

## Chapter 5

### Lack of Competition in the Bidding Process

The Guidelines on Disinvestment provide that in case the competitive bidding process does not generate sufficient response, then the State Government shall modify either the prequalification criteria and/ or the risk sharing provisions and restart the bid process or may cancel the competitive bid process. In order to secure best price in bidding for sale, there should be sufficient number of participating bidders so as to generate Competition among them or there should not be any collusion among bidders to avoid competition.

#### UPSSCL

#### Bidding for Operating Mills

**5.1** On 29 June 2009 UPSSCL invited Expression of Interest-cum-Request for Qualification (EOI-cum-RFQ) for sale of 11 mills of UPSSCL in slump sale of assets through a Competitive bidding process. Ten applicants submitted EOI-cum-RFQ for the mills. All the applicants were short-listed according to eligibility criteria of EOI-cum-RFQ and in July 2009 UPSSCL offered them Request for Proposal (RFP) informing about process of sale of units and inviting financial bid from them. Only three,<sup>24</sup> out of the ten applicants, submitted financial bid.

The milestone dates in the entire Bid Process were:

- Date of Advertisement in newspaper 29 June 2009
- Last date of receipt of EOI-cum-RFQ 21 July 2009
- Last date of receipt of RFP (financial bid) 03 June 2010
- Date of Advertisement for SCM for six mills 28 July 2010
- Last date of receipt of EOI-cum-RFQ 12 August 2010
- Last date of receipt of financial bid of challenger 6 September 2010

The table below shows all the events in the process of bidding of ten mills indicating Expected Price, Bid Amount, Sale Price and name of the bidders/ buyers:

(₹ in crore)						
Sugar Mill	Expected Price	RFP (Financial bid) received	Bid Price quoted	Sold to Original Bidder	Sold to Bidder (in SCM )	Bid Price (Approved)
Amroha	16.70	1. Wave Industries Pvt. Ltd 2. PBS Foods Pvt. Ltd	17.01 16.70	Wave Industries Pvt. Ltd		17.01
Bijnore	161.85	1. Wave Industries Pvt. Ltd 2. PBS Foods Pvt. Ltd	81.80 64.80	Taken to SCM	Wave Industries Pvt. Ltd	101.25*
Bulandsahar	58.80	1. Wave Industries Pvt. Ltd 2. PBS Foods Pvt. Ltd	29.75 23.55	Taken to SCM	Wave Industries Pvt. Ltd	29.75
Chandpur	83.35	1. Indian Potash Ltd 2. PBS Foods Pvt. Ltd 3. Wave Industries Pvt Ltd	91.80 90.00 8.40	PBS Foods Pvt. Ltd (IPL withdrew its bid)		90.00
Jarwal Road	25.67	1. Indian Potash Ltd 2. Wave Industries Pvt. Ltd	26.95 14.21	Indian Potash Ltd		26.95
Khadha	20.07	1. Indian Potash Ltd	22.05	Taken to SCM	Indian Potash Ltd	22.05
Rohankalan	41.00	1. Indian Potash Ltd	50.40	Taken to SCM	Indian Potash Ltd	50.40
Saharanpur	70.90	1. Wave Industries Pvt. Ltd 2. PBS Foods Pvt. Ltd	35.85 28.40	Taken to SCM	Wave Industries Pvt. Ltd	35.85
Sakotitanda	41.10	1. Indian Potash Ltd	43.15	Taken to SCM	Indian Potash Ltd	43.15
Siswa Bazar	32.55	1. Indian Potash Ltd 2. Wave Industries Pvt. Ltd	34.38 17.91	Indian Potash Ltd		34.38
<b>Total</b>	<b>551.99</b>					<b>450.79</b>

\* Bid price increased during negotiation.

<sup>23</sup> DCM Shriram Industries limited, Dwarikesh Sugar Industries limited, Indian Potash Limited, Laxmipati Balaji Sugar and Distilleries Private Limited, Patel Engineering Limited, PBS Foods Private Limited, Triveni Engineering and Industries Limited, SBEC Bio Energy Limited (consortium), Tikaula Sugar Mills Limited (Group), Wave Industries Private Limited (Group).

<sup>24</sup> Waves Industries Private Limited (Group), PBS Foods Private Limited and Indian Potash Limited.

We noticed that:

- Indian Potash Limited was the only bidder for three mills at Khadda, Rohankalan and Sakoti Tanda.
- Wave Industries Private Limited and PBS Foods Private Limited were the Competitive Bidders for four mills at Amroha, Bijnore, Saharanpur and Bulandsahar.
- Bid prices for the six mills<sup>25</sup> where Indian Potash Limited submitted RFP, were more than the Expected Price. In the case of Chandpur, Indian Potash Limited withdrew its RFP and the mill was sold to the next highest bidder.
- For Bijnore, Saharanpur and Bulandshahar, where only Wave Industries Private Limited and PBS Foods Private Limited submitted RFP, their bid prices were far below the Expected Price and ranged from 51 *per cent* to 63 *per cent* of the Expected Price. In these mills, UPSSCL recovered only ₹ 166.85 crore against the Expected Price of ₹ 291.55 crore. The resultant short realisation was ₹ 124.70 crore (*Annexure 18*).
- Six mills<sup>26</sup> were taken to the 'Swiss Challenge Method' (SCM) as the financial bids received for three mills were below the Expected Price but above 50 *per cent* of the Expected Price (for Bijnore, Bulandshahar, Saharanpur) and as single bid was received for other three mills (Khadda, Rohankalan, Sakoti Tanda).

EOI-cum-RFQ from two challengers viz. Indian Sucrose Limited and PBS Foods Private Limited were received for these six mills under SCM but no RFP was received from them (Indian Sucrose Limited and PBS Foods Private Limited).

These six mills were sold to the highest original bidder under condition 4.1(2) of the RFP<sup>27</sup>.

#### **Related Companies bidding against each other**

**5.2** Our examination of Documents received with EOI-cum-RFQ and financial bids from bidders revealed that two bidders<sup>28</sup> were Related Companies, as would be observed from the following facts:

**Two of the three Bidders were Related Companies.**

##### **5.2.1 Significant influence of one Company over the other**

- ❖ At the time of filing Profit and Loss Account and other documents for the year 2009-2010 with the Registrar of Companies (ROC), Wave Industries Private Limited declared that PBS Foods Private Limited was an enterprise in which its key management personnel were able to exercise significant influence.

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<sup>25</sup> Chandpur, Jarwal Road, Khadda, Rohankalan, Sakhoti Tanda and Siswa Bazar

<sup>26</sup> Bijnore, Bulandsahar, Khadda, Rohankalan, Sakhoti Tanda and Saharanpur.

<sup>27</sup> In case no fresh bid is received under the SCM process, the UPSSCL may consider the bid of the original highest bidder even though it is lower than the Expected Price.

<sup>28</sup> Waves Industries Private Limited (Group) and PBS Foods Private Limited.

### **5.2.2 Consecutive serial numbers of Demand Drafts**

- ❖ Two Demand Drafts (DDs) valuing ₹ 50000 submitted by PBS Foods Private Limited and Wave Industries Private Limited for purchasing EOI-cum-RFQ were obtained on same date i.e 16 July 2009, from the same Bank and bore consecutive serial numbers i.e. 528450 and 528451.

### **5.2.3 Same Address**

- ❖ The same address viz, A-129, New Friends Colony, New Delhi was noted in the endorsement of the sale of stamp paper, needed for the Power of Attorney submitted by both Wave Industries Private Limited and PBS Foods Private Limited. This address was the Registered office address of Wave Industries Private Limited as per records like Certificate of Incorporation etc.
- ❖ Stamp papers submitted by both the Companies for Performance Guarantee contained the same address as “60, Friends Colony East, New Delhi”.

### **5.2.4 Consecutive serial numbers for covering letter of Bank Guarantees**

- ❖ The Bank Guarantees submitted by them were issued by the same bank on same date (28 August 2010). The Bank Guarantees obtained from Oriental Bank of Commerce, Connaught Place, New Delhi. by Wave Industries Private Limited and PBS Foods Private Limited contained consecutive serial numbers 119636 and 119637 .

### **5.2.5 Common Directors and Shareholdings**

- ❖ Terms and Conditions of EOI-cum-RFQ stipulated submission of Shareholding pattern and background of key promoters by the bidders. However, PBS Foods Private Limited did not submit the same alongwith EOI-cum-RFQ submitted in July 2009.

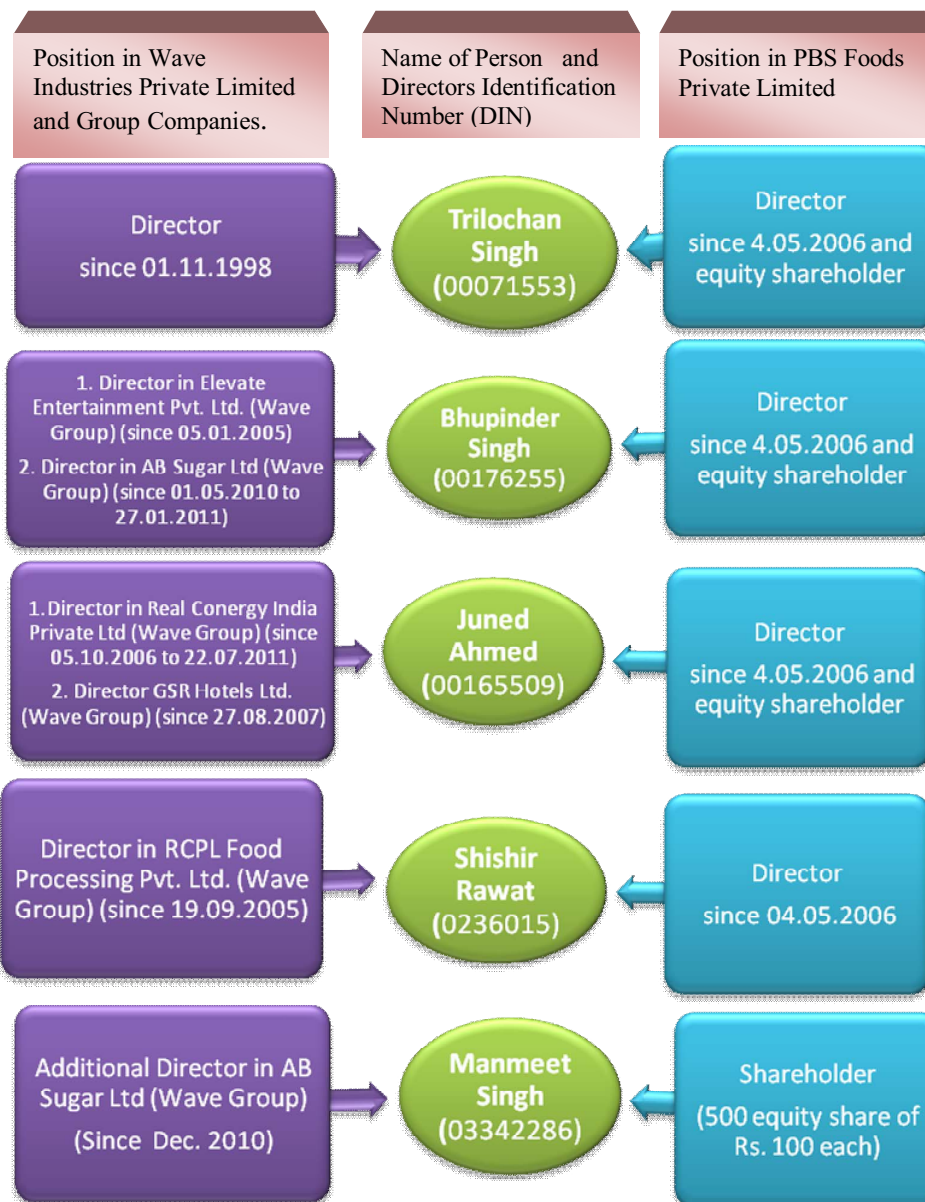
As per the records of Registrar of Companies, Kanpur, Shri Trilochan Singh was a director in both Companies *i.e.* Wave Industries Private Limited and PBS Foods Private Limited since 1 November 1998 and 4 May 2006 respectively. However, at the time of formation of Special Purpose Vehicle (PBS Foods (Sugar) Private Limited), the list of its shareholders<sup>29</sup> submitted by PBS Foods Private Limited did not contain the name of Shri Trilochan Singh.

- ❖ As per the records of Registrar of Companies (ROC) Kanpur and information available on website of Ministry of Corporate Affairs, Common Directorships and Shareholdings between the two Companies were noticed as detailed below:

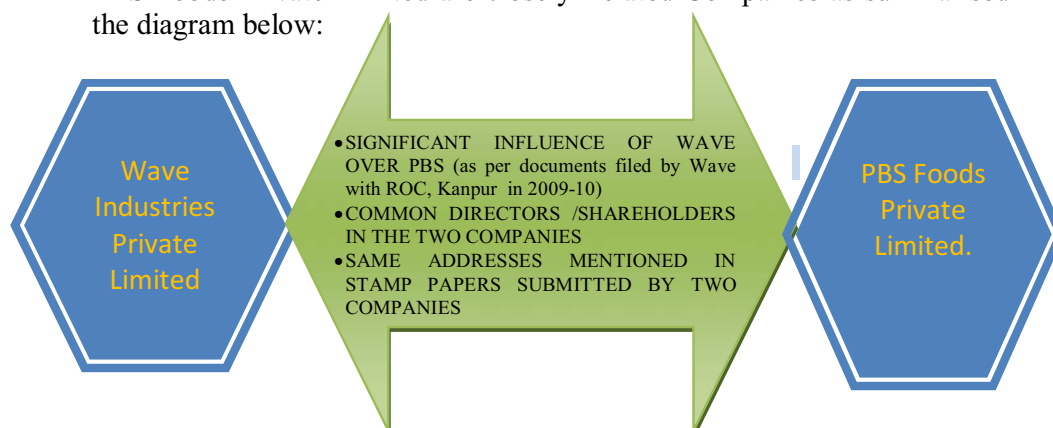
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<sup>29</sup>

As on 31 December 2008.



Thus, from the above it is evident that Wave Industries Private Limited and PBS Foods Private Limited are closely Related Companies as summarised in the diagram below:



## Conclusion

We are of the view that the Advisor/ Management/ CGD did not exercise due diligence while scrutinizing the bid documents despite several apparent indications like common Directors and Shareholdings, same address and consecutive serial number for covering letter of bank guarantee indicating participation in bidding by Related Companies. Thus, there was lack of Competition which affected the realization of fair value of sugar mills. In respect of three mills <sup>30</sup> only ₹ 166.85 crore could be realised against Expected Price of ₹ 291.55 crore. This resulted in short realisation of ₹ 124.70 crore. They also did not take any step to analyse the reasons as to how Bid Prices received in respect of three mills were far below the Expected Price.

In response, UPSSCL stated that both the Companies (Wave Industries Pvt. Ltd and PBS Foods Pvt. Ltd) were separate legal entities. There was no opportunity to know about bank guarantee at the time of evaluation of bids, there was no common director at the stage of EOI-cum-RFQ as per the information of applicant (Bidders) and there was no prescribed format to provide information about key promoters. It further stated that sale of Bijnore, Saharanpur and Bulandsahar mills were resorted to by adopting 'Swiss Challenge Method' which was transparent method of price discovery.

We are not convinced with the reply as the Management/ Advisor/ CGD failed to examine the documents submitted by the Bidders at different stages of sale process. They had not asked for details of Directors as required in the Guidelines of Disinvestments. They also had not insisted for list of Shareholders of PBS Foods Private Limited who had not submitted it with EOI-cum-RFQ. Thus, there was lack of Competition due to participation by only three Companies of which two were closely related to each other resulting in receipt of bids far below the Expected Price in respect of three mills.

## UPRCGVNL

5.3 UPRCGVNL invited (June 2010) EOI-cum-RFQ for sale of its 14 closed mills via 'Slump Sale of Assets' on 'As is where is basis' through Competitive bidding process. Nine applicants<sup>31</sup> submitted EOI-cum-RFQs in August 2010 for the purchase of 11 closed mills only. All the applicants were short-listed according to eligibility criteria and were given an offer for submission of RFP (financial bid). Only three<sup>32</sup> out of nine bidders submitted (September/

<sup>30</sup> Bijnore, Bulandsahar and Saharanpur.

<sup>31</sup> Anand Triplex Board Limited (Meerut), Gautam Realtors Private Limited (Varanasi), Shree Sidhdata Ispat Private Limited (Noida), Wave Industries Private Limited (New Delhi), Nilgiri Food Products Private Limited (Unnao), Trikal Foods and Agro Products Private Limited (New Delhi), SR Buildcon Private.Limited (Delhi), Kapil kumar tyagi (Greater noida), Shree Radhey Industries Private Limited (Delhi).

<sup>32</sup> Wave Industries Private Limited (New Delhi), Nilgiri Food Products Private Limited (Unnao) and Trikal Foods and Agro Products Private Limited (New Delhi).

October 2010) RFP (financial bid) for these mills. As all the bids were just above the 50 *Per cent* of Expected Price, SCM was applied in all the cases.

The milestone dates in the entire bid process were:

- Date of advertisement in newspaper 21-23 June 2010
- Last date of receipt of EOI-cum-RFQ 13 August 2010
- Last date of receipt of RFP (financial bid) 16 September 2010
- Date of advertisement for SCM for all the 11 mills 22 September 2010
- Last date of receipt of EOI-cum-RFQ 11 October 2010
- Last date of receipt of RFP(financial bid) challenger 1 November 2010

The particulars of the mills, their Expected Price, Bid Amount and names of Original bidders, Challengers and Buyers are given below in the table:

(₹ in crore)

Sugar Mill	Expected Price	Original Bidder	Original Bid Price quoted	Challenger Bidder	Bid Price quoted by challenger Bidder and Bid Price (Approved)	Response of Original Bidder to the Bid Price of challenger Bidder	Finally sold to Bidder
Baitalpur	25.80	Nilgiri Food Products Private Limited	12.96	IB Trading Private Limited	13.16	Accepted	Nilgiri Food Products Private Limited
Bareilly	27.50	Wave Industries Private Limited	13.78	Namrata Marketing Private Limited	14.11	Not accepted	Namrata Marketing Private Limited
Bhatni	9.00	Trikal Foods and Agro Products Private Limited	4.55	Shri Radhey Intermediaries	4.75	Accepted	Trikal Foods and Agro Products Private Limited
Deoria	26.86	Nilgiri Food Products Private Limited	13.50	Namrata Marketing Private Limited	13.91	Not accepted	Namrata Marketing Private Limited
Ghugli	6.94	Trikal Foods and Agro Products Private Limited	3.51	S R Buildcon Private Limited	3.71	Not accepted	S R Buildcon Private Limited
Shahganj	19.02	Wave Industries Private Limited	9.54	IB Commercial Private Limited	9.75	Accepted	Wave Industries Private Limited
Barabanki	23.29	Nilgiri Food Products Private Limited	12.00	Giriasho Company Private Limited	12.51	Not accepted	Giriasho Company Private Limited
Chhitauni	4.67	Trikal Foods and Agro Products Private Limited	3.00	Giriasho Company Private Limited	3.60	Not accepted	Giriasho Company Private Limited
Ramkola	7.96	Wave Industries Private Limited	4.05	Giriasho Company Private Limited	4.55	Not accepted	Giriasho Company Private Limited
Lakhmiganj	6.47	Nilgiri Food Products Private Limited	3.25	Namrata Marketing Private Limited	3.40	Not accepted	Namrata Marketing Private Limited
Hardoi	16.12	Wave Industries Private Limited	8.08	Namrata Marketing Private Limited	8.20	Not accepted	Namrata Marketing Private Limited
<b>Total</b>	<b>173.63</b>		<b>88.22</b>		<b>91.65</b>		

We noticed from the bidding pattern that:

- There was only one bid for each of the 11 mills, divided among the three bidders<sup>33</sup> and no Competition among Bidders for any mill.
- The six challengers<sup>34</sup> who submitted financial bid under SCM challenging the highest offer made the offer for separate mills, with no

<sup>33</sup> Wave Industries Private Limited (New Delhi), Nilgiri Food Products Private Limited (Unnao) and Trikal Foods and Agro Products Private Limited (New Delhi).

<sup>34</sup> I.B Trading Private Limited, Shri Radhey Intermediaries, Namrata Marketing Private Limited, Giriasho Company Private Limited, I.B. Commercial Private Limited and S.R. Buildcon Private Limited.



Competition among them. Thus, there was only one bid for a mill both in original bidding and bidding under SCM (details in *Annexure 20*).

- The bid price of the original three Bidders was just above 50 *per cent* of Expected Price except the bid price of Trikal Foods and Agro Products Private Limited in respect of Chhitauni mill which was 64 *per cent* of the Expected Price.
- Even after SCM, the bid prices by all the six challengers were only marginally above (ranging from ₹ 12 lakh to ₹ 60 lakh) the highest amount in the original bid. (*Annexure 20*).
- Against the total Expected Price of ₹ 173. 63 crore only ₹ 91.65 crore was realised resulting in short realisation of ₹ 81.98 crore.

On further examining these issues, we noticed that Related Companies bid in a concerted manner. The audit findings as outlined in the subsequent paragraphs support our contention:

#### Bidding by Related Companies

5.4 The examination of documents submitted with EOI-cum-RFQ and RFP revealed that Bidders were Related Companies as emerged from the following facts:

**All the bidders at initial and SCM level were Related Companies.**

##### 5.4.1 Majority shares of one company held by other

- ❖ As already mentioned under Paragraph 5.2.5, every bidder Company was required to submit its shareholding pattern at the time of submitting technical bid. Two bidder Companies i.e. Namrata Marketing Private Limited and Giriasho Company Private Limited, however, did not fulfill this requirement.

Shareholding pattern of the two Companies was obtained by us from Registrar of Companies (ROC) Kanpur which revealed that Giriasho Company Private Limited held 86.42 *per cent* Equity Shares in Namrata Marketing Private Limited by way of transfer in May 2010. Thus, Namrata Marketing Private Limited was a fully controlled subsidiary of Giriasho Company Private Limited.

##### 5.4.2 Consecutive serial numbers of Demand Drafts

- ❖ Demand Drafts (DDs) valuing ₹ 50,000 submitted by the Bidders to purchase EOI-cum-RFQ had consecutive serial numbers as mentioned below:

Demand Draft Number	Date of issue	Name of issuing Bank	Name of the Bidder to whom issued
166456	6 August 2010	Punjab National Bank	Wave Industries Private Limited
166457, 166459, 166461	6 August 2010	Punjab National Bank	Nilgiri Food Products Private Limited
166460, 166462, 166463	6 August 2010	Punjab National Bank	Trikal Food & Agro Products Private Limited
66727	7 August 2010	State Bank of India	Trikal Food & Agro Products Private Limited
66730	7 August 2010	State Bank of India	Nilgiri Food Products Private Limited
66731, 66732	7 August 2010	State Bank of India	Wave Industries Private Limited

- ❖ Bank drafts submitted by the Bidders for depositing Bid Security were issued on same date by same bank and had consecutive numbers / same series as detailed below:

Bank Draft Number	Date of issue	Name of issuing Bank	Name of the Bidder to whom issued
19002, 19003	14 September 2010	H.D.F.C.	Trikal Food & Agro Products Private Limited
19010 to 19012 ,19020	14 September 2010	H.D.F.C.	Wave Industries Private Limited
19016, 19017	14 September 2010	H.D.F.C.	Nilgiri Food Products Private Limited
19062	23 September 2010	H.D.F.C.	Nilgiri Food Products Private Limited
19063	23 September 2010	H.D.F.C.	Trikal Food & Agro Products Private Limited
19064, 19065	23 September 2010	H.D.F.C.	Wave Industries Private Limited

#### **5.4.3 Common Address, Phone Number and E-Mail id**

- ❖ Correspondence address mentioned by two Bidders viz, Namrata Marketing Private Limited and Giriasho Company Private Limited in their EOI-cum-RFQ and RFP was same i.e. “Chamber 1, A 257, Sarita Vihar, New Delhi-110076”. The Management of UPSSCL addressed letters to both firms at the above mentioned address.
- ❖ E-mail id and Contact Number of Namrata Marketing Private Limited and Giriasho Company Private Limited as mentioned in EOI-cum-RFQ and RFP were same i.e. “grandpeak2010@gmail.com” and “011-40574598” respectively.
- ❖ Address and Phone number i.e. 574, Magarwara Unnao (U.P.), Tel. 0515-2833525, mentioned on the letter head of Nilgiri Food Products Private Limited was same as that of works Unit - II of PBS Foods Private Limited.

#### **5.4.4 Handing over of mill to authorized signatory of other Company**

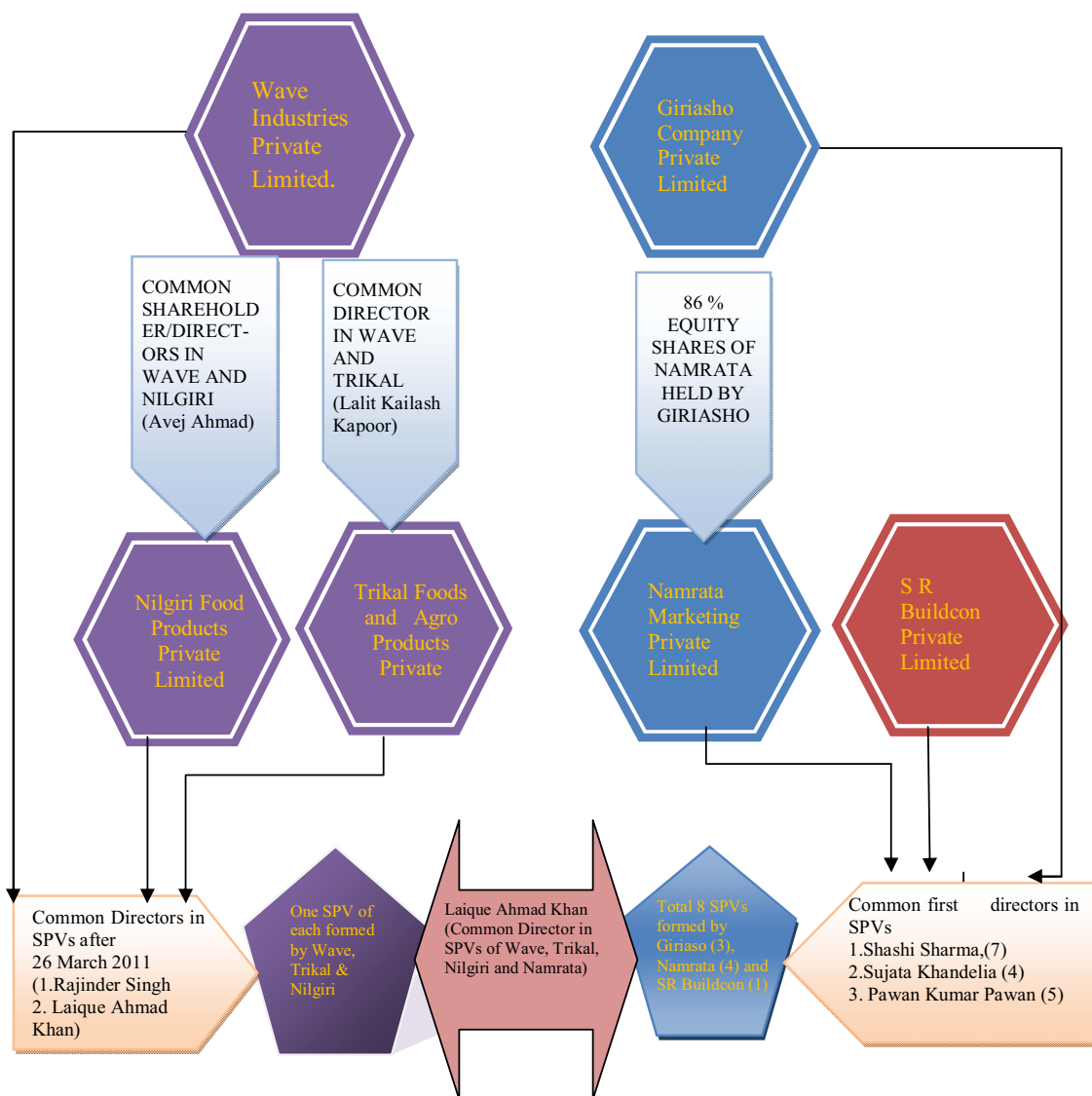
- ❖ Bhatni mill purchased by Trikal Food & Agro Products Private Limited was handed over to Shri Israrul Hasan Zaidi (vide Board resolution of buyer dated 4 February 2011). He was also authorized signatory of Namrata Marketing Private Limited.

#### **5.4.5 Common Directors and Shareholdings**

- ❖ Our scrutiny of documents submitted by Bidders and information from ROC Kanpur, showed that there were several common Directors/Shareholders among bidding Companies/ SPVs formed by Bidding Companies (*Annexure 21*).
- ❖ Shri Laique Ahmad Khan was director in one SPV each of Wave Industries Private Limited, Nilgiri Food Products Private Limited, Trikal Foods & Agro Products Private Limited and four SPVs of Namrata Marketing Private Limited.
- ❖ Shri Rajinder Singh was director in one SPV each of Wave Industries Private Limited, Nilgiri Food Products Private Limited and Trikal Foods & Agro Products Private Limited.
- ❖ While Ms Shashi Sharma and Sujata Khandelia were directors in seven and four SPVs respectively of Namrata Marketing Private Limited, Giriasho Company Private Limited and S R Buildcon Private Limited. Similarly, Mr. Pawan Kumar Pawan was director in five SPVs of Namrata Marketing Private Limited and Giriasho Company Private Limited.



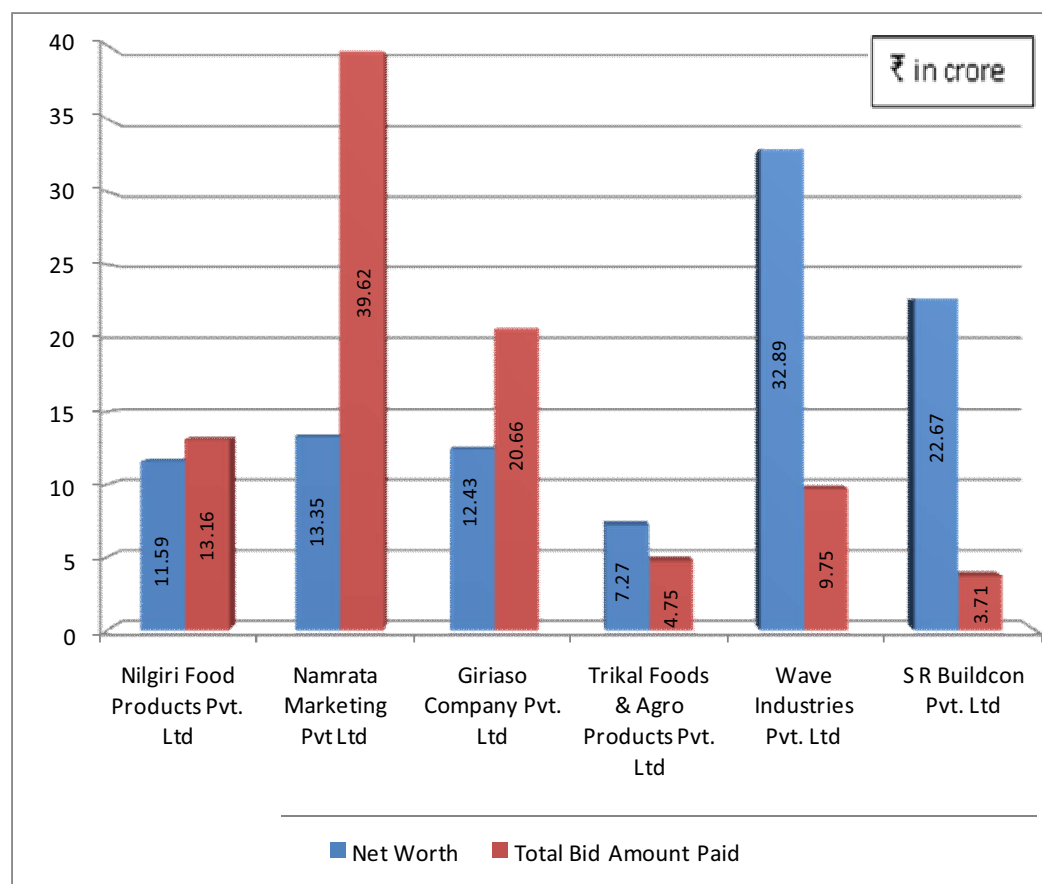
Chart depicting the relationship among the bidding companies



**Paying Capacity of buyers not ascertained**

5.5 We noticed that in contravention to Guidelines of Disinvestment, certificates depicting Paying Capacity of the applicants were not demanded by the Management from the bidders. The graph below shows comparative analysis of net worth of buyer and payments made by them on purchase of mills:

As per Clause 2.3 of Annexure VI of the Guidelines of Disinvestment, before accepting the financial bid of any party a certificate is required either from the banker or from an independent Chartered Accountant that the bidder has got enough funds to complete the transaction. Management did not ask the Bidders to submit this certificate.



Thus, it can be seen from the graph that three Companies, viz. Namrata Marketing Private Limited, Giriasho Company Private Limited and Nilgiri Food Products Private Limited made payments which far exceeded their net worth but the Management made no effort to satisfy itself about the source of funds of buyers and ensure fairness in bidding process to rule out participation as a proxy of other bidders.

**Frequent changes in Eligibility Criteria at the instance of Bidders**

**5.6** For the purpose of defining Eligibility Criteria for participation in sale process of closed mills, the CGD fixed (20 May 2009), the requirement of minimum net worth of bidders at ₹ 20 crore. Subsequently, the CGD revised (18 June 2010) eligibility criteria for bidders as follows:

The Eligibility Criteria was revised twice, the second time on the suggestion of bidders. Three successful bidders did not meet even the revised requisite criteria.

- Minimum net worth- ₹ 10 crore
- Minimum turnover – ₹ 25 crore (average for last three years); and
- The bidders could submit bids for maximum five mills and they had to fulfill cumulative eligibility criteria in case of purchase of more than one mill.

On 21 June 2010, UPSSCL invited EOI-cum-RFQ from the prospective Bidders for sale of 14 closed mills of UPRCGVNL. On the basis of suggestions received by prospective bidders in the pre-bid meeting on 1 July 2010, the CGD revised (6 July 2010) the eligibility criteria of minimum net worth from ₹ 10 crore to ₹ two crore and withdrew the minimum turnover criteria. Besides this, the CGD fixed 20 *per cent* of Expected Price as bid security (EMD).

A second pre-bid meeting was held on 30 August 2010. On the basis of suggestion received from bidders in this meeting, the CGD made (31 August 2010) further changes and reduced bid security to ten *per cent* of Expected Price subject to minimum of ₹ 1 crore per mill (for 12 closed mills), ₹ 1.5 crore for Hardoi mill.

The net worth of Companies which were successful bidders and number of units purchased by them are given as below:

(₹ in crore)				
S. No.	Name of the Bidder	Net worth	Minimum net worth (₹ ten crore per mill) required as per criteria dated 18 June 2010	No. of mills eventually purchased
<b>Initial Level</b>				
1.	Wave Industries Private Limited	32.89	10.00	1
2	Trikal Food and Agro Products Private Limited	7.27	10.00	1
3	Nilgiri Food Products Private Limited	11.59	10.00	1
<b>SCM level</b>				
1	Namrata Marketing Private Limited	13.35	40.00	4
2	Giriasho Company Private Limited	12.43	30.00	3
3	S R Buildcon Private Limited	22.67	10.00	1

It is evident from above that three bidders <sup>35</sup> though did not meet the net worth criteria fixed on 18 June 2010 remained in the fray and purchased one, four and three mills respectively. Thus, these bidders were unduly favoured by reducing the net worth criteria further to ₹ two crore in July 2010.

#### **Unusual withdrawal of bids**

**5.7** In respect of all the 11 mills of UPRCGVNL challenge bids were invited under SCM. Bids from five challengers for all the 11 mills were received (November 2010). The Management informed (15 November 2010) all the original highest bidders <sup>36</sup> about the SCM challenge bids and asked them to match the bids so received. Initially, all the original highest bidders conveyed (17 November 2010) their willingness to accept the challenge bids. However, three original bidders withdrew (24 December 2010) their consent and allowed their bid security to be forfeited in respect of eight mills as detailed below (*Annexure 20*):

(₹ in crore)

Sugar Mill	Original Bidder	Original Bid Price	Amount of Bid Security forfeited	Excess of Challenger Bid over original Bid Price	Name of Challenger Bidder who were favoured by Original Bidder
Barabanki	Nilgiri Food Product Private Limited	12.00	2.33	0.51	Giriasho Company Private Limited
Deoria	Nilgiri Food Product Private Limited	13.50	2.69	0.41	Namrata Marketing Private Limited
Hardoi	Nilgiri Food Product Private Limited	8.08	1.50	0.12	Namrata Marketing Private Limited
	<b>Total</b>		<b>6.52</b>	<b>1.04</b>	
Bareilly	Wave Industries Private Limited	13.78	2.75	0.33	Namrata Marketing Private Limited
Laxmiganj	Wave Industries Private Limited	3.25	1.00	0.15	Namrata Marketing Private Limited
Ramkola	Wave Industries Private Limited	4.05	1.00	0.50	Giriasho Company Private Limited
	<b>Total</b>		<b>4.75</b>	<b>0.98</b>	
Chittauni	Trikal Food and Agro Products Private Limited	3.00	1.00	0.60	Giriasho Company Private Limited
Ghughli	Trikal Food and Agro Products Private Limited	3.51	1.00	0.20	SR Buildcon Private Limited
	<b>Total</b>		<b>2.00</b>	<b>0.80</b>	

<sup>35</sup> Trikal Foods and Agro Product Private Limited, Namrata Marketing Private Limited and Giriasho Company Private Limited

<sup>36</sup> Waves Industries Private Limited, Trikal Food and Agro Products Private Limited and Nilgiri Food Product Private Limited.

It is evident from the above table that Nilgiri Food Product Private Limited, Wave Industries Private Limited and Trikal Food and Agro Products Private Limited withdrew its original bid in favour of Giriasho Company Private Limited, Namrata Marketing Private Limited and SR Buildcon Private Limited being 'Related Companies' and allowed to forfeit their bid security ranging

**Section 3(3)(d) of the Competition Act 2002 inter alia provides "Any agreement<sup>37</sup> entered into between enterprises or associations of enterprises or decision taken by any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods which directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition."**

from ₹ One crore to ₹ 2.75 crore instead of matching the challengers' bids which were just above the original bid amount ranging from ₹ 12 lakh to ₹ 60 lakh. This reflects cartelization of bids. The cartelization among the participating Companies tantamount to appreciable

adverse effect on Competition under Section 3(3)(d) of the Competition Act, 2002.

The Management of UPSSCL stated (17 November 2011) that UPSSCL was not involved in any part of the evaluation process since it was not required as per provisions of Guidelines.

The reply is not based on facts because the UPSSCL was nominated (May 2008) as a nodal agency to carry out the process of disinvestment of sugar mills by the GoUP and the Managing Director of UPSSCL was also a member of the CEC. He had also participated in most of the meetings of the CGD. Hence the responsibility of the Management in the sale process was clearly specified.

## **Conclusion**

**The Advisor/ Management/ CGD did not exercise due diligence while evaluating the bids despite several apparent indications of participation by closely related companies such as, Common Directors and Shareholdings, Majority shares of one Company held by other Company, Consecutive numbers of Demand Drafts submitted by the Companies, same address/ email ids/ phone numbers of the Companies and handing over of one mill to authorized signatory of other Company. Besides, paying capacity of purchasers were not ascertained to ensure satisfaction regarding their source of funds, frequent changes were made in eligibility criteria at the instance of the bidders and the original bidders unusually preferred to forgo their bid security of higher amount instead of matching the challenge bids which were marginally above the original bid amount clearly pointing to cartelization of bids. There was single bid for each of the mills both in original bidding and bidding under SCM.**

**As such, there was complete lack of competition which affected the realization of fair value of sugar mills as only ₹ 91.65 crore was realised from 11 mills against total Expected Price of ₹ 173.63 crore. Thus, there was short realisation of at least ₹ 81.98 crore if only the Expected Price is taken into account. The Advisor/ Management/ CGD did not analyse**

<sup>37</sup>

Agreement includes any arrangements or understanding or action, whether or not formal/in-writing.

reasons as to how the bid prices received for all the 11 mills were just above 50 *per cent* of the Expected Price.

Thus, Lack of Competition resulted in short realization of at least ₹ 206.68 crore in Disinvestment process of sugar mills of UPSSCL (₹ 124.70 crore) and UPRCGVNL (₹ 81.98 crore) when compared to the Expected Price. Since the market value of the mills was much higher than the Expected Price, a fair, transparent and competitive bid process may have resulted in a much higher bid amount.