business of the company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by these persons, in the present case.

(xxv) As regards Mr. S. Kulandhaisamy, Director of Lite Containers Pvt Ltd., investigation revealed that Mr. S Kulandhaisamy, Director had submitted that his company was being prosecuted by banks in Debt Recovery Tribunal(DRT) to liquidate the assets including his house. DRT has also taken possession of his factory. However, at the relevant time of tenders in question, he was the MD of the company and being in that capacity he was responsible for the conduct of the business of the company. Accordingly, the Commission is in agreement with the DG that Mr. S.Kulandhaisamy is found to be in charge of and responsible for the conduct of the business of said company at the relevant time. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that

the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by the said person in the present case.

(xxvi) In relation to Mahaveer Cylinders Ltd., the Commission notes that as per the statement of Mr. Dinesh Mittal, Director, recorded before the DG, he was looking after the day to day affairs of the company since 1995 and being responsible for the conduct of its business. In response to the Investigation Report, it has been stated that the DG has merely stated that the person who is in charge of the company is liable to prosecuted and there is no clinching evidence in support of such claim. It has been further stated that to prosecute the director in vicarious capacity it is mandatory to produce clinching evidence to the effect that director was not only involved in the day to day affairs of the company but had direct nexus with the alleged non-compliance of the Act. In view of complete lack of nexus of the director with the alleged contravention of the Act, the director cannot be prosecuted under Section 48 of the Act. The Commission notes that Mr. Dinesh Mittal, as per his own statement, was in charge of and responsible for the conduct of the business of the company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by the said person in the present case.

(xxvii) In relation to Mr. N.K. Sureka, Managing Director of Mauria Udyog Ltd., investigation revealed that Mr. K.M. Pai, Director of the company, in his deposition, stated that he was simply looking after day to day affairs of the company other than finance. It was further stated that he does not have any shareholding in the company and gets fixed remuneration. As per Mr. K.M. Pai, Mr. N.K. Sureka is the Managing Director of the company. The Commission is in agreement with the DG that being the Managing Director of the company, Mr. N.K. Sureka was in charge of and responsible for the conduct of the business of the company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised



all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by the said person in the present case.

(xxviii) With respect to Mr. Rajkumar Bhartia, Mr. Naveen Bhartia and Mr. Sandeep Bhartia, Directors of North India Wires Ltd (Howrah), the investigation revealed that Mr. Rajkumar Bhartia, Mr. Naveen Bhartia and Mr. Sandeep Bhartia are the Directors of the company and are involved in the decision making of the company. Being directors involved in day to day affairs of the company, the Commission is in agreement with the DG that all the said persons were in charge of and responsible for the conduct of the business of the company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by the said persons in the present case.

(xxix) In relation to Tee Kay Metals Pvt. Ltd., investigation has revealed that Mr. Kishore Kela, Director of the company, takes all the decisions of quotation for the different tenders. In his deposition, he has stated that he was looking after the day to day affairs of the company and conduct of its business in 2013 in relation to tender of HPCL. Therefore, the Commission is in agreement with the DG that Mr. Kishore Kela was in charge of and responsible for the conduct of the business of the company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by the said person in the present case.

(xxx) In relation to Mr. Davish Jain, Chairman and Mr. Sanjay Rathi, Director of Prestige Fabricators Pvt. Ltd., the Commission notes that as per the statement dated 01.08.2016 of Mr. Sanjay Rathi, Director of the said company, he was looking after day to day affairs of the company during 2011 and 2013 in consultation and approval of Mr. Jain. Therefore, it can be said that Mr. Jain and Mr. Rathi were the

persons incharge and who were responsible for the conduct of the business of the company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by these persons in the present case.

(xxxii) With respect to Mr. Rajesh Mittal, Mr. Naveen Mittal and Mr. Viprendar Aggarwal, Directors of Punjab Gas Cylinders Ltd., the investigation has revealed that Mr. Rajesh Mittal, Director of the company, in his deposition stated that he along with Mr. Viprendar Aggarwal and Mr. Naveen Mittal, jointly control the company and are responsible for conduct of its business. In response to the Investigation Report it has been stated that the DG has merely stated that the person who is in charge of the company is liable to be prosecuted and there is no clinching evidence in support of such claim. It has been further stated that to prosecute the director in vicarious capacity it is mandatory to produce clinching evidence to the effect that director was not only involved in the day to day affairs of the company but had direct nexus with the alleged non-compliance of the Act. In view of complete lack of nexus of the director with the alleged contravention of the Act, the director cannot be prosecuted under Section 48 of the Act. It has been further stated that Mr. Viprendar Aggarwal was never called upon by the DG for recording any statement which is despite of the fact that after statement of Mr. Rajesh Mittal the DG issued summons upon Mr. Naveen Mittal who was examined as well as confronted with the answers given by Mr. Rajesh Mittal. The Commission finds that all the three above named directors were in charge of and responsible for the conduct of the business of the company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by the said persons in the present case.

(xxxiii) As regards, Mr. Chenadi Ramu, Ms. B. Usharani and Ms. I. Savitri, Directors of Prathima Industries Pvt. Ltd., investigation revealed that Ms. I. Savitri, in her deposition before the DG stated that all decisions are taken collectively by the board

though day to day affairs are carried out by her only. In view of the above, the DG found all three persons are responsible for the conduct of the business of the company. The Commission finds that no evidence is available to suggest that the aforesaid Directors were not incharge and responsible for the conduct of the business of the company. Thus, the Commission finds all the three Directors in charge of and responsible for the conduct of the business of the company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by the said persons in the present case.

(xxxiii) With respect to Mr. Dev Prakash Mahapatra, Managing Director of Konark Cylinders & Containers Pvt Ltd, the DG noted that Mr. Mahapatra takes all important decisions in relation to tenders. Further, as per the information available in public domain, he is the Managing Director of the Company. Being Managing Director of the company, he was found to be responsible for the conduct of the business of the company. Accordingly, the Commission agrees with the DG in this regard that Mr. Dev Prakash Mahapatra, Managing Director is incharge of and responsible for the conduct of the business of the abovenamed company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by the said person in the present case.

(xxxiv) As regards Mr. P.K. Gupta, Ex. Director of Sahuwala Cylinders Pvt Ltd, investigation has revealed that Mr. P.K. Gupta, in his statement before the DG, stated that he was the founder director of the company and was looking after day to day affairs of the company and also responsible for the conduct of its business including deciding tender rates for the company in 2013. Accordingly, the Commission is in agreement with the DG that Mr. P.K. Gupta was in charge of and responsible for the conduct of the business of the abovenamed company at the relevant time. As per the proviso to Section 48(1) of the Act, the burden of proof is

on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by the said person in the present case.

(xxxv) In relation to Mr. Vimal Mahipal, Director of Sunrays Engineers Pvt Ltd, investigation has revealed that Mr. Pradeep Mahipal, Director of the company, in his statement before the DG has stated that, he looks after the day to day affairs of the company and is responsible for the conduct of its business. In response to the Investigation Report it has been submitted that in view of complete lack of nexus of the director with the alleged contravention of the Act, the director cannot be prosecuted under Section 48 of the Act. The Commission does not find any merit in the contention of the OP and is in agreement with the DG that that Mr. Vimal Mahipal is incharge of and responsible for the conduct of the business of the abovenamed company, being its Director. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by the said person in the present case.

(xxxvi) As regards Mr. Vijay Kumar Aggarwal, Mr. Kamal Goyal, Mr. Pankaj Goel, and Mrs. Neelam Aggarwal, Directors of SM Cylinders, the Commission notes that as per the statement dated 16.03.2016 of Mr. Vijay Kumar Aggarwal, Mr. Aggarwal takes all business decisions relating to the company after discussion with other directors as the company is not well organized professionally. In view of above statement it can be said that all the above named three directors are persons who are collectively incharge of and responsible for the conduct of the business of the abovenamed company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by the said persons in the present case.

(xxxvii) In relation to Shri Shakti Cylinders Pvt Ltd, Mr. D.V. Raja Sekhar Reddy, in his statement before the DG stated that he is responsible for the day to day affairs of the company and tender related decisions are taken by him. Accordingly, the Commission agrees with the DG that Mr. D.V. Rajasekhar is incharge of and responsible for the conduct of the business of the abovenamed company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by the said person in the present case.

(xxxviii) With respect to Mr. M. Muruganandam, Managing Director of Sri Sai Balaji Gas Cylinders Pvt Ltd., investigation revealed that despite service of summon, Mr. Muruganandam did not appear for deposition before the DG. The Commission is in agreement with the DG that being the MD of the company, Mr. Muruganandam is said to be incharge of and responsible for the conduct of the business of the abovenamed company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by the said person in the present case.

(xxxix) As regards Mr. Puneet Batra, Director of Surya Shakti Vessels Pvt Ltd, the Commission notes that Mr. Batra, in his deposition has stated that he is responsible for the day to day affairs of the company and conduct of the business of the company. Therefore, the Commission agrees with the DG that Mr. Batra is incharge of and responsible for the conduct of the business of the abovenamed company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by the said person in the present case.

- (xl) With respect to Tirupati Cylinders Ltd., as per the DG, Mr. Dinesh Goyal, in his deposition stated that he is responsible for the day to day affairs of the company and tender related inputs are given by him. Accordingly, the Commission agrees with the DG that he is incharge of and responsible for the conduct of the business of the abovenamed company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by the said person in the present case.
- (xli) As regards Tirupati Containers Pvt. Ltd., Mr. Rakesh Singhal, Director of the company, in his deposition before the DG, has stated that he was solely looking after the day to day affairs of the company and is responsible for the conduct of its business. In response to the Investigation Report it has been stated that the DG has merely stated that the person who is in charge of the company is liable to prosecuted and there is no clinching evidence in support of such claim. It has been further stated that to prosecute the director in vicarious capacity it is mandatory to produce clinching evidence to the effect that director was not only involved in the day to day affairs of the company but had direct nexus with the alleged non-compliance of the competition Act. In view of complete lack of nexus of the director with the alleged contravention of the Act, the director cannot be prosecuted under Section 48 of the Act. The Commission notes that Mr. Rakesh Singhal was incharge of and responsible for the conduct of the business of the abovenamed company, being its Managing Director. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by the said person in the present case.
- (xlii) In relation to Mr. A.K. Sharma, Joint MD of Universal Cylinders Ltd. (Unit-II), as per the statement of Mr. Sharma, he was looking after the work with the OMCs tender etc. In response to the Investigation Report, it has been stated that to prosecute the director in vicarious capacity it is mandatory to produce clinching evidence to the effect that director was not only involved in the day to day affairs

of the company but had direct nexus with the alleged non-compliance of the Act. The Commission finds Mr. A.K. Sharma to be incharge of and responsible for the conduct of the business of the abovenamed company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by the said person in the present case.

(xliii) In relation to Vidhya Cylinders Pvt. Ltd., investigation has revealed that Mr. Mukesh Kumar Mittal, Director of the company, in his statement before the DG, has stated that he is responsible for the day to day affairs of the company and looking after the conduct of its business. Accordingly, the Commission is in agreement with the DG that Mr. Mukesh Kumar Mittal is incharge of and responsible for the conduct of the business of the abovenamed company, being the Director of the said company. As per the proviso to Section 48(1) of the Act, the burden of proof is on the person liable to prove that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. It is noted by the Commission that such burden of proof has not been discharged by the said person in the present case.

(xliv) With respect to Sarthak Industries Ltd., as per the statement of Mr. Yogender Kumar Sharma, Director, Late Mr. V.K. Gupta, the then Director of the company was looking after the conduct of business of the company during 2013. In view of above the DG found that Late V.K.Gupta, the then Director was the responsible for the conduct of the business of the company. It is pertinent to mention that Mr. V.K. Gupta has expired on 22.05.2014. Thus, Commission decides not to proceed against Late Mr. V.K. Gupta.

(xlv) As regards Saboo Cylinders Pvt Ltd, the Commission notes that as per the statement of Mr. Pawan Kumar dated 18.07.2016, Late B.L. Saboo, the then MD of the company was looking after affairs of the company and also responsible for the conduct of its business. The DG found Late B.L. Saboo, the then MD as responsible for the conduct of the business of the company. It is pertinent to mention that Mr.



B.L. Sahoo has since expired. Thus, the Commission decides not to proceed against Late Mr. B.L. Sahoo.

120. In view of the above, the Commission passes the following:

### ORDER

121. The OPs and their respective office bearers are directed to cease and desist from indulging in practices, in future which are found to be in contravention of the provisions of Section 3 (3) (d) read with Section 3 (1) of the Act.

122. The Commission, for the reasons recorded below, finds the present case fit for imposition of penalty. Under the provisions contained in Section 27(b) of the Act, the Commission may impose such penalty upon the contravening parties, as it may deem fit which shall be not more than ten per cent of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreement or abuse. Further, in cases of cartelization, the Commission may impose upon each such cartel participant, a penalty of up to three times of its profit for each year of continuance of the anti-competitive agreement or ten per cent of its turnover for each year of continuance of such agreement, whichever is higher.

123. It may be noted that the twin objectives behind imposition of penalty are: (a) to reflect the seriousness of the infringement; and (b) to ensure that the threat of penalties will deter the infringing undertakings. Therefore, the quantum of penalty imposed must correspond with the gravity of the offence and the same must be determined after having due regard to the mitigating and aggravating circumstances of the case.

124. Most of the OPs in their objections to the Investigation Report have submitted that in a case of this nature, a zero penalty with a warning or a notional penalty would be sufficient to the act as a deterrent and a reformative measure. As per the OPs, the important aspects that deserve consideration in determining the nature of penalty applicable are *firstly*, the dominant position of oil companies/HPCL and the lack of any loss to them on account of the alleged acts, *secondly*, lack of any intent to contravene any provision of the Act, *thirdly*, precarious financial position and the status of a small industry and lack of any supernormal profit. To support the plea, reliance was placed upon an order of the Commission in Ref. Case No. 05 of 2011 filed by Shri B. P. Khare,

Principal Chief Engineer, South Eastern Railway, Kolkata against M/s Orissa Concrete and Allied Industries Ltd. and others wherein the Commission did give due considerations to the facts that opposite parties therein were small & medium enterprises and there was lack of awareness amongst the alleged bidders thereby resulting into no penalty against the bidders in spite of the fact that the substantive findings of bid rigging were held against them. It has also been submitted that at the time of calculating the penalty, if any, the penalty shall be considered from perspective of “relevant average annual turnover” only *i.e.* from the sale of 14.2 kg LPG cylinder to HPCL over last three years, which is the product in question in the present case.

125. Before examining the pleas, the Commission deems it appropriate to clarify its finding in *M/s Orissa Concrete and Allied Industries Ltd. (supra)*. In the said order, it was observed by the Commission as follows:

*As regards penalty under section 27 of the Act, the Commission notes that there are circumstances in this case which require the issue of penalty to be looked into somewhat differently. The facts as projected in the present reference reveal a complete lack of awareness by the opposite parties which are small and micro enterprises. The replies of many of these parties are effectively incriminating in nature. Further, none of these parties quoted for more than 50% quantity which was a requirement under the tender. Thus, right in the beginning the offers made by these parties were not in accordance with the requirement of the tender and hence they could not have got supplies as per the tender conditions. Moreover, the bid given by these parties was not the lowest and so they could not have been awarded the contract.*

126. From a plain reading of the above, it would appear that there were myriad considerations which weighed with the Commission in not imposing penalty upon the infringing firms. It is evident that being small and micro enterprises *per se* was not a consideration before the Commission in adopting such course. Thus, it is futile for the parties here to quote the said order out of context and in isolation of the facts of the present case. At the same time, the Commission is of opinion that though size of the enterprise in itself may not be a decisive factor while quantifying the penalty, it may be taken among other things as a mitigating factor while considering the issue of penalty.

127. With respect to the aspect of relevant turnover, some of the OPs have contended that relevant turnover should be calculated based only on the sale of 14.2 kg LPG cylinders to

HPCL in impugned tenders. In this regard, reliance has been placed upon the judgment of the Hon'ble Supreme Court in *Excel Crop Care Ltd.* case. The Commission observes that such a narrow interpretation of the concept of relevant turnover as has been sought to be done by some of the OPs may be neither in consonance with the definition of turnover as contained in the Act nor in the light of the judgment of the Hon'ble Supreme Court in *Excel Crop Care Ltd.(Supra)*. Further, restricting the turnover only with respect to impugned tender of HPCL is highly inappropriate as admittedly the OPs are manufacturing and supplying cylinders to other OMCs and is not confined to HPCL alone. In view of above, contentions of OPs on this aspect is rejected by the Commission.

128.The Commission notes that the instant case emanates out of public procurement and as such it is a fit case to impose penalties upon the infringing parties. Any collusion in rigging tenders in public procurement costs exchequer on account of anti-competitive bids besides resulting in higher cost to end-consumers for whom a cylinder is a necessary input for their daily requirements. This itself is a compelling factor for the Commission to not only impose penalty but to view the contravention seriously.

129.Having dealt with the nature of contravention as well as the mitigating factors stated by them, the Commission proceeds to impose penalty on the OPs at the rate of 1 percent of its average relevant turnover for the financial years 2013-14, 2014-15 and 2015-16 filed with the Commission. Accordingly, the total amount of penalty works out as follows:

(In Rupees)

S.No.	Parties	2013-14	2014-15	2015-16	Total	Average relevant turnover	1 % of Average relevant turnover
1.	Allampally Brothers Ltd.	24,69,16,297	18,92,90,935	21,19,46,585	64,81,53,817	21,60,51,272	21,60,513
2.	Asian Fab Tec Ltd.	2,55,75,29,488	4,25,95,54,373	6,88,14,05,968	13,69,84,89,829	4,56,61,63,276	4,56,61,633
3.	AKMN Cylinders Pvt. Ltd.	7,33,81,977	8,36,63,043	6,87,34,986	22,57,80,006	7,52,60,002	7,52,600
4.	Andhra Cylinders (A unit of Envy Cylinders)	27,74,83,392	37,33,59,197	37,62,60,889	1,02,71,03,478	34,23,67,826	34,23,678
5.	Bhiwadi Cylinders Pvt. Ltd.	1,06,40,97,933	1,06,50,91,506	1,17,80,95,884	3,30,72,85,323	1,10,24,28,441	1,10,24,284
6.	Balaji Pressure Vessels Ltd.	31,91,32,559	30,40,14,900	36,02,54,102	98,34,01,561	32,78,00,520	32,78,005



S.No.	Parties	2013-14	2014-15	2015-16	Total	Average relevant turnover	1 % of Average relevant turnover
7.	BTP Structural India Pvt. Ltd.	28,39,90,513	23,68,45,178	29,39,03,239	81,47,38,930	27,15,79,643	27,15,796
8.	Carbac Holdings Ltd.	71,55,23,843	64,99,37,618	68,66,01,937	2,05,20,63,398	68,40,21,133	68,40,211
9.	Confidence Petroleum India Ltd.	2,36,86,90,434	2,66,28,37,723	3,50,52,85,050	8,53,68,13,207	2,84,56,04,402	2,84,56,044
10.	Daya Industries	27,02,55,243	27,74,35,451	40,49,84,600	95,26,75,294	31,75,58,431	31,75,584
11.	Faridabad Metal Udyog Pvt. Ltd.	28,78,38,798	31,03,38,836	27,75,73,064	87,57,50,698	29,19,16,899	29,19,169
12.	Jesmajo Industrial Fabrication	39,82,75,440	47,70,74,532	56,83,04,826	1,44,36,54,798	48,12,18,266	48,12,183
13.	WinfabEquipments (P) Ltd.	24,78,39,200	25,46,96,860	24,40,52,370	74,65,88,430	24,88,62,810	24,88,628
14.	GDR Cylinders Pvt. Ltd.	15,59,44,203	17,86,64,323	29,23,10,195	62,69,18,721	20,89,72,907	20,89,729
15.	Him Cylinders Ltd.	54,14,74,616	57,42,94,437	58,97,22,984	1,70,54,92,037	56,84,97,346	56,84,973
16.	Southern Cylinders Pvt. Ltd.	22,69,56,634	23,70,84,159	19,95,08,017	66,35,48,810	22,11,82,937	22,11,829
17.	Hyderabad Cylinders Pvt. Ltd.	54,20,44,982	69,08,94,538	85,19,82,323	2,08,49,21,843	69,49,73,948	69,49,739
18.	Haldia Precision Engineering Pvt. Ltd.	53,27,52,633	40,38,04,876	54,47,92,645	1,48,13,50,154	49,37,83,385	49,37,834
19.	International Cylinders Pvt. Ltd.	1,44,44,57,210	1,26,59,67,664	1,25,40,10,511	3,96,44,35,385	1,32,14,78,462	1,32,14,785
20.	J.K.B. Gas Pvt. Ltd.	50,16,38,321	54,87,17,062	54,66,57,843	159,70,13,226	53,23,37,742	53,23,377
21.	Kurnool Cylinders Pvt. Ltd. (Unit-II)	48,58,98,105	70,25,78,646	-	1,18,84,76,751	59,42,38,376	59,42,384
22.	Raghupati Synergy Pvt. Ltd.	59,83,02,820	71,58,09,000	92,17,94,685	2,23,59,06,505	74,53,02,168	74,53,022
23.	Intel Gas Gadgets Pvt. Ltd. (Unit-II)	25,38,38,275	29,48,62,506	17,84,99,159	72,71,99,940	24,23,99,980	24,24,000
24.	Lite Containers Pvt. Ltd.	6,28,49,261	0	1,19,47,288	7,47,96,549	2,49,32,183	2,49,322
25.	Mahaveer Cylinders Ltd.	40,16,50,265	36,62,66,250	42,32,10,479	1,19,11,26,994	39,70,42,331	39,70,423
26.	Mauria Udyog Ltd.	3,62,57,72,000	3,77,86,76,000	3,11,61,98,268	10,52,06,46,268	3,50,68,82,089	3,50,68,821
27.	Nandi Cylinders Pvt. Ltd.	27,51,77,102	38,11,45,746	51,88,39,494	1,17,51,62,342	39,17,20,781	39,17,208
28.	North India Wires Ltd. (Howrah Unit)	34,85,39,619	33,80,05,973	28,50,69,012	97,16,14,604	32,38,71,535	32,38,715



S.No.	Parties	2013-14	2014-15	2015-16	Total	Average relevant turnover	1 % of Average relevant turnover
29.	Omid Engineering Pvt. Ltd.	35,00,02,580	32,92,43,692	30,05,22,810	97,97,69,082	32,65,89,694	32,65,897
30.	Om Containers	1,02,32,26,423	84,34,91,367	-	1,86,67,17,790	93,33,58,895	93,33,589
31.	Prestige Fabricators Pvt. Ltd.	35,72,43,392	45,26,42,307	37,99,54,806	1,18,98,40,505	39,66,13,502	39,66,135
32.	Punjab Gas Cylinders Ltd.	24,20,70,039	42,69,25,605	32,45,27,946	99,35,23,590	33,11,74,530	33,11,745
33.	Prathima Industries Pvt. Ltd.	18,61,13,752	17,70,91,739	16,38,24,739	52,70,30,230	17,56,76,743	17,56,767
34.	Konark Cylinders & Containers Pvt. Ltd.	42,14,685	0	0	42,14,685	14,04,895	14,049
35.	R. M. Cylinders Pvt. Ltd.	94,72,11,937	93,66,66,305	1,14,00,19,116	3,02,38,97,358	1,00,79,65,786	1,00,79,658
36.	Saboo Cylinders Pvt. Ltd.	1,70,04,62,618	1,64,13,83,981	1,18,50,91,277	4,52,69,37,876	1,50,89,79,292	1,50,89,793
37.	Sanghvi Cylinders Pvt. Ltd.	1,00,65,01,136	90,15,24,246	1,08,05,95,190	2,98,86,20,572	99,62,06,857	99,62,069
38.	Sahuwala Cylinders Pvt. Ltd.	1,22,85,40,594	1,20,33,01,032	1,86,64,09,987	4,29,82,51,613	1,43,27,50,538	1,43,27,505
39.	Sunrays Engineers Pvt. Ltd.	18,09,53,727	12,01,95,882	12,50,27,488	42,61,77,097	14,20,59,032	14,20,590
40.	Sarthak Industries Ltd.	20,80,89,420	14,52,10,080	23,14,89,372	58,47,88,872	19,49,29,624	19,49,296
41.	S.M. Cylinders	92,01,92,554	74,70,35,803	1,10,66,70,585	2,77,38,98,942	92,46,32,981	92,46,330
42.	Shri Shakti Cylinders Pvt. Ltd.	40,64,13,100	38,48,38,665	45,31,90,333	1,24,44,42,098	41,48,14,033	41,48,140
43.	Sri Sai Balaji Gas Cylinder Pvt. Ltd	3,49,71,888	1,84,94,501	55,88,474	5,90,54,863	1,96,84,954	1,96,850
44.	Surya Shakti Vessels Pvt. Ltd.	1,02,63,46,270	93,02,54,358	1,39,84,69,033	3,35,50,69,661	1,11,83,56,554	1,11,83,566
45.	Super Industries	91,33,87,016	80,76,24,651	-	1,72,10,11,667	86,05,05,834	86,05,058
46.	Tirupati Cylinders Ltd.	1,23,68,19,361	1,18,90,09,755	1,34,83,13,032	3,77,41,42,148	1,25,80,47,383	1,25,80,474
47.	Tirupati Containers Pvt. Ltd.	2,11,87,87,285	2,39,22,18,568	2,66,56,09,000	7,17,66,14,853	2,39,22,04,951	2,39,22,050
48.	Tirupati LPG Industries Ltd.	1,54,09,12,662	1,66,35,46,883	2,02,09,18,372	5,22,53,77,917	1,74,17,92,639	1,74,17,926
49.	Tee Kay Metals Pvt. Ltd.	93,09,40,378	91,08,68,967	1,03,76,76,002	2,87,94,85,347	95,98,28,449	95,98,284
50.	Universal Cylinders Ltd. (Unit-II)	47,65,05,680	36,97,92,364	41,60,95,270	1,26,23,93,314	42,07,97,771	42,07,978
51.	Vidhya Cylinders Pvt. Ltd.	17,35,28,287	15,59,32,106	12,66,34,840	45,60,95,233	15,20,31,744	15,20,317

130. The Commission further deems it appropriate and necessary to impose penalty on the above-mentioned individuals found liable under Section 48 of the Act at the rate of 1 percent of their average income of the financial years 2013-14, 2014-15 and 2015-16 filed with the Commission. Accordingly, the total amount of penalty on the aforesaid individuals found liable under Section 48 of the Act works as follows:

(In Rupees)

S. No.	Parties	2013-14	2014-15	2015-16	Total	Average Income	1 % of Average Income
1.	Mr. M.B. Koyakutty, MD of Allampally Brothers Ltd.	1,38,58,588	57,60,000	62,76,750	2,58,95,338	86,31,779	86,318
2.	Mr. K.H. Puttaswami Gowda, MD of Asian Fab Tec Ltd.	-	23,08,319	3,88,09,770	4,11,18,089	2,05,59,045	2,05,590
	Ms. Shashikala BR, Director of Asian Fab Tec Ltd.	4,78,333	4,78,535	23,99,140	33,56,008	11,18,669	11,187
3.	Mr. N. Ravindran, MD of AKMN Cylinders Pvt. Ltd.	2,44,317	2,96,400	4,57,815	9,98,532	3,32,844	3,328
4.	Mr. Elesh Khara, Director of Andhra Cylinders and Confidence Petroleum India Pvt. Ltd.	24,87,912	32,21,765	37,63,731	94,73,408	31,57,803	31,578
5.	Mr. Manvinder Singh, Director of Bhiwadi Cylinders Pvt. Ltd.	9,71,710	13,31,654	16,92,149	39,95,513	13,31,838	13,318
6.	Mr. P. Ramesh Kumar, Chairman and MD of Balaji Pressure Vessels Ltd.	34,86,718	45,92,757	82,12,423	1,62,91,898	54,30,633	54,306
	Mr. P.N. Vinay Kumar, Executive Director of Balaji Pressure Vessels Ltd.	16,01,958	14,93,266	12,14,779	43,10,003	14,36,668	14,367
7.	Mr. B.B. Patil, CMD of BTP Structural India Pvt. Ltd.	1,07,33,858	36,85,368	69,85,258	2,14,04,484	71,34,828	71,348
8.	Mr. C.P. Bhartia, Director of Carbac Holdings Ltd. and Haldia Precision Engineering Pvt. Ltd.	23,84,474	24,31,919	21,38,516	69,54,909	23,18,303	23,183
	Ms. Aradhana Bhartia, Director of Carbac Holdings Ltd.	12,76,564	12,63,031	14,12,735	39,52,330	13,17,443	13,174
	Mr. Sanjay Bhartia, Director of Carbac Holdings Ltd. and Haldia Precision Engineering Pvt. Ltd.	23,49,242	22,21,306	21,31,726	67,02,274	22,34,091	22,341



S. No.	Parties	2013-14	2014-15	2015-16	Total	Average Income	1 % of Average Income
	Mr. Sandeep Bhartia, Director of Carbac Holdings Ltd.,Haldia Precision Engineering Pvt. Ltd. and North India Wires Ltd. (Howrah Unit)	22,71,622	20,68,007	18,62,599	62,02,228	20,67,409	20,674
9.	Mr. A.P Sapra, Partner of Daya Industries	9,20,711	13,05,969	14,60,317	36,86,997	12,28,999	12,290
10.	Mr. Adarsh Jain, MD of Faridabad Metal Udyog Pvt. Ltd.	31,31,149	28,94,139	45,22,789	1,05,48,077	35,16,026	35,160
11.	Mr. Cedric Fernandez, Director of Jesmajo Industrial Fabrication	15,94,302	12,51,534	-	28,45,836	14,22,918	14,229
12.	Mr. Nand Kishore Ladda, MD of Winfab Equipments (P) Ltd.	7,89,675	11,12,103	9,04,603	28,06,381	9,35,460	9,355
13.	Mr. M. Muruganandam, then MD of GDR Cylinders Pvt. Ltd. and Sri Sai Balaji Gas Cylinder Pvt. Ltd.	-	3,83,495	5,74,492	9,57,987	4,78,994	4,790
14.	Mr. Ashok Raja, Chairman and Director of Him Cylinders Ltd. and Omid Engineering Pvt. Ltd.	1,58,56,962	18,71,485	18,30,293	1,95,58,740	65,19,580	65,196
15.	Mr. N. Suresh, MD of Southern Cylinders Pvt. Ltd.	8,10,522	7,47,224	-	15,57,746	7,78,873	7,789
16.	Mr. Vijay Sanghvi, MD of Hyderabad Cylinders Pvt. Ltd.	37,82,521	11,90,400	47,78,300	97,51,221	32,50,407	32,504
17.	Mr. K.K. Gupta, Director of J.K.B. Gas Pvt. Ltd.	1,02,48,909	40,66,918	27,42,810	1,70,58,637	56,86,212	56,862
18.	Mr. B.S. Reddy, Director of Kurnool Cylinders Pvt. Ltd. (Unit-II)	29,10,213	30,99,443	27,86,104	87,95,760	29,31,920	29,319
19.	Mr. Gagan Agarwal, Director of Raghupati Synergy Pvt.Ltd	60,74,673	60,01,056	60,13,234	1,80,88,963	60,29,654	60,297
	Mr. Kushagra Aggarwal, Director of Raghupati Synergy Pvt. Ltd.	19,62,096	20,58,122	63,31,984	1,03,52,202	34,50,734	34,507
20.	Mr. Pankaj Gupta, MD of Intel Gas Gadgets Pvt. Ltd (Unit-II)	50,45,073	87,24,489	3,37,96,542	4,75,66,104	1,58,55,368	1,58,554





S. No.	Parties	2013-14	2014-15	2015-16	Total	Average Income	1 % of Average Income
	Mr. Puneet Gupta, Director of Intel Gas Gadgets Pvt. Ltd. (Unit-II)	24,90,000	25,24,275	35,11,000	85,25,275	28,41,758	28,418
21.	Mr. S. Kulandhaiswami, Director of Lite Containers Pvt. Ltd.	-	-	11,72,853	11,72,853	11,72,853	11,729
22.	Mr. Dinesh Mittal, Director of Mahaveer Cylinders Ltd.	24,24,518	24,62,292	47,64,697	96,51,507	32,17,169	32,172
23.	Mr. N.K Sureka, MD of Mauria Udyog Ltd.	2,04,53,845	93,14,556	66,53,779	3,64,22,180	1,21,40,727	1,21,407
24.	Mr. Yogesh Sanghvi, Director of Nandi Cylinders Pvt. Ltd.	39,29,481	25,15,478	51,27,922	1,15,72,881	38,57,627	38,576
25.	Mr. Rajkumar Bhartia, Director of North India Wires Ltd. (Howrah Unit)	10,60,390	15,89,821	19,02,420	45,52,631	15,17,544	15,175
	Mr. Naveen Bhartia Director of North India Wires Ltd. (Howrah Unit)	14,00,556	46,20,214	99,22,377	1,59,43,147	53,14,382	53,144
26.	Mr. Davish Jain, Chairman of Prestige Fabricators Pvt. Ltd	61,54,159	98,85,337	1,19,44,244	2,79,83,740	93,27,913	93,279
	Mr. Sanjay Rathi, Director of Prestige Fabricators Pvt. Ltd	4,40,338	5,76,433	6,70,931	16,87,702	5,62,567	5,626
27.	Mr. Rajesh Mittal, Director of Punjab Gas Cylinders Ltd.	22,18,086	17,96,919	44,98,721	85,13,726	28,37,909	28,379
	Mr. Naveen Mittal, Director of Punjab Gas Cylinders Ltd	35,97,606	17,47,080	58,66,273	1,12,10,959	37,36,986	37,370
	Mr. Viprendar Aggarwal, Director of Punjab Gas Cylinders Ltd	9,83,208	13,10,527	22,56,801	45,50,536	15,16,845	15,168
28.	Mr. Chenadi Ramu, Director of Prathima Industries Pvt. Ltd	17,93,958	17,35,084	-	35,29,042	17,64,521	17,645
	Ms. B. Usharani, Director of Prathima Industries Pvt. Ltd	4,33,392	46,47,670	39,27,194	90,08,256	30,02,752	30,028
	Ms. I. Savitri, Director of Prathima Industries Pvt. Ltd	6,32,245	6,43,133	6,16,415	18,91,793	6,30,598	6,306



S. No.	Parties	2013-14	2014-15	2015-16	Total	Average Income	1 % of Average Income
29.	Mr. Dev Prakash Mahapatra, MD of Konark Cylinders & Containers Pvt. Ltd.	6,24,325	6,05,420	-	12,29,745	6,14,873	6,149
30.	Mr. Ritesh Sanghvi, Director of R. M. Cylinders Pvt. Ltd.	18,99,949	9,72,183	36,01,517	64,73,649	21,57,883	21,579
31.	Mr. Ramesh Sanghvi, MD of Sanghvi Cylinders Pvt. Ltd.	38,74,343	19,73,194	-	58,47,537	29,23,769	29,238
32.	Mr. P.K. Gupta, Ex. Director of Sahuwala Cylinders Pvt. Ltd.	7,24,112	8,25,534	-	15,49,646	7,74,823	7,748
33.	Mr. Vimal Mahipal, Director of Sunrays Engineers Pvt. Ltd	11,12,974	11,58,138	7,59,366	30,30,478	10,10,159	10,102
34.	Mr. Vijay Kumar Aggarwal, Director of S.M. Cylinders	41,72,229	35,79,401	65,31,329	1,42,82,959	47,60,986	47,610
	Mr. Kamal Goyal, Director of S.M. Cylinders	6,64,33,096	5,86,99,882	14,24,40,159	26,75,73,137	8,91,91,046	8,91,910
	Mr. Pankaj Goel, Director of S.M. Cylinders	6,59,86,730	5,83,72,679	49,48,062	12,93,07,471	4,31,02,490	4,31,025
	Ms. Neelam Aggarwal, Director of S.M. Cylinders	6,08,766	5,92,539	9,06,230	21,07,535	7,02,512	7,025
35.	Mr. D.V. Rajasekhar Reddy, MD of Shri Shakti Cylinders Pvt. Ltd.	42,43,665	39,15,990	-	81,59,655	40,79,828	40,798
36.	Mr. Puneet Batra, Director of Surya Shakti Vessels Pvt. Ltd.	18,58,126	20,95,392	1,09,00,920	1,48,54,438	49,51,479	49,515
37.	Mr. Dinesh Goyal, Director of Tirupati Cylinders Ltd.	4,65,08,779	4,48,72,315	5,77,86,223	14,91,67,317	4,97,22,439	4,97,224
38.	Mr. Rakesh Singhal, MD of Tirupati Containers Pvt. Ltd.	16,27,402	14,05,768	22,55,129	52,88,299	17,62,766	17,628
39.	Mr. Arun Goyal, Director of Tirupati LPG Industries Ltd and International Cylinders Pvt. Ltd.	1,27,65,252	1,43,82,071	4,77,88,313	7,49,35,636	2,49,78,545	2,49,785
40.	Mr. Kishore Kela, Director of Tee Kay Metals Pvt. Ltd.	3,06,18,555	2,56,53,454	11,63,52,061	17,26,24,070	5,75,41,357	5,75,414
41.	Mr. A.K. Sharma, Joint MD of Universal Cylinders Ltd (Unit-II)	11,01,798	10,52,269	11,86,083	33,40,150	11,13,383	11,134



S. No.	Parties	2013-14	2014-15	2015-16	Total	Average Income	1 % of Average Income
42.	Mr. Mukesh Mittal, Director of Vidhya Cylinders Pvt. Ltd.	5,64,569	6,41,499	6,51,068	18,57,136	6,19,045	6,190

131. With respect to imposition of penalty on Mr. Nishant Mittal, Director of Raghupati Synergy Pvt. Ltd., the Commission observed that appropriate orders would be passed in due course upon furnishing of copies of income tax returns for the financial years 2013-14, 2014-15 and 2015-16 by him.

132. The Commission directs the concerned parties to deposit the aforesaid penalty amounts within 60 days of the receipt of this order. It is ordered accordingly.

133. Secretary is directed to forward copies of this order to all the OPs and HPCL, forthwith.

Sd/-  
(Ashok Kumar Gupta)  
Chairperson

Sd/-  
(U.C. Nahta)  
Member

Sd/-  
(Sangeeta Verma)  
Member

New Delhi  
Dated: 09/08/2019