(2026) 01 CCI CK 1349

In the Competition Commission Of India

Case No : Case No. 08 Of 2025

M/S Super Medicos & M/S Chemicura — APPELLANT

Vs

Northern Railways Central Hospital — RESPONDENT

Date of Decision : 07-01-2026

Acts Referred:
Competition Act, 2002 — Section 3, 3(3), 4, 19(1)(a), 26(2), 33

Citation : (2026) 01 CCI CK 1349

Hon'ble Judges : Ravneet Kaur, Chairperson;Anil Agrawal, Member;Sweta Kakkad, Member;Deepak Anurag, Member

Bench : Full Bench

Final Decision : Dismissed

Judgement

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

1. The present Information has been filed by M/s Super Medicos ("Informant No. 1") and M/s Chemicura ("Informant No. 2") (collectively referred to as the "Informants") against Northern Railways Central Hospital ("NRCH" /"Opposite Party"/ "OP") under Section 19(1)(a) of the Competition Act, 2002 ("Act"), alleging contravention of the provisions of Sections 3 and 4 of the Act.

2. The Informants are stated to be local vendors/chemists, who are empanelled for the supply of medicines, surgical items, consumables etc. under local purchase supply, in compliance of previous Tender No. 43/ MED/LP/Advt./2022.

3. As stated in the Information, the OP is a government-run hospital under the Ministry of Railways, Government of India, which undertakes to provide healthcare services to railway employees, their families, and retired personnel in India. It is stated that for the purpose of local purchase supply, specifically meant for emergency purposes, of medicines, surgical items, consumables etc., the OP empanels local chemists through tendering process.

4. It is stated that based on its earlier, ongoing Tender No. 43/ MED/LP/ Advt./2022, the Informants along with M/s Adarsh Medicos and M/s Sai Chemist

were empanelled and registered as chemists located within the preferred and required 12 km radius and were authorised for local purchase supply and providing services as per terms and conditions, in a time bound manner without any complaints. They continued to supply the products under extension granted for further 3 months i.e., up to 30.06.2025 till Tender No. NRCH-L2425C was finalised.

5. As submitted by the Informants, previously, 3 tenders namely NRCH-LP2425 (on 14.08.2024), NRCH-LP2425A (on 30.09.2024), NRCH-LP2425B (on 15.01.2025) were floated by the OP through E-Tender Notice published in The Times of India, for empanelment of local vendor i.e., firms/distributors/chemist shops etc. for day-to-day supply of medicines, surgical items and consumables for a period of 2 years. The estimated value of tender was Rs. 12,66,80,486.00 for 2 years (i.e. Rs. 6,33,40,243.00 approx. per annum). It is stated that the aforesaid tenders were subsequently cancelled. Thereafter, Tender No. NRCH-LP2425C ("Impugned Tender") was re-floated on 15.01.2025 for the fourth time.

6. The Informants have stated that one of the conditions for participating in the Impugned Tender as per clause 6.6 of Section IV of the tender document was that the vendor's average annual turnover must be equal to or more than Rs. 19,00,20,729.00 during the last 3 completed financial years prior to the date of opening of the tender.

7. It has been alleged by the Informants that the criteria with regard to the annual average turnover of the vendor has been modified and increased exorbitantly from Rs. 7.5 crores (in previous tender, held in the year 2022) to Rs. 19.0 crores in an unfair and unjustified manner, which is not in compliance with Rule IV of General Financial Rules ("GFR") 2017, and has eventually resulted in restricting the participation of multiple bidders.

8. As per the Informants, a new tender with same terms and conditions is repeatedly being floated every time disclosing the prices, discounts and financials of the bidders and then forcing the bidders to participate in a re-tender with the same terms and conditions. Furthermore, no reason is given for its repeated cancellation and floating of the tenders again and again.

9. Based on the aforesaid facts and allegations, the Informants have prayed before the Commission that the terms and conditions with regard to the turnover criteria in the Impugned Tender be relaxed/revised and the same tender be considered and finalised in accordance with the relaxed turnover and as per participation already done by the bidders. It is also requested that the aforesaid tender should not be re-tendered again.

10. The Informants have also sought interim relief under Section 33 of the Act, stating that status quo be maintained and justice be done by amending the terms and conditions with respect to turnover criteria. It is also stated that in the event the tender process is moved forward, it would cause irreparable loss to the Informants as their invaluable fundamental right to trade and to participate

freely in the tender process would be hampered.

11. Vide order dated 28.05.2025, the Commission considered the Information and directed that a copy of the Information be forwarded to the OP, for its response/reply to the same within 04 weeks from the date of receipt of the order. Vide order dated 23.07.2025, the Commission further granted 04 weeks to the OP for filing its response/reply to the Information.

12. In the meanwhile, the Informants filed an Interlocutory Application ("IA") bearing IA No. 353 of 2025 dated 08.08.2025 containing additional information. As per the same, all the tender documents floated by the OP clearly stated that the tender process follows and complies with all rules and notices of Public Procurement Policy (Make in India) Order 2017 ("PPP(MII)").

13. The Informants reiterated that the condition regarding annual average turnover in the Impugned Tender was exorbitantly increased 9 times more than the previous tender held in the year 2020, which is a deliberate violation of guidelines issued by the Ministry of Commerce and Industry and the Ministry of Railways in PPP-MII Order 2017. Annexure-A of the Office Memorandum issued by the Ministry of Commerce and Industry contains certain examples that make a bid non-compliant to PPP-MII Order 2017. As per the above-mentioned Office Memorandum, requirement of excessive turnover as a pre-qualifying criterion falls within the ambit of 'Restrictive and discriminatory tender conditions', if the same doesn't correspond to the financial capacity required for executing the contract.

14. Further, it has been stated that restrictive and discriminatory clause of exorbitant annual turnover requirement is allegedly imposed because of new Railway Board Policy which is imposed to favour one bidder and omit competition from other participants. In the aforesaid policy, the category of Generic Medicines and IV fluids category was removed from the procurement process, leading to direct pecuniary loss to the railway exchequer. Further, distance criteria of 5km which was there in all previous tenders was also removed from the new Railway Board Policy in order to favour a single vendor viz. M/s Kaushik Medical Store.

15. It is alleged that M/s Kaushik Medical Store was L3 in the financial bid opening of the Impugned Tender whereas the Informants were L1. It is also alleged that negotiation was unfairly and discriminatorily done with only M/s Kaushik Medical Store to bypass the L1 bidders and change their offered discount price after the tender was opened. It is stated that no such negotiation was done or offered to any of the other participants of the tender to make an empanelment as per true spirit of the tender terms.

16. Vide order dated 08.10.2025, the Commission considered the Informant's IA, containing additional information and directed to forward a copy of it to seek response from the OP. In compliance to the order of the Commission dated 08.10.2025, the OP filed its response dated 27.10.2025 to the Information on 30.10.2025.

17. In its response dated 27.10.2025, the OP submitted that the Informants could not meet the annual turnover financial criteria laid down by the Drug Procurement Policy along with a Letter No. 2017/H/4/1/Local Purchase (E-3236402) dated 31.07.2023 issued by the Railway Board. The OP highlighted the relevant clause of the abovementioned letter and stated that the turnover criteria has been fixed as per the approved circular. The same is reproduced below:

" d. Financial capability:

i. Average Annual Turnover of the vendor for the last three completed financial years prior to the date of opening of tender should be equal to or more than ? three times the average annual value of retail local purchase procurement made by that Railway hospital in the last three completed financial years or three times the estimated annual value of purchase, whichever is higher."

18. Vide order dated 12.11.2025, the Commission considered the matter in its ordinary meeting and decided to pass an appropriate order in due course.

19. The Commission has perused the Information and material available on record and notes that the primary grievance of the Informants appears to be that in the Impugned Tender, the criteria for participation in the bidding process in terms of average annual turnover has been exorbitantly enhanced from Rs. 7.5 crores to Rs. 19 crores, which is unfair, discriminatory and contrary to guidelines issued by the Ministry of Commerce and Industry and the Ministry of Railways in terms of PPP-MII Order 2017 and GFR, 2017. As stated by the Informants, the alleged conduct of the OP is limiting fair competition of vendors in order to favour a single vendor viz. M/s Kaushik Medical Store, in contravention of Sections 3 and 4 of the Act.

20. The Informants have alleged that increasing the annual average turnover from Rs. 7.5 crores to Rs. 19 crores in an unfair manner violates Rule IV of the GFR, 2017. As per the Informants, Rule IV states that turnover criteria should be 30% of the estimated tender value. Notwithstanding the fact that ordinarily tender conditions are not per se violative of the provisions of the Act, the Commission has also perused the GFR, 2017 in view of the allegation raised by the Informants. Rule IV of GFR, 2017 relates to the departmental regulations of financial character, and is reproduced as under:

"All Departmental regulations, in so far as they embody orders or instructions of a financial character or have important financial bearing, must invariably be made by, or with the approval of the Ministry of Finance."

21. The Commission notes that the averment made by the Informants with regard to Rule IV of GFR, 2017 is not correct as it contains nothing pertaining to annual average turnover. Even otherwise, violation of any rule or guideline/policy by an enterprise cannot be examined under the Act unless there is any contravention of its provisions.

22. The Commission has also perused the relevant clause of the Letter No. 2017/H/4/1/Local Purchase (E-3236402) dated 31.07.2023 issued by the Railway Board as furnished by the OP in its response to the Information and notes that the modification by the OP in one of the conditions related to annual average turnover is in compliance with the revised guidelines issued by Railway Board vide the aforesaid letter.

23. The Commission notes that the Informants are aggrieved with the tender conditions which have been designed and issued by the OP acting on behalf of the President of India. The Commission, in the past has dealt with the competition issues arising from tender conditions prescribed by the procurer and has been of the view that the procurer is at liberty to set its terms and conditions for procurement in free market. The Commission, in Shri Prem Prakash Vs Power Grid Corporation of India Ltd. Case No. 41 of 2016 (https://cci.gov.in/antitrust/orders/details/387/0), had observed "every consumer/procurer must have freedom to exercise their choice freely in the procurement of goods and services. Such choice is sacrosanct in a market economy as the consumers are in the best position to evaluate what meets their requirements and provides them competitive advantage in provision of their services. While exercising such choice, they may stipulate standards for procurement which meets their requirement and the same as such cannot be held as anti-competitive."

24. In view of the facts of the case and analysis carried out supra, the Commission is of the view that there is no requirement of delineating the relevant market, as per the provisions of Section 4 of the Act.

25. With regard to the allegation of the Informants regarding favouring one bidder, in violation of Section 3 of the Act, the Commission notes that there is no evidence on record to indicate contravention in terms of Section 3(3) of the Act.

26. In view of the Information provided and analysis carried out in preceding paragraphs, the Commission is of the opinion that no prima facie case of contravention of Sections 3 and 4 of the Act is made out against the OP. Accordingly, the Information is directed to be closed forthwith under Section 26(2) of the Act.

27. Consequently, no case for grant of interim relief under Section 33 of the Act, as sought by the Informants arises and the same is also rejected.

28. The Secretary is directed to communicate to the Parties, accordingly.

