



COMPETITION COMMISSION OF INDIA

Reference Case No. 02 of 2018

In Re:

**Eastern Railway, Kolkata
(Through Mr. Sanjeev Agarwal, Senior Deputy
General Manager)
17- Netaji Subhas Road, Kolkata – 700001**

Informant

And

**M/s Chandra Brothers
Ichapur Road, Santragachi
Howrah**

Opposite Party No. 1

**M/s Chandra Udyog
Ichapur Road, Santragachi
Howrah**

Opposite Party No. 2

**M/s Sriguru Melters & Engineers
20 A M. Dutta Lane
Kolkata**

Opposite Party No. 3

**M/s Rama Engineering Works
Plot No. 769, IDA Phase I
Subhas Nagar, Hyderabad**

Opposite Party No. 4

**M/s Krishna Engineering Works
C-12 Electronic Complex
Kushaiguda, Hyderabad**

Opposite Party No. 5



**M/s Janardan Engineering Industries
Gala No. 2, Nandlal Ramroop Estate
Kondivita Road, J. B. Nagar
Andheri (East), Mumbai**

Opposite Party No. 6

**M/s V. K. Engineering Industries
10, Avishkar, 3 Mahant Road
Vile Parle (E) Mumbai**

Opposite Party No. 7

**M/s Jai Bharat Industries
R-7, Nehru Enclave (West)
Kalkaji, New Delhi**

Opposite Party No. 8

CORAM

**Mr. Ashok Kumar Gupta
Chairperson**

**Ms. Sangeeta Verma
Member**

**Mr. Bhagwant Singh Bishnoi
Member**

Appearances:

For Informant: None

For Opposite Parties: Mr. Kaustav Chandra, Sole Proprietor of M/s Chandra Brothers and Partner of M/s Chandra Udyog along with Mr. Tadimalla Bhaskar Gowtham, Advocate for M/s Chandra Brothers and M/s Chandra Udyog (OP-1 and OP-2); Mr Subrata Chandra in-person, Erstwhile partner of OP-2



Mr. M. M. Sharma, and Mr. Anandshree, Advocates for M/s Sriguru Melters & Engineers and Mr. B. N. Palit (OP-3)

Mr. Tadimalla Bhaskar Gowtham, Advocate for M/s Rama Engineering Works and Mr. Vallabhaneni Chakrapani (OP-4)

Mr. Vallabhaneni Venkata Ram, Partner, for M/s Krishna Engineering Works and himself (OP-5)

Mr. Krishnakant Ghanshyam Singh, Partner, and Mr. Sateesh Jagannath Rajadhyaksha, Chartered Accountant for M/s Janardan Engineering Industries and Mr. Krishnakant Ghanshyam Singh (OP-6)

Mr. Sandeep Balkrishna Mehendale, Partner and Dr. Pravin S. Agarwal, Advocate for M/s V. K. Engineering Industries and Mr. Sandeep Balkrishna Mehendale (OP-7)

Mr. Avinash Sharma, Advocate for M/s Jai Bharat Industries and Mr. Naresh Garg (OP-8)

Order under Section 27 of the Competition Act, 2002

Facts:

1. The instant matter was received as a reference from Eastern Railway through its Senior Deputy General Manager, Mr. Sanjiv Agarwal



(‘**Informant**’), against M/s Chandra Brothers (‘**OP-1**’), M/s Chandra Udyog (‘**OP-2**’), M/s Sriguru Melters & Engineers (‘**OP-3**’), M/s Rama Engineering Works (‘**OP-4**’) and M/s Krishna Engineering Works (‘**OP-5**’) [OP-1 to OP-5 collectively referred to as ‘**OPs**’] alleging contravention of the provisions of Section 3 of the Act.

2. The Informant is from one of the sixteen zones of the Indian Railways with its headquarters in Kolkata, West Bengal. The OPs are Research Designs and Standards Organisation (‘**RDSO**’)-approved vendors engaged in the manufacture and supply of Axle Bearings, more specifically, Plain Sleeve Bearing – Top and Bottom Halves as per RDSO drawing no. RDSO/PE/SK/EMU/0052-2003. STR No. RDSO/PE/STR/EMU/0006 (Rev. ‘1’) / KPA DRG. No ER –KPA-EL-TM.1HE.020C to the Indian Railways (‘**Axle Bearings**’).
3. The Axle Bearings supplied by the OPs are used in EMU/DMU motor coaches to assist in the rotations of axle motors. It is an alloy comprising high-leaded bronze, steel, copper, nickel, *etc.*, as its main constituents. The product was standardised as per RDSO specifications, which undergo minor changes at times to customise the product as per the requirements of Zonal Railways. The bearing is also known as “High Lead Bearing”.
4. During a vigilance investigation conducted by the Informant in the unit of its Controller of Stores regarding the purchase cases of Axle Bearings used in EMU trains, it was found that the OPs had quoted the same price in response to the three tenders (Tender No. 20125122, Tender No. 20131138 and Tender No. 20141116) floated between August 2012 to August 2014. Suspecting a case of cartelisation and bid rigging, the Informant referred the present matter to the Commission.



5. For Tender No. 20125122, opened on 12.10.2012, a total of eight vendors, including the OPs, had submitted their bids. It was found that, of these eight, two Part II RDSO approved vendors, viz. OP-1 and OP-4, had quoted the same price of Rs. 17056/- per unit (pair of Axle Bearing) and three Part I RDSO approved vendors, viz. OP-2, OP-3 and OP-5, had quoted the same price of Rs. 17160/- per unit. In this tender, Purchase Orders ('POs') were placed by the Eastern Railway to OP-1 and OP-4 for 319 units each, while OP-2, OP-3 and OP-5 received orders for 638 units each.
6. Further, in Tender No. 20131138 opened on 01.11.2013, a total of seven vendors, including the OPs, had submitted their bids, and all the OPs were found to have quoted exactly the same price of Rs. 17,850/- per unit. POs were given to OP-1, OP-2, OP-4 and OP-5 for 713 units each.
7. Furthermore, in Tender No. 20141116 opened on 17.10.2014, it was found that all the OPs had quoted the same price of Rs. 18,900/- per unit. POs were issued to all OPs for 372 units each. It was stated that the OPs in this tender had quoted a 5.88% higher price than the Last Purchase Order and the Informant had negotiated the prices with the OPs. The negotiation with the OPs yielded a reduced price; however, again OPs quoted Rs. 17850/-, which was the same price quoted by them in the previous tender, i.e. Tender No. 20131138.
8. The Commission, after analysing the bids relating to the said tenders submitted by the Informant, *inter alia*, observed that it could not be a coincidence that the prices quoted by the OPs in response to each of the aforesaid tenders were exactly the same and that the price quoted by the OPs after negotiations was also exactly the same.



9. Based on the above, the Commission was of the view that there was a *prima facie* reason to believe that there was an agreement among the OPs to quote the same price in response to the aforesaid tenders floated by the Informant, which contravened the provisions of Section 3(3) of the Act. Accordingly, the Commission passed an order under Section 26(1) of the Act, directing the Director General ('DG') to cause an investigation to be made into the matter. Accordingly, the DG conduct investigation and submitted its investigation report to the Commission on 30.09.2020.

Investigation by the DG:

10. In its investigation report, the DG noted that Indian Railways was the only buyer for Axle Bearings in India. The Railway Board mandated the procurement of these items only from RDSO-approved vendors. Thus, every vendor had to go through the technical scrutiny of RDSO and, thereafter, the RDSO approved a list of vendors who were eligible to apply for tenders of the Indian Railways. On account of the monopsony of the Indian Railways and the approval process of RDSO, there were limited sellers for the product, which resulted in high market concentration. Furthermore, as the products to be procured from RDSO-approved vendors were of the same specifications, they were homogenous in nature.
11. With respect to the procurement of Axle Bearings, the DG noted from the submissions of the Informant that Axle Bearings were a Stock Item (regularly used) of the Eastern Railway. Procurement of this item was made against the Annual Indent of the Stocking Depot by way of floating an Open Tender on the Portal of the Indian Railways Electronic Procurement System (IREPS), with source restriction of RDSO-approved vendors. However, no source restriction had been advised regarding the procurement of raw materials. The reasonableness of the rate for purchase



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of Axle Bearings was assessed by the Tender Committee in comparison of the quoted rate *vis-à-vis* Last Purchase Rate (**LPR**) of the Eastern Railway as well as contemporary rates obtained/ finalised by other Railways.

12. In order to gain insight into the bidding patterns of the bidders as well as to understand the tendering process followed/practised by various Railway Zones in procurement of the Axle Bearings, the DG issued notices to 17 Railway Zones/Metro, and sought relevant details about the tenders floated by them for the said item during the period 2011–12 to 2016–17. In addition, the DG issued notices to email and mobile phone service providers requisitioning email and Call Detail Records (**CDRs**) of the OPs and third parties in order to ascertain whether the OPs and third parties were in contact with each other.
13. On the basis of the data given by the email service provider, M/s rediff.com, relating to emails in the email ID of Mr. Krishnakant Singh, Proprietor of M/s Janardan Engineering Industries, and a third party, the DG found that the OPs and some third parties, who were also bidders in the three tenders referred by the Informant, were exchanging emails sharing information with regard to the allocation of Axle Bearings among parties/suppliers in the Railway tenders floated by various zones of the Indian Railways, including the Eastern Railway. Further, from the CDRs obtained from mobile telephone service providers, namely Vodafone and Airtel, the DG found that all five OPs as identified by the Commission in its order passed under Section 26(1) of the Act as well as some third parties were in regular contact through voice calls as well as SMS (text messages).



14. Based on the above evidence, the DG identified three more firms that had submitted bids in tenders referred by the Informant, namely (i) M/s Janardan Engineering Industries, Mumbai (ii) M/s V. K. Engineering Industries, Mumbai and (iii) M/s Jai Bharat Industries, New Delhi. Their roles in the present case were also investigated. The DG summoned all OPs and third parties – M/s Janardan Engineering Industries, Mumbai, M/s V. K. Engineering Industries, Mumbai, and M/s Jai Bharat Industries, New Delhi – and confronted them with the evidence gathered and recorded their statements on oath.
15. Upon such investigation, the DG found that there was an agreement/arrangement/understanding amongst the cartel members/OPs to share the quantities of Axle Bearings offered in the Railway tenders issued by different Railway Zones. In order to achieve the aforesaid agreement/arrangement/understanding, records of the allocation of tender quantities of Axle Bearings in the Railway tenders were diligently maintained, updated and shared amongst the cartel members/OPs as attachments to emails. The purpose of sharing these records was to correct any discrepancies in these records to arrive at an accurate account of the quantities of Axle Bearings received by each cartel member/OP in various Railway tenders, so that allocations for future tenders, could be decided as per the agreed share. Further, the cartel members/OPs also assisted/compensated each other in case of any shortfalls from the agreed share of any member by submitting cover bids or not submitting bids/bid suppression in forthcoming/future Railway tenders, enabling the concerned member/supplier to win the tender.
16. Further, the investigation showed that there was regular communication among the cartel members/OPs through telephone calls as well as SMS, which also continued while the three tenders were being processed. All



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parties in their statements on oath admitted that they were in regular communication through telephone calls and SMS with their competitors.

17. Mr. Subrata Chandra, Partner in OP-2, Mr. B.N. Palit, CEO of OP-3 and Mr. Krishnakant Singh, Partner in M/s Janardan Engineering Industries, admitted in their statements on oath that the suppliers of Axle Bearings to the Indian Railways were sharing the quantities of Axle Bearings in the Railway tenders, including the three Eastern Railway tenders. They also admitted that the bid prices for the three Eastern Railway tenders, namely Tender No. 20125122, 20131138 and 20141116, were discussed and decided through telephone calls and informed individually through SMS/telephone calls. However, Mr. Sushanta Chandra (OP-1) and (OP-2), Mr. V. Chakrapani (OP-4), Mr. V. Venkata Ram (OP-5), Mr. Sandeep Mehendale, Partner in M/s V. K. Engineering Industries, and Mr. Naresh Garg, Proprietor of M/s Jai Bharat Industries, in their statements recorded on oath, submitted evasive, vague, contradictory and untruthful replies, and suppressed vital information when confronted with evidence of their role in cartelisation and bid rigging.
18. During the investigation, the DG also asked all the OPs/third parties to provide a break-up of their bids submitted during the three tenders. All submitted their information except M/s V. K. Engineering Industries and M/s Jai Bharat Industries, who stated that they did not have relevant records. Based on the information/data submitted by the OPs, the DG found that they had different manufacturing and overhead costs and profit margins and were located in different cities/places. Hence, the DG concluded that there was no other explanation for the bid prices of OP-1 to OP-5 to be exactly the same in the said Eastern Railway tenders except through bid rigging/collusive bidding in said tenders. Further, the DG noted that the break-up of bid prices of M/s Janardan Engineering



Industries had no correlation with its bids submitted in said three tenders, which only proved that he had submitted a cover bid as admitted by Mr. Krishankant Singh, Partner in M/s Janardan Engineering Industries, in his statement on oath.

19. Therefore, on the basis of the evidence on record and the statements of the key persons/Partner/Proprietor of the concerned firms recorded on oath, the DG concluded that OP-1, OP-2, OP-3, OP-4, OP-5, M/s Janardan Engineering Industries, M/s V. K. Engineering Industries, and M/s Jai Bharat Industries, were members of the cartel for the supply of Axle Bearings to the Railways. The DG found that these parties, through concerted efforts, were allocating or sharing tender quantities in the Railway tenders for Axle Bearings in violation of the provisions of Section 3(3)(b) read with Section 3(1) of the Act. Further, the DG also concluded that OP-1, OP-2, OP-3, OP-4, OP-5, M/s Janardan Engineering Industries, and M/s V. K. Engineering Industries had colluded to rig bids in the three tenders referred by the Eastern Railway, namely Tender No. 20125122, 20131138, and 20141116, floated in 2012, 2013, and 2014, respectively, in violation of the provisions of Section 3(3)(d) read with Section 3(1) of the Act. It was also found that OP-1, OP-2, OP-3, OP-4, OP-5, M/s Janardan Engineering Industries, and M/s V. K. Engineering Industries were directly involved in determining the sale prices/bid prices quoted in the three tenders floated by the Informant between 2012 to 2014 for the supply of Axle Bearings, in violation of Section 3(3)(a) read with Section 3(3)(1) of the Act.
20. Accordingly, given the aforesaid findings against M/s Janardan Engineering Industries, M/s V. K. Engineering Industries, and M/s Jai Bharat Industries, in addition to the OPs, the DG submitted that these



parties may also be considered additional Opposite Parties, namely OP-6, OP-7, and OP-8, respectively.

21. In terms of Section 48 of the Act, the DG also identified persons of the OPs who had played an active role in the contravention of the provisions of Section 3 of the Act and who were in charge of and responsible for the conduct of the businesses of the OPs.

Proceedings before the Commission:

22. Upon consideration of the investigation report submitted by the DG in its ordinary meeting held on 18.11.2020, the Commission decided to forward an electronic copy of the same to OP-1, OP-2, OP-3, OP-4, OP-5, and the three third parties, M/s V. K. Engineering Industries, M/s Janardan Engineering Industries, and M/s Jai Bharat Industries (hereinafter, these three third parties will be referred to as OP-6, OP-7, and OP-8, respectively. Accordingly, henceforth in this order, OP-1 to OP-8 will be collectively referred to as ‘OPs’.), who had been found by the DG to have contravened the provisions of the Act. The OPs alongwith their respective officials who had been identified by the DG to be liable in terms of Section 48 of the Act and the Informant, would be referred to as the Parties.
23. The Commission directed the parties to file their objections/suggestions, if any, to the investigation report of the DG and their audited balance sheets and profit and loss accounts/turnover for the relevant financial years, *i.e.*, 2012–13, 2013–14 and 2014–15, along with details of the revenue and profits generated from the sale of Axle Bearings during these financial years by way of affidavits supported by the certificates of Chartered Accountants. Further, the persons identified by the DG for the purposes of Section 48 of the Act—except Mr. Sushanta Chandra of OP-



1 and OP-2 who, as per records, expired on 30.06.2020—were directed to furnish their income details, including the individual Income Tax Returns (ITRs) for the duration. The parties were directed to serve advance copies to each other. The Commission further directed the parties to file their replies, if any, to each other's objections/suggestions, with advance copies to each other thereafter.

24. In response thereto, the Informant did not submit any reply. However, all the OPs filed the objections/suggestions to the investigation report of the DG along with the required financial details. Thereafter, the final hearing on the investigation report of the DG was held through video conferencing on 25.02.2020, and the Commission decided to pass an appropriate order on the matter in due course.

Submissions of the parties:

25. In their objections/suggestions to the investigation report of the DG and during the oral hearing, the OPs and their respective officials identified by the DG took diverse pleas and the same are summarized in the succeeding paras.

OP-1:

26. OP-1 in its objections/suggestions to the investigation report of the DG, *inter alia*, submitted the following:
- i. OP-1 has been in the business of manufacturing Axle Bearings since 1992 as a Part-II RDSO-approved manufacturer, and later became a Part-I RDSO source in 2013. Since then, the firm has been conducting business diligently and participating in tenders across the country without any connection to the alleged cartel for



Axle Bearings. The firm was earlier run by the late Mr. Sushanta Chandra and, following his death on 30.6.2020, by his son Mr. Kaustav Chandra, who was a college student at the time of the alleged cartelisation during August 2012 to August 2014.

- ii. OP-1 was a small-scale industrial unit registered with the National Small Industries Corporation ('NSIC'), giving direct employment to 15 workers and indirect employment to 10 workers. Due to COVID-19, it was forced to retrench 6 workers and was already facing significant stress on day-to-day operations. Further, the profit margin on the subject item was very less and the increase of prices in the tender were directly proportional to Wholesale Price Indices ('WPI') of metals used as basic raw materials, including copper, lead, and non-ferrous alloys, as well as other inputs such as fuel, power, and labour.
- iii. OP-1 rejected the investigation report of the DG and denied the formation of a cartel and any alleged involvement of OP-1 in such a cartel. In its preliminary objections, OP-1 submitted that Mr. Subrata Chandra had quit the business and ceased to be a partner of OP-2 from 2016. Since Mr. Subrata Chandra had to quit the partnership under compulsion as a result of bitter transactions between the partners, OP-2 had borne a grudge and constructed unnecessary allegations against OP-1 with the intent to malign the reputation of the late Mr. Sushanta Chandra.
- iv. The evidence relied upon by the DG to substantiate the alleged cartel amongst the OPs in 2012 included emails exchanged by the OPs in the years 2015 and 2017 and phone transactions between the late Mr. Sushanta Chandra and Mr. V. Chakrapani in October 2013



and again in May and November 2015, which were not relevant for any of the three alleged tenders under dispute, since the late Mr. Sushanta Chandra was not in touch with the alleged cartel at the relevant time of bidding, which would be a week or a few days before the opening date of the disputed tenders of the Eastern Railway, *i.e.*, 12.10.2012, 01.11.2013, and 17.10.2014.

- v. This was not the case where the alleged cartel was formed amongst the OPs to manipulate the prices of Axle Bearings to amortise profits to respective parties. In fact, the Railways had forced them to quote the previous L1 tender price. It was submitted that the Railways used to specify the estimated price along with the Tender Document and that the practice of quoting the estimated price was a signal to vendors to quote the price expected by the Indian Railways. Therefore, the firm, in order to survive in the market, had to quote the price orally communicated by the Railways. Further, as alleged in the investigation report, even if a cartel was formed to rig tender prices, the same never caused any loss of revenue to the Railways, as the prices quoted by OP-1 were much less than the estimated price quoted by the Railways.
- vi. Moreover, the inherent nature of the market of Axle Bearings manufacturers was such that it precluded the possibility of competition. The product could only be sourced from an RDSO-approved source. Further, the Railways was in charge of awarding the contract, be it in terms of quantity or price, and even after awarding the contract, the Railways had the power to alter the contract to order a greater or lesser quantity. The reasonableness of the tender amount was also considered by the Railways based on WPI of metals used as basic raw materials, such as copper, lead and



non-ferrous alloys, and other inputs such as fuel, power and labour, and the final price was fixed by the Tender Committee after negotiating with the lowest Part-I firms to bring down the prices, after which, the final purchase order was placed. In this process, if the Railways suspected cartelisation, it could cancel the bid and issue a new tender. However, the Railways did not do so and instead, called for a negotiation to further lower prices, as a result of which, the Railways benefitted by approving the tenders at lower prices.

- vii. Mere price parallelism cannot be the reason for arriving at a conclusion of collusive agreement or bid rigging, particularly in a monopsonistic market where the likelihood of price parallelism is natural as there are few buyers, and as they set the prices, the conditions are such that sellers can predict demand, there is a repetitive bidding process and the products are identical and specialised.

- viii. In this case, there was only one buyer, and the market for supply of Axle Bearings had limited growth. Further, as per the general terms, the Railways procured only from RDSO-approved sources. In a market condition like this, if a particular manufacturer was not selected, it would be removed from the market. The limited number of manufacturers was the result of there being only a single buyer, not cartelisation. It was the Railways that was creating barriers for new entrants. Moreover, the Railways also controlled the prices of bids and the quantity to be ordered, as it had independence flowing from the general terms of the contract entered between the parties, and it brought down the prices significantly through joint negotiations, which benefitted the Railways. The OPs could bid



their offers to the Railways, but they had no role in the pricing of Axle Bearings at the time of awarding of the PO. The OPs used to bid across the country in various Railway zones whenever a tender was floated for the procurement of Axle Bearings. As the product was identical, the manufacturing cost was more or less dependent on the WPI indices of raw metal, and since there was a single buyer, viz., the Railways, there was a possibility of identical bids being filed by suppliers.

- ix. Thus, in a market like the instant case, it was the buyer who set the prices as there was almost no other buyer in the market, and the conditions of entry into such a market, such as RDSO approval, design, material specifications, etc., were restricted by the Informant itself. In such conditions, the bidders could take a business decision to mirror the prices of competitors in certain other Railway zones by adjusting or averaging prices in others.
- x. OP-1 and the other OPs never shared any crucial information as to bid amounts or bid presentation dates in the relevant period, which would establish the existence of a cartel. In its para-wise reply, OP-1, *inter alia*, submitted that the late Mr. Sushanta Chandra, in his statement before the DG, had denied any such interaction before and after quoting the bid prices and answered the question regarding the matching of prices of other Part II firms, stating that it was the Last Purchase Price quoted in other Railway zones. He had also clarified that the profit margin in the product was very less.
- xi. Further, the late Mr. Sushanta Chandra never received or replied to any email during the relevant period of 2012–2014. All that the investigation report of the DG pointed to was an email from the



year 2017, which revealed information about already awarded quantities—details that were already available in the public domain. OP-1 had no role in the said email and did not even possess knowledge about such an email until the investigation by the DG. When the late Mr. Sushanta Chandra received an email from OP-6 in 2017 about an alleged cartel that had existed in 2012–2013, he ignored the email the moment he received it as it was not useful to him. The late Mr. Sushanta Chandra never replied to any emails that contained any material regarding cartel or group bidding, as it was not of interest to him. Additionally, he did not speak to alleged cartel members during the relevant period, when tenders were floated in 2012–2014, and never shared any prices or participated in bid rigging as alleged.

- xii. The estimated price given by the Informant for Tender No. 20125122 was Rs. 17,160/-, and OP-1, being a first time supplier of Axle Bearings, quoted a price of Rs. 17,056/-, as it was general practice for Part II suppliers to quote a lesser price so as to bag the tender to meet the upgradation quantity mentioned by the RDSO to qualify as a Part I supplier in the future. Later in 2013, the bid amount was increased to Rs. 17,850/-, keeping in view the volatility of metal prices, and it was rounded off as per convenience.
- xiii. The investigation report of the DG was based on uncorroborated confessional statements of Mr. B.N. Palit, Mr. Subrata Chandra and Mr. Krishnakant Singh, which ought not to have been relied upon without corroboration from an independent source to prove the allegations of cartelisation. Additionally, the investigation report of the DG failed to unearth any documentary evidence against OP-1



or gather any evidence whatsoever to prove the existence of the agreement as mentioned under Section 3(3)(d) of the Act.

- xiv. The DG's findings were based on an incorrect understanding of facts and law as there was no direct evidence to prove the existence of an agreement, and only circumstantial evidence and oral statements were relied upon to arrive at the conclusion. There was no evidence in the form of written agreement, or any independent evidence to suggest that there was an understanding amongst the OPs regarding bid prices.
- xv. Further, the DG had not considered any or all factors mentioned in Section 19(3) of the Act. There was also no discussion in the investigation report of the DG that there was any appreciable adverse effect on competition due to the alleged action of the OPs in terms of Section 19(3) of the Act, which is a prerequisite and touchstone to attract Section 3 of the Act.
- xvi. This was the first time that these parties were found to have engaged in alleged cartelisation and bid rigging. There was no allegation or evidence that they had been cartelising in the past. Therefore, some consideration ought to be shown for that reason.
- xvii. Moreover, OP-1 was a Micro, Small and Medium Enterprise (MSME) with a meagre turnover, and due to the economic slowdown, it was struggling to cope in the business environment. The average turnover of OP-1 during the contravening period, *i.e.*, August 2012 to August 2014, in respect of plain sleeve Axle Bearings was very less compared to the total turnover. Due to COVID-19 pandemic and the consequent economic slowdown, it



had further become difficult for OP-1 to survive in the market, and any penalty now imposed on OP-1 would drive the company out of business. Further, in mature competition law jurisdictions, in case of a multi-product company, the calculation of fines was based on the turnover arising from the product market in which cartelisation had taken place. Hence, in the event of a penalty being imposed on OP-1, only the turnover generated by plain sleeve Axle Bearings should be taken into account as this would form the ‘relevant turnover’ for the purposes of competition law.

- xviii. In view of the above facts, OP-1 prayed that the investigation report be set aside and the case be dismissed against OP-1, and that the Commission may pass any other order that it may deem appropriate.

OP-2 and its official Mr. Subrata Chandra:

27. At the outset, OP-2 also rejected the investigation report of the DG *in toto* and denied the formation of a cartel and any alleged involvement in such a cartel. OP-2 submitted that it was a small-scale industrial unit registered with NSIC, giving direct employment to 150 workers and indirect employment to 50 workers. Due to the COVID-19 pandemic, it was forced to retrench 50 workers and was already facing considerable stress in day-to-day operations.
28. At this stage, it may be pointed out that OP-2 is a sister concern of OP-1 by virtue of having the same proprietor/partner, *i.e.*, the late Mr. Sushanta Chandra and, after his death, his son Mr. Kaustav Chandra. Further, during the hearing before the Commission, both were represented by the same counsel and made exactly the same objections/suggestions to the



investigation report of the DG. Thus, to avoid repetition, the objections/suggestions of OP-2 are not being reproduced here.

29. However, the official of OP-2, Mr. Subrata Chandra, submitted his individual objections/suggestions to the investigation report of the DG, wherein he denied and disputed the findings of the investigation report of the DG, except those that were a matter of record. In his objections/suggestions, he specifically denied the finding that he had played an important role and was individually responsible for cartelisation and bid rigging in the three tenders floated by the Eastern Railway during the years 2012, 2013 and 2014 for the supply of Axle Bearings. The submissions of Mr. Subrata Chandra are as under:

- i. Mr. Subrata Chandra had entered into a partnership in 1987 with the late Mr. Sushanta Chandra to carry out business under the name and style of 'Chandra Udyog', where his partner the late Mr. Sushanta Chandra was the key person for all marketing activities of the said partnership firm.
- ii. In or around the year 2014, Mr. Subrata Chandra noticed that the day-to-day business affairs and conduct of the said partnership firm were not being communicated to him properly, and that some business activities in the partnership firm were taking place without his approval and knowledge. Further, the authorised signatory of Digital Signature Certificate ('DSC') was also transferred from him to Mr. Sushanta Chandra without his consent.
- iii. Thereafter, he refrained from and disapproved of various business conducts of the partnership firm, but as it resulted in more chaos, he expressed his unwillingness to continue as a partner in the



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partnership firm, and finally, on 10.06.2016, entered into a Memorandum of Understanding with his partner in the said firm, *vide* which it was mutually decided that he would retire from the partnership firm with effect from 01.04.2016 and that all his rights and liabilities in the said partnership firm would stand dissolved and terminated permanently and absolutely from the date of his retirement, *i.e.*, 01.04.2016.

- iv. Subsequently, another Reconstituted Deed of Partnership of OP-2, dated 07.10.2016, was executed with effect from 01.04.2016, whereby Ms. Pratima Chandra was inducted as the Joining Partner of the said firm. In this deed, as per Clause 22, the Continuing Partner and the Incoming Partner agreed that the Outgoing Partner shall, at any time thereafter, not be held liable for any liabilities, claims, dues, acts, deeds or omissions of the said partnership, whether past, present or which may thereafter accrue, and that the Continuing Partner and the Incoming Partner would be solely liable and responsible, and agreed to indemnify and hold the Outgoing Partner harmless and indemnified for the same.
- v. In view of the aforesaid, it was submitted that, from the date of retirement, Mr. Subrata Chandra had neither accessed any documents pertaining to the said partnership firm nor he was in contact with the said firm or had knowledge of any of its business activities. Therefore, the Commission may consider Clause 2 of the Memorandum of Understanding dated 10.06.2016 and Clause 22 of Reconstituted Partnership Deeds *vide* which, as an Outgoing Partner, he had been discharged of all liabilities arising with the partnership firm from the date of his retirement, *i.e.*, 01.04.2016 with the retrospective effect.



OP-3 and its official Mr. B.N. Palit:

30. OP-3 in its objections/suggestions to the investigation report of the DG, *inter alia*, submitted as follows:
- i. It is a sole proprietorship firm owned by Ms. Jyotsana Palit and based in Kolkata. It is a RDSO Part -1 approved supplier for the Railways and manufactures and supplies Diesel/Electric Locomotive coach spares, including Axle Bearings, to the Indian Railways. It has one manufacturing plant and an office in Behala, Kolkata. It is registered with NSIC as a small-scale industrial unit.
 - ii. At the outset, OP-3 concurred with the findings in the DG Report insofar as that the OPs had colluded with respect to the subject tenders in violation of Section 3(3)(d) read with Section 3(1) of the Act. However, it prayed that, while exercising discretion to impose penalty, the CCI may consider the submission and the mitigating circumstances pleaded in the ensuing paras, including a plea for allowing the benefit of leniency provision under Section 46 of the Act in case it decides to impose a penalty.
 - iii. That it had provided vital, full and true disclosure regarding the contravention of the provisions of Section 3 of the Act. OP-3's disclosures during the deposition enabled the DG to conclude independently and without corroboration from other OPs that: (i) the OPs colluded to share quantities of Axle Bearings in the subject tenders through bid rigging/collusive tendering; (ii) the rationale for sharing the Axle Bearing quantities was to ensure that all manufacturers had at least a few orders to make their business economically viable; (iii) in order to have an accurate assessment of order quantities received by various parties in the railway tenders



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and to monitor any shortfall from their respective agreed shares, a detailed account of order quantities received by the cartel members in various railway tenders was maintained and circulated through email; (iv) the aforesaid quantities were updated from time to time to arrive at an accurate assessment of quantities received by each OP, which enabled the OPs to decide on the allocation of Axle Bearings for future tenders; (v) the cartel members also implemented a mechanism wherein the OPs who received less than the agreed share in a current tender were compensated in future tenders; and (vi) the OPs pre-decided the bid prices for the subject tenders through phone/SMS.

- iv. Thus, OP-3 not only provided a detailed and complete description of the cartel, including the information on the cartelised product, it also provided information such as the *modus operandi* of the cartel, the business rationale for the cartel and the commencement and the duration of the cartel, in addition to details of other cartel members. Further, OP-3 had also ceased further participation in the cartel and provided full and continuous co-operation during the entire course of the investigation before the DG and the Commission.
- v. Further, OP-3 was the first to make the admission regarding the contravention of the provisions of Section 3 of the Act and describe the documentary evidence on record, thereby enabling the DG to discover the *modus operandi* of the cartel and establish a contravention of the provisions of Section 3(3)(d) read with Section 3(1) of the Act independently, even in the face of denial by other OPs. The DG's finding that the OPs rigged the subject tenders in violation of Section 3(3)(d) read with Section 3(1) of the Act substantially rests on the admission made by OP-3.



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- vi. OP-3 was the first to explain the documentary evidence of the cartel and admit that the OPs had formed a cartel to rig the bids for the subject tenders. Mr. Krishnakant Singh, the authorised representative of OP-6, merely corroborated the admissions made by OP-3 and did not provide any fresh disclosures. Further, the admission made by Mr. Subrata Chandra, *i.e.*, the authorised representative of OP-2, was contradicted by another authorised representative of OP-2, *i.e.*, Mr. Sushanta Chandra.
- vii. In addition to the statements provided by Mr. Subrata Chandra, Partner in OP-2, Mr. B.N Palit, CEO of OP-3, and Mr. Krishnakant Singh, Partner in OP-6, the DG further relied on (a) documentary evidence of various emails and (b) communicative evidence of CDRs to establish a contravention of the provisions of Section 3(3) of the Act against the parties. However, a perusal of the documentary evidence relied upon by the DG revealed that the earliest email relied upon was dated 31.12.2014, whereas the latest email relied upon by the DG was dated 21.08.2017, and the subject tenders in the present case were dated 12.10.2012, 01.11.2013 and 17.10.2014. Hence, all emails relied upon by the DG, as mentioned above, were subsequent to the subject tenders in question. Thus, these emails were not sufficient to establish a prior meeting of minds, which was a *sine qua non* for establishing a contravention of Section 3(3) read with Section 3(1) of the Act and did not *ipso facto* prove cartelisation.
- viii. Further, the communicative evidence relied upon by the DG, *i.e.*, the CDRs, was also not legally admissible as evidence in view of non-availability of certificate of authenticity under Section 65 B of the Evidence Act, 1872. As per records, the telephone service



providers had not supported the CDRs with a 65 B Certificate since the CDRs were more than 13 months old and had to be retrieved from backend devices. It was submitted that the restoration of old or earlier data face challenges of compatibility and seamlessness due to software changes/software version upgrades/software version phaseouts, *etc.* Therefore, the service providers were unable to guarantee the authenticity of the data since there could be damages in the storage due to the efflux of time as well as inadvertent omissions/errors during restoration.

- ix. Thus, based on the foregoing paras, it would be erroneous to rely on either documentary evidence in the form of emails or communicative evidence in the form of CDRs to establish a contravention of Section 3(3)(d) read with Section 3(1) in relation to the subject tender. Hence, the DG's findings that the OPs had contravened Section 3(3) of the Act were entirely based on the admissions made by OP-3. However, the quality and detail of the disclosures made by OP-3 were such that the DG could establish bid rigging in the subject tenders even in the absence of any other evidence.
- x. OP-3 was the first cartel participant to provide full and true disclosure in respect to the alleged violations. OP-6's statement, which was subsequently given, merely corroborated the admissions already made by OP-3. However, soon after making full and true disclosure regarding the alleged violation, OP-3 learnt that the Act provided for leniency in terms of Section 46 of the Act. Accordingly, OP-3 applied for leniency in the captioned matter and assumed that it would be entitled to the benefit of Section 46 of the Act since it had provided vital disclosure in respect to Section 3 of



the Act, and cooperated genuinely, fully, continuously and expeditiously throughout the DG's investigation in terms of Regulation 3 of the Competition Commission of India (Lesser Penalty) Regulations, 2009 (**LP Regulations**).

- xi. However, in the absence of adequate legal advice, OP-3 was unaware that, in order to avail of the benefit of lesser penalty, he had to make an application in terms of Regulation 5(1) of the LP Regulations. Therefore, although the Commission granted a priority status to OP-3 under Regulation 5(2) of the LP Regulations, the same was forfeited when OP-3, under a *bona fide* mistake, failed to file information in terms of Regulation 5(1) of the LP Regulations. OP-3 submitted that, although it fulfilled the conditions for the grant of lesser penalty under Section 46 of the Act and Regulation 3 of the LP Regulations, on account of a *bona fide* omission, due to ignorance of the *extant* regulations, OP-3 failed to get the benefit of the lesser penalty provisions of the Act. Thus, it prayed that the Commission overlook the procedural deficiency and grant OP-3 full benefit of the lesser penalty provisions.
- xii. Further, the nature of the cartel also warranted a lenient treatment as the Indian Railways was the only buyer of Axle Bearings in India, and therefore, enjoyed buyer power *vis-à-vis* the OPs. In the present case, the OPs, including OP-3, were mere price takers. It was apparent from the evidence on record that the intention behind the cartel was not to gain *supra*-competitive profits; rather, it was a situation where the OPs were forced to cooperate to ensure the business viability of their units. In this regard, OP-3 provided its explanation to the DG for substituting competition with



cooperation in the subject tenders, which was noted in the DG's record as follows: *"...has to be shared among various manufacturers of the said product so that all the manufacturers can have few orders to make their business economically viable."* Thereafter, the DG Report also noted that, *"Thus, economic viability of their respective business played an important role in the concerted efforts of Axle Bearing suppliers to collude and rig bids for mutual benefit."*

- xiii. Thus, the cooperation between the parties was borne out of need rather than greed. This was also independently corroborated by the statement given by Mr. Krishnakant Singh, the representative of OP-6, who submitted that the rationale for the formation of the cartel and sharing of quantities of Axle Bearings was because, *"As work was getting less and less, it was agreed that to help each firm get orders there will be equal distribution of Axle Bearings among the Group members."* Further, the bid prices submitted by OP-3 in relation to the subject tenders included a profit margin of a mere 13 per cent. Thus, the evidence on record clearly demonstrated that the bid rigging arrangement in the present case was borne out of necessity rather than any intention to garner undue and *supra-competitive* profits.
- xiv. OP-3 prayed that penalty, if any, should be imposed on the relevant turnover. Without prejudice to the submission that the Commission ought to afford lenient treatment to OP-3 and provide a 100% reduction of penalty to OP-3 in view of the first and vital disclosures made by OP-3, which enabled the DG to establish a contravention of Section 3(3) read with Section 3(1) of the Act., OP-3 submitted that the power conferred on the Commission to



impose penalty under the Act was purely discretionary in nature and that the Commission may consider the facts mentioned in ensuing paras while deciding the penalty.

- xv. Lastly, the relevant turnover for the relevant period should be considered in terms of the law laid down in *Excel Crop Care Ltd & Ors. v. Competition Commission of India* (2017) 8 SCC 47 by the Hon'ble Supreme Court of India, as follows: “*While imposing penalty, it is the affected turnover, i.e. ‘relevant turnover’ that becomes the yardstick for imposing such a penalty*”. In the case of *National Insurance Company Ltd. and Ors. v. Competition Commission of India*, 2017, the Hon'ble Competition Appellate Tribunal upheld the interpretation of the term ‘turnover’ for the purposes of Section 27(b) of the Act, to “*mean value of goods and services which are made subject matter of investigation under Section 26 of the Act and hence liable for punishment under Section 27 of the Act*”.
- xvi. Thus, the relevant turnover must pertain to the entity’s turnover arising out of the products/services affected by the contravention. Since the present case concerns bid rigging by the OPs in the tenders floated by the Informant for the procurement of Axle Bearings, the relevant product in the present case is Axle Bearings and the turnover generated by OP-3 from the sale of Axle Bearings alone must be considered for the imposition of penalty, if any. Further, the DG’s findings are only with respect to the subject tenders which were floated in the years 2012, 2013 and 2014. Therefore, the relevant period for the purposes of imposition of penalty ought to be the financial years 2012–2013, 2013–2014 and 2014–2015.



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- xvii. Further, the Commission should consider the mitigating circumstances in favour of OP-3 while imposing penalty. In *Excel Crop Care v. Competition Commission of India (supra)*, the Hon'ble Supreme Court had categorically held that: *"After such initial determination of relevant turnover, the Commission may consider appropriate percentage, based on facts and circumstances of the case and by taking into consideration various factors such as the nature, gravity, extent of the contravention, role played by the infringer, the duration of participation, the intensity of participation, loss or damage suffered as a result of such contravention, market circumstances in which the contravention took place, nature of the product, market share of the entity, barriers to entry in the market, nature of involvement of the company, bona fide of the company, profit derived from the contravention etc."* Further, Hon'ble COMPAT in case of *MDD Medical Systems India Private Limited &Ors. v. Competition Commission of India & Ors.* (Appeal No. 93/2012) and *M/s. Gulf Oil Corporation Ltd & Ors. v. Competition Commission of India* (Appeal No. 82 of 2012) had also held that: *"CCI must not only give the reasons in support of the quantum of penalty, but also consider the mitigating circumstances and then only come to the final conclusion regarding the quantum of punishment."*
- xviii. Thus, the Commission may consider the following as mitigating factors: a) OP-3 was the first to admit its role in the cartel and provided vital disclosures regarding the cartel, which enabled the DG to establish a contravention of Section 3(3) read with Section 3(1) of the Act; b) OP-3 provided genuine, full, continuous and effective cooperation throughout the DG's investigation; c) This was OP-3's first competition law violation; d) OP-3 qualified as a



micro-enterprise, having small annual turnover, and the imposition of heavy penalty might result in OP-3 becoming economically unviable; and e) The prevailing economic situation arising as a result of the pandemic (COVID-19) had resulted in huge financial distress for OP-3.

- xix. Regarding individual penalty under Section 48 of the Act, it is submitted that, despite OP-3's continuous cooperation, the DG had recommended proceedings against the authorised representative of OP-3, Mr. B. N. Palit, under Section 48 of the Act. The mitigating factors pleaded against the imposition of penalty under Section 27 of the Act against OP-3 may also be considered while initiating proceedings under Section 48 of the Act.
- xx. Based on the facts stated above, along with the analysis and legal submissions made, OP-3 prayed that the Commission: i) provide the benefit of Section 46 of the Act to OP-3 and refrain from imposing any penalty under Section 27 of the Act; ii) refrain from imposing a penalty under Section 27 of the Act considering the unique facts and circumstances of the present case; iii) not initiate proceedings against Mr. B.N. Palit under Section 48 of the Act; and iv) pass such further order(s) as the Commission may deem fit.

OP-4 and its official Mr. Vallabhaneni Chakrapani:

31. It is observed that OP-4 was represented before the Commission by the same counsel who represented OP-1 and OP-2, and largely submitted the same objections/suggestions to the investigation report of the DG for OP-4 as well. However, there are certain submissions related to facts concerning only OP-4. Hence, the submissions specific to OP-4 are briefly noted.



32. OP- 4 in its objections/suggestions to the investigation report of the DG, *inter alia*, submitted as follows:

- i. At the outset, the conclusions drawn in the investigation report were rejected *in toto* and any formation of a cartel or alleged involvement in such a cartel was denied.
- ii. It was pointed out that the answering opposite party has been in the business of manufacturing Axle Bearings since 2012 as a Part II RDSO-approved manufacturer. Since then, it had been doing business diligently and participating in tenders across the country without any connection to the alleged cartel for Axle Bearings. It is a micro-enterprise registered with NSIC that had an average turnover of about 1.65 crores before the COVID-19 pandemic. It submitted that any penalty now imposed on it would drive it out of the business. OP-4 gave direct employment to 30 workers and indirect employment to 20 workers, OP-4 was forced to retrench 14 workers but was already facing huge stress on day-to-day operations due to financial losses induced by the COVID pandemic. Moreover, there were no orders from the Railways since March 2020. Further, the profit margin on the subject item was usually very less and the increase of prices in the tender were directly proportional to the WPI of metals used as basic raw materials such as copper, lead and non-ferrous alloys as well as fuel, power and labour.
- iii. During the investigation, the DG presented documents of the years 2013 and 2014 that were mostly irrelevant as so-called evidence of bid rigging. Mr. Chakrapani could not recollect some events from January 2020 even after continuous questioning for about 8 hours,



and moreover, some answers were led by the Investigation Officer. In any case, Mr. Chakrapani never received or replied to any email during the relevant period of 2012–2014. OP-4 had only received an email from OP-6 in 2017 about an alleged cartel that had existed in the years 2012 and 2013, which is highly improbable and moreover, had no value since it was ignored by Mr. Chakrapani the moment it was received and had not been enforced/implemented. Thus, such emails did not establish any connection whatsoever of Mr. Chakrapani to the alleged cartel or group, and hence, there was no need to suppress any information or facts as he was not part of the cartel.

- iv. In para-wise reply, OP-4 submitted that Mr. Chakrapani had answered the question regarding the matching of prices of other Part-II firms, stating that it was the Last Purchase Price quoted in other Railway zones. Regarding the email in question, OP-4 stated that the same was of the year 2017 and not relevant. Mr. V Chakrapani was not familiar with using email or computer, and the office staff Mr. Narsimha Rao used to handle his email. Further, OP-4 submitted that Mr. Chakrapani never replied to any emails that contained material regarding cartel or group bidding, as it was not of interest to him and he ignored them. Additionally, there was no intention on the part of Mr. Chakrapani to participate in group bidding, so he never replied to the aforesaid email confirming the quantities and was not aware of any price discussion or used any price figures in its tender quotations. Thus, it was evident that Mr. Chakrapani had not received the said email and nor used/implemented/enforced anything using that email.



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- v. Further, the finding in the investigation report of the DG, that Mr. Chakrapani was in touch through calls with Mr. V. Srinivas, Mr. V. Ramadevi, Mr. Sushant Chandra and Mr. B.N. Palit was also of no consequence, as such calls were on irrelevant dates (mostly in the year 2015). Mr. Chakrapani did not talk to alleged cartel members during the relevant period when tenders were floated, *i.e.*, 2012–2014, and OP-4 never shared any prices or participated in bid rigging, as alleged. Further, there was no evidence to show that Mr. Chakrapani was in touch with other bidders during the time of bidding.
- vi. OP-4 submitted that, in 2012, Mr. V. Chakrapani quoted a price of Rs. 17,056/- as it was his first time bidding as a Part-II manufacturer. Later, in 2013, the bid amount was increased to Rs. 17,850/- keeping in view the change in tax regime from 4% to 5% CST, and in 2014 due to volatility of metal prices, and it was rounded off as per convenience.
- vii. Lastly, OP-4 submitted that this was the first time that these parties had been found to be under the scanner for alleged cartelisation and bid rigging. There was no allegation or evidence that they had been cartelising in the past. Therefore, some consideration ought to be shown for that factor. Further, in mature competition law jurisdictions, in the case of a multi-product company, the calculation of fines was based on the turnover arising from the product market in which cartelisation had taken place. Hence, in the event of any penalty being imposed on OP-4, only the turnover generated by plain sleeve Axle Bearings should be taken into account, as this would form the ‘relevant turnover’ for the purposes of competition law. Moreover, OP-4 was an MSME with a meagre



turnover, and due to the economic slowdown, was struggling to cope in the business environment. In view of the foregoing facts, OP-4 prayed that the investigation report be set aside and the case be dismissed against OP-4.

OP-5 and its official Mr. Vallabhaneni Venkata Ram:

33. OP-5, in its objections/suggestions to the investigation report of the DG, *inter alia*, submitted as follows:

- i. Since the year 1998, the firm had been supplying only Axle Bearings throughout Indian Zonal Railways and Railway Production Unit. This was a safety item fitted into Railway Loco Engine. If there was any damage to the item, the engine would break down and train would stop. Keeping this in view, OP-5 never compromised on quality at its end. OP-5 submitted that it was a micro-category MSME registered with the District Industries Centre, Hyderabad, and certified by ISO 9000 since 1999 and approved by RDSO (Lucknow).
- ii. The Zonal Railways invited tenders of three types, *i.e.*, advertised tender, limited tender and special limited tenders, as per their requirement, *i.e.*, delivery schedule, emergency requirement or as usual requirement from time to time. The tender was evaluated depending on their need and not only price. The supplier was required to meet such compliance for the award of tenders. The Railways could award the contract on L1 rate, split the tender 60:40 on quantity basis, invite a counter-offer on L1 rate or have a running contract rate or implement optional clause of 30% to an existing supplier, among several many other options. If dissatisfied with the price, the Railways could also cancel the delivery schedule and re-



tender following the Railway Board Guidelines & Committee Recommendation dated 17.10.2002. Further, as per the material procurement policy implemented by the Railways as per the MSME Ministry order dated 23.03.2012 and Railway Board notification no. 2010/RS(G) 363/1 dated 05.07.2012, in a tender where a participating MSME quoted a price within the price band of L1 + 15%, it shall be allowed to supply a portion of the requirement by bringing down its price to L1 price in a situation where L1 price is from someone other than an MSME, and such MSMEs can be ordered up to 20% of the total order value. Also, the same item may be reserved for an RDSO-approved vendor.

- iii. The purpose and objective of cartelisation or bid rigging was essentially to hike the price abnormally from the past rate or quote a high price. The Eastern Railway, suspecting this to be a case of cartelisation/bid rigging, approached the Commission for the above three tenders; however, such an exercise ought to have been done by the Tender Committee officers before awarding the tender to the supplier. In any case, the Eastern Railway approached the Commission only for the three tenders and not for any earlier tender or later tenders, while OP-5 had been participating in tenders of Zonal Railways, Public Sector Undertakings and Railway Production units by way of manual submission of bids and also through e-tender (digitally) since the formation of their firm. It is stated that they participated not only during the aforesaid allegation period but also earlier as well as later and was awarded tenders, including those of the Eastern Railway.



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- iv. In the investigation report of the DG, OP-5 did not find any copy of a complaint or vigilance investigation report as stated in the order. OP-5 also failed to find the rates of similar items quoted to other Zonal Railways by RDSO-approved vendors or the unit rate certified by any valuing agency like the Directorate General of Supplies and Disposals ('DGS&D') or any certified valuer, like Cost Accountant firms. Moreover, in case of a digital tender, everyone from everywhere who owns a Class 3 Digital Signature can participate in the tender, and it is not possible to ascertain who will participate. In such circumstances, the question that arises is that, if OP-5 had supposedly formed a cartel, then why was the cartel only for three tenders of the Eastern Railway? OP-5, being an RDSO-approved vendor, could have formed the cartel for all zonal railways and production units so that it could gain more benefits. However, no such allegation was found in the investigation report of the DG.
- v. Further, the tender committee had the right to make a decision. If it suspected cartelisation, the tender committee could have re-tendered or altered the procurement policy; however, no such action had been taken. Moreover, the allegation of cartelisation was not an automatic action; the Railways should have considered the facts and circumstances and issued a notice to vendors before allegation. It was a mere empty formality to suspect a cartel and simply transfer the case to the Commission.
- vi. Further, as per the investigation report of the DG, in a tender, M/s BHEL (Bhopal), a Public Sector Undertaking (Government of India), an RDSO Part-I approved source, had quoted a rate of Rs. 36,365.54, which was 103.72% more than the rate quoted by OP-5.



OP-5 received the PO for the aforesaid Tender No. 20125122 at a rate of Rs. 16,500/-, Tender No. 20131138 at a rate of Rs. 17,000/- and Tender No. 2014116 at a rate Rs. 17,000/-, which was absolutely on the lower side in comparison to others.

- vii. OP-5 had quoted a very competitive and economically sound price for the tender based on the requirement of the Railways and tender criteria such as delivery schedule, quantity, consignee distance, transportation availability, *etc.* In fact, every time before quoting the price, OP-5 ensured having in hand the quantity of its competitor's order, previous rate, last purchase rate of similar item, metal price (exchange rate), *etc.* In case of the aforesaid tenders also, OP-5 quoted on the basis of Last Purchase Rate (LPR), which was less than the rate quoted to other Railways, owing to it being a large quantity. Incidentally, all suppliers quoted the same LPR. The Eastern Railway accordingly awarded orders to suppliers as per the capacity of the vendor to meet their requirement.
- viii. It had never contacted any competitor before the tender nor increased the rate abnormally. It never shared its quoted price with anybody through any mode. With respect to the email allegation, it submitted that when the RDSO has correspondence and any communication with the vendor through email, it is in the form of a single email to all. If "reply all" is clicked erroneously, everybody would gain access to OP-5's submission. Since its employee was newly appointed and inexperienced with the knowledge of email, such things happened but not intentionally.



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- ix. Further, the tender rate tabulation in the investigation report of the DG for the three impugned tenders showed that the Public Sector Undertaking (Government of India) unit quoted 103% more and another RDSO supplier quoted 47.05% more. Generally, cartelisation would occur if approved vendors quoted a higher price than others and if it is such cartel bidding, it would be a loss to the Railways, but in this case, no such cartelisation was feasible.
- x. Finally, since the Commission had ordered investigation, the Railways had stopped procurement, which had affected their unit. Last year, the turnover of OP-5 drastically dropped by 60% and in present year, dropped by 80%. Further, due to the COVID-19 pandemic and the investigation by CCI, their firm had become crippled and were unable to pay salaries to workers and other dues.

OP-6 and its official Mr. Krishnakant Singh:

34. OP-6 in its objections/suggestions to the investigation report of the DG submitted that it had never supplied Axle Bearings as per RDSO Drg. No. RDSO/PE/SK/EMU/0052-2003 and KPA Drg. No. ER-KPAEL-TM.IHE.020C to the Eastern Railway. During the initial stages, *i.e.*, in the FY 2012–13, OP-6 was not registered with RDSO. Thereafter, in the FYs 2013–14 and 2014–15, OP-6 was registered as a Part II Vendor (Trial Vendor) with RDSO. During the three years, *i.e.*, FYs 2012–13, 2013–14 and 2014–15, OP-6 had supplied Axle Bearings of the above drawing numbers to other zones of the Indian Railways.

OP-7 and its official Mr. Sandeep Mehendale:

35. OP-7 in its objections/suggestions to the investigation report of the DG submitted that:



- i. It was a microenterprise engaged in the business of manufacturing bearings, bearing accessories, bushes and bearings hardware, *etc.*, and the COVID-19 pandemic had stretched its resources and made it difficult for it to stay afloat. Further, it had bid for Tender No. 20125122 in 2012 for Axle Bearings as a new supplier entitled to “educational order”, but it did not bid for the subsequent tenders, namely, tender numbers 20131138 and 20141116 in 2013 and 2014, respectively, for Axle Bearings. Regarding the finding of the DG that its conduct was in violation of the Act based on the collected evidences, it was submitted that it differed from the facts and the conclusions drawn in the investigation report of the DG.
- ii. Firstly, with respect to the finding that the bid submitted by OP-7 was a cover bid in tender number 20125122, it submitted that it had bid for the said tender as an educational order and was not expecting bulk purchases by the Eastern Railway. Thus, the bidding was not merely for the sake of participation, but to explore the opportunity for additional work. Further, as the bid prices in the said tender by all new suppliers were above Rs. 20,000/-, the bid price of Rs. 22,050/- submitted by OP-7 as a new supplier cannot be considered a high price as it had apportioned the development costs to the small quantity that may have been placed as an educational order by the Eastern Railway. Hence, for these reasons, the bid by OP-7 cannot be said to be a cover bid but an exploratory bid seeking additional work.
- iii. Secondly, the findings of the DG that (i) OP-1 to OP-8 were members of the cartel for supplying Axle Bearings to Railways, (ii) OP-1 to OP-7 were involved in directly determining the sale price/bid price quoted in the three tenders floated by the Eastern



Railway during 2012 to 2014 for supply of Axle Bearings, and (iii) their conduct amounted to bid rigging/collusive bidding in the said three tenders, required proof that an agreement existed between the OPs, namely OP-1 to OP-7. For this, the DG, in the case of OP-7, had made the finding of agreement based on the emails and CDRs, which were post the date of the tender 20125122. No meeting between the parties had been brought on record by the DG. Thus, there appeared to be no possibility of an agreement that might be inferred at the time of bidding for tender number 20125122 in case of OP-7. Hence, in the absence of an agreement, Sections 3(1) and 3(3) of the Act, were not applicable.

- iv. Further, so far as the goods were concerned, the goods of OP-7 were from an unapproved RDSO supplier bidding for the educational order only. They were neither identical nor similar to the goods offered by OP-1 to OP-5 for bulk purchases from an RDSO-approved supplier, which were priced below Rs. 20,000/-. At best, the goods of OP-7 might have been similar to that of OP-6, but not identical. The goods were produced by two different suppliers in different locations with different expertise and conditions and produced at two different price points. Thus, the goods may be distinguished based on the status of the supplier—approved or unapproved, compliance of quality standard/assurance as laid out by RDSO, the quantum of orders that the supplier was entitled to and the price bid submitted. Hence, Sections 3(1) and 3(3) of the Act were not applicable in the present scenario.
- v. With respect to the findings under Section 3(3)(a) of the Act which reads, “directly or indirectly determines purchase or sale price”, the DG had pointed out the monopsonist market structure in which the



Eastern Railway operated. The monopsony power makes the buyer, in this case the Railways, a price setter, which was evidenced by the following:

- a) The bid prices of above Rs. 20,000/- made by the new suppliers were not considered by the tender committee in finalising the purchase price for the Tender No. 20125122. Even a low price bid of Rs. 17,892.50 by OP-8, a new supplier, with earlier supply history to BHEL, for Tender No. 20141116 in 2014 was not awarded with any order in spite of being L1. OP-7 had bid at Rs. 22,050/- in the said tender and had not bid for other tenders considered in the DG Report.
- b) The estimated value of the Tender No. 20125122 was Rs. 7.35 crores for 4285 pairs of Axle Bearings. This worked out to be Rs. 17,153/- as per the pair of Axle Bearings. The estimated cost of purchase was the “benchmark” for purchase price and not the bid price by the OPs. The estimated cost of purchase was derived from Book Average Rate (BAR).
- c) The Eastern Railway placed their bulk purchases on the RDSO-approved suppliers—Part I suppliers at Rs. 17,160/- per pair of Axle Bearings and Part II suppliers at Rs. 17,056/- per pair of Axle Bearings. No educational orders were placed with unapproved RDSO suppliers.
- d) The Tender Committee, in its comments on the reasonableness of rates for Tender No. 20125122, noted that the last purchase rate was Rs. 17,160/-.

Thus, the Railways, with monopsony power coupled with factors such as strict tender conditions, *etc.*, ensured that bidding prices had no sanctity. This was also evidenced in the 2014 Tender No. 20141116, where all got the order at the negotiated reduced price.



Based on foregoing, it may be concluded that OP-7's bid in 2012 in no way directly or indirectly determined the purchase price of the purchases made by the Eastern Railway *vide* Tender No. 20125122 and did not violate Section 3(3)(a) of the Act in particular.

- vi. The finding of the DG that “it can therefore be concluded on the basis of the evidence on record and the statements of OP-1, OP-2, OP-3, OP-4, OP-5, OP-6, OP-7 and OP-8, that they were members of the cartel for supply of Axle Bearings to Railways. The above mentioned parties (i.e. OP-1 to OP-8) through concerted efforts were allocating or sharing tender quantities in Railway tenders for Axle Bearings, which is a violation of Section 3(3)(b) read with Section 3(1) of the Act.”, should be read under the provision of Section 3(3)(c) instead of Section 3(3)(b) of the Act.
- vii. While arriving at a finding that OP-7 was a member of the cartel, the DG did not delineate a market, as a cartel operates in a market with producers, sellers, distributors, traders or service providers as stakeholders. Further, there was an absence of the evidence of any agreement, as discussed above, among OP-1 to OP-6 and OP-8 at the time of bidding of Tender No. 20125122 with OP-7. Additionally, there was no evidence in the investigation report of the DG regarding price fixing, which occurs when competitors agree on pricing rather than competing against each other.
- viii. Being a new unapproved RDSO supplier, OP-7 was bidding for an educational order and was not a part of a cartel. It did not bid for the other two tenders as considered in the investigation report of the DG. In addition, the Eastern Railway, with its monopsony power



and watertight tendering processes, would make the existence of a cartel a remote possibility, as the very existence of the suppliers depended on the orders of the buyer, namely the Railways, to stay afloat. Hence, it may be concluded that OP-7 was not part of the alleged cartel.

- ix. With respect to the finding under Section 3(3)(c) of the Act, it may be noted that OP-7 was a new supplier eligible for educational orders of 5% of the quantity ordered by the Eastern Railway, *i.e.*, 5% of 4285 pairs of Axle Bearings, which amounts to 214 pairs of Axle Bearings—a quantity that could get divided among other three new suppliers/bidders. The costing for the same was worked out accordingly in the best case scenario of procuring educational orders for hundred pairs of Axle Bearings. However, none of the new suppliers received any orders. As explained earlier, OP-7's bid was not a cover bid. The outcome of the tender, whereby the bulk of the purchases made by the Eastern Railway were allotted equally to the two Part-II RDSO suppliers entitled to 15–25% of the ordered quantity (who got 319 pairs of Axle Bearings order each) while the three Part I RDSO suppliers were awarded an order for 638 pairs of Axle Bearings each, was in accordance with the bulk purchase policy using a watertight tendering process at each stage, ensuring uninterrupted supplies for the Eastern Railway at most competitive purchase price. Thus, OP-7 was neither a part of the alleged cartel nor in any way connected to the alleged conduct of allocating/sharing the market for the Axle Bearings, as it had bid for the educational order only while the order was placed by the Eastern Railway for bulk purchase on RDSO-approved suppliers. Hence, OP-7 had not violated Section 3(3)(c) of the Act and was not a member of a cartel.



- x. As regards the finding of the DG that the conduct of OP-7 was in violation of Section 3(3)(d) read with Section 3(1) of the Act, it may be noted that OP-7 had bid only for Tender No. 20125122 in 2012 for an educational order and did not bid for Tender Nos. 20131138 and 20141116 in 2013 and 2014, respectively.
- xi. In *Rajasthan Cylinders Containers Limited v Union of India, 2018 SCC online SC 1718* (Rajasthan Cylinders case), the Hon'ble Supreme Court laid down that the necessary ingredients of "bid rigging": "(a) Agreement between the parties; (b) These parties are engaged in identical or similar production or trade of goods or provision of services; and (c) The agreement had the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process of bidding."
- xii. In the present case, (a) there was no evidence of an agreement, as discussed earlier, between OP-7 and other OPs; (b) the goods of OP-7, being goods from an unapproved RDSO supplier for an educational order, were not identical or similar to the goods of OP-1 to OP-5. At best, the goods that OP-7 offered at a different price might be similar to OP-8, which was of insignificant consequence here for reasons discussed in respect of goods above; and (c) the DG inferred that the bid by OP-7 in 2012 resulted either in (i) eliminating or reducing competition for bids or (ii) adversely affecting or manipulating the bidding process, but no evidence was laid out in the investigation report of the DG. Such an inference or assumption might have been based on the preponderance of probabilities. However, the same was inadequate for the legal requirements of the above explanation to Section 3(3) of the Act.



Further, in the monopsony situation, with strict watertight tender process and conditions, where even the lower bid was subject to negotiations to determine a lower final rate, as in 2014, precluded any of the above mentioned effects, namely, elimination or reduction of competition for bids, adversely affecting the process of bidding or manipulation of the process of bidding. Hence, OP-7 did not violate Section 3(3)(d) of the Act.

- xiii. Thus, in view of the arguments made above, none of the Sections, *i.e.*, Section 3(1), Section 3(3)(a), Section 3(3)(c) or Section 3(3)(d) of the Act had been violated by OP-7. Moreover, Section 3 requires additional proof of the causation of appreciable adverse effects on competition by any “agreement” under Section 3(3) of the Act, which raised the presumption of such effect and which, in turn, must be rebutted by the OPs. In this regard, the above discussions provide sufficient proof that there was no adverse effect on competition by the bid of OP-7 in 2012. This was because all RDSO-approved suppliers were successfully allocated tenders, the prices ended up being fair, being below the price and the inflation accounted for, and the buyer, the Eastern Railway, was powerful and could not have been negatively impacted by the OPs, particularly due to OP-7 bidding in 2012 for the educational order. Further, there seemed to be no barrier in the process of open tender as there were new suppliers bidding in the market for their share in the educational order segment. Such absence of adverse effect meant that Section 3(3) was not violated.
- xiv. The investigation report of the DG had also identified the officials/officers of OPs who were found to be responsible under Section 48(2) of the Act. As the issue and the related findings in



respect to OP-7 have been addressed and concluded in a negative above, the issue and findings may be considered inapplicable against the officials/officers of OP-7 found responsible under Section 48(2) of the Act as well.

- xv. The submissions of OP-7 may be accepted especially in light of the decision of the Hon'ble Supreme Court of India in the Rajasthan Cylinders case, as the facts of the present case are similar to that case. Further, keeping in view that OP-7 was a microenterprise with a mindset of growth and staying afloat during the difficult times of the COVID-19 pandemic, a lenient view may be taken by the Commission.

OP-8 and its official Mr. Naresh Garg:

36. OP-8 in its objections/suggestions to the investigation report of the DG submitted that:
- i. Most of the conclusions in the investigation report of the DG *qua* OP-8 were highly erroneous and misleading. Though the DG exonerated OP-8 from the allegation of bid rigging/collusive bidding, it was erroneously concluded that it was part of the cartel. It was not clear on what cogent basis such a finding against OP-8 was arrived at. Moreover, there were generalised statements against OP-8 without specifying when and how OP-8 had indulged in anti-competitive practices, if any.
 - ii. The DG had erred in observing that OP-8 was a part of the cartel. Neither had the Informant (Eastern Railway) raised any allegations against OP- 8 in its reference nor did the Commission make any observations against OP-8 as a party at the time of passing the order



under Section 26(1) of the Act. Further, the DG had completely overlooked the fact that the present reference by the Eastern Railway originated/emanated from a complaint made by OP-8 itself to various authorities, including Eastern Railway, in the facts and circumstances, as explained hereinafter.

- iii. OP-8 was a sole proprietorship firm and a small vendor doing business with the Indian Railways since 1973. It manufactured and supplied various items as per the requirements of the Indian Railways. OP-8 neither participated nor was involved in two of the three tenders floated by the Eastern Railway. It participated only in the tender floated in the year 2014 but did not get the order in spite of being L1.
- iv. OP-8, suspecting a case of cartel by OP-1 to OP-5, filed a detailed complaint to the Chief Vigilance Officer, Eastern Railway, about cartelisation in Tender No. 20141116 *vide* letter dated 02.06.2015. OP-8 further made a complaint to the Controller of Stores, Eastern Railway, *vide* letter dated 04.06.2015. On receipt of written confirmation from the Office of the General Manager (Vigilance), Eastern Railway, on 05.06.2015, OP-8 duly responded *vide* letter dated 11.06.2015. Thereafter, OP-8 wrote a reminder letter dated 20.06.2015 to the General Manager (Vigilance), Eastern Railway. Since no action was being taken on the aforesaid complaints, OP-8 escalated the complaint to the Executive Director, Vigilance (Stores), Indian Railways, Rail Bhawan, New Delhi, *vide* letter dated 20.06.2015, and a detailed complaint dated 21.06.2015 to the Chief Vigilance Commissioner, Office of Central Vigilance Commission (CVC), Satarkata Bhawan, New Delhi. Further, OP-8 wrote about the aforesaid cartel formation to the Hon'ble



Chairman, Parliamentary Committee on Railways, New Delhi, and received a response letter dated 13–14.06.2015. On being asked, OP-8 sent a confirmation letter dated 21–22.07.2015 to the CVC. On 17.08.2015, OP-8 received a letter from the CVC intimating that the complaint dated 21.06.2015 made by it had been registered and forwarded to Mr. Sunil Kumar, Adviser (Vigilance), Railway Board, Rail Bhawan, New Delhi, for the investigation and submission of a report within 12 weeks from the date of receipt of CVC's reference. It was further intimated that the CVC would be obtaining a report from the Department in due course. OP-8 also received a letter dated 03.12.2015 from the Office of the Controller of Stores, Eastern Railway.

- v. OP-8 submitted that it was OP-8 who, in spite of being L1 in the tender floated by the Eastern Railway in 2014, couldn't get an order on account of cartel formation by OP-1 to OP-5. Hence, being aggrieved by the aforesaid cartelisation of OP-1 to OP-5, OP-8 had filed a complaint before different government authorities and, as a result of the consistent efforts of OP-8, the present reference was filed before the Commission. Thus, it was completely fallacious on the part of the DG to conclude that OP-8 was a part of the cartel. It was beyond comprehension to assume that a cartel member would make so many detailed complaints to different government authorities to investigate the cartel. Had OP-8 been part of the cartel, it would have not made these complaints to different government authorities.
- vi. OP-8 submitted that the above detailed facts regarding initiation of the present case of cartelisation were not appropriately dealt with by the DG in the investigation report, and the investigation report



moved on the premise that the case emanated from the Eastern Railway. A perusal of the investigation report did not indicate whether the DG had indeed enquired from the Eastern Railway as to who made the complaint about the aforesaid cartelisation in the first place. Clearly, it was OP-8 who acted as a whistleblower to unearth the aforesaid cartel. Hence, it was completely erroneous to conclude that OP-8 was a member of the cartel.

- vii. Even otherwise, there was no reason for the aforesaid cartel members, *i.e.*, OP-1 to OP-5, who were all RDSO-approved, to collude with OP-8, who was admittedly not RDSO-approved and therefore, constituted separate class.
- viii. Further, neither the Informant (Eastern Railway) nor the DG were able to establish/demonstrate, even remotely, as far as OP-8 was concerned, that there was any meeting of minds or a conscious or congruous act or conspiracy to gather undue market power or intent to fix prices/limit output/share market between various unconnected and competing enterprises.
- ix. The DG had relied on various emails which were written and exchanged between the OPs. A careful perusal of those emails would show that OP-8 had always been a recipient of emails being exchanged by the OPs. The only email which had allegedly originated from OP-8 was an email dated 14.08.2017, which contained information already in the public domain and which any person/individual could have collected from the Indian Railways using the Right to Information Act, 2005. Moreover, the said email did not have any information/reference to the three aforesaid tenders of the years 2012, 2013 and 2014.



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- x. OP-8 submitted that if the prices were not getting jointly fixed, the output was not getting jointly controlled, the market was not being consciously shared or a bid was not being rigged through the practice, then OP-8, who had been a complainant throughout before different authorities, could not be said to be a member of the cartel. Hence, Section 3(3) of the Act read with Section 3(1) of the Act was not attracted so far as OP-8 was concerned and OP-8 disagreed with the aforesaid erroneous finding of the DG.
- xi. OP-8 submitted that, in view of the above facts, it was clear that, in the present case, neither the Informant nor the DG had adduced any evidence which could even remotely suggest any collusion or action in concert on the part of the OP -8. Thus, OP-8 was not at all part of cartel, as alleged in the investigation report of the DG. *Per contra*, it was OP-8 who had brought the anti-competitive practices committed by other OPs to the notice/knowledge of various government authorities, which culminated in the present case before the Commission. Hence, by no stretch of imagination can it be concluded that OP- 8 was a part of the cartel.

Analysis:

37. The Commission has carefully perused the reference filed by the Eastern Railway, the investigation report and evidences in support thereof submitted by the DG, the submissions made by the OPs and the other material available on record and has also heard in detail the arguments put forth by the parties during oral hearings.
38. At the outset, the Commission observes that the findings in the investigation report are based on three types of evidence, namely, emails, CDRs and statements of OPs recorded during the investigation. The



emails and CDRs obtained by the DG from the email service providers and mobile telephone service providers were used to confront the OPs while recording their statements, and based on the evidence adduced, it was concluded in the investigation report that the parties had contravened the provisions of Section 3 of the Act.

39. For examining the complicity and role of the Opposite Parties, it would be apposite to analyse the same party-wise. Accordingly, a *seriatim* analysis of the evidence *qua* each party alongwith findings of the Commission thereon is noted below:

M/s Chandra Brothers (OP-1) and M/s Chandra Udyog (OP-2)

40. The Commission notes that the late Mr. Sushanta Chandra was the person responsible for the conduct of business of both OP-1 and OP-2, till his death on 30.06.2020, as sole proprietor/partner (roles that are now discharged by his son Mr. Kaustav Chandra) and deposed as such for both firms during the investigation by the DG. Further, both OP-1 and OP-2 submitted common objections/suggestions to the investigation report of the DG and were represented by common counsel during the hearing before the Commission. Thus, in this backdrop, the Commission finds it appropriate to record common analysis and findings for OP-1 and OP-2.
41. It is noted that the late Mr. Sushanta Chandra, during his deposition before the DG, submitted that he was the sole proprietor of OP-1 and a partner in OP-2, holding 75% stake, along with his wife, who held the remaining 25%. He submitted that, whereas OP-2 had been supplying Axle Bearings to the Railways since mid-nineties, OP-1 had only been doing so since 2010. He also stated that, up till March 2016, the bids for OP-1 in the Railway tenders were uploaded using his digital signature, whereas for OP-2, the digital signatures of Mr. Subrata Chandra were used. He



submitted that both his companies had separate employees, separate bank accounts, separate manufacturing facilities and separate offices.

42. When the DG confronted him with evidence of cartelisation and bid rigging in the Railway tenders, he denied having any knowledge of cartel in supply of the Axle Bearings to the Eastern Railway. Several of his replies were found to be evasive as well as self-contradictory. For instance, on the one hand, he admitted that “he was aware about the bid prices of both the companies, which was not fair”, but on the other, he stated that he was unaware as to how the bid prices of OPs (including OP-1 and OP-2) in the Eastern Railway Tender No. 20131138 and Tender No. 20141116 were same. When further questioned on the submission of the same quotes by OPs, he submitted that he had quoted the Last Purchase Rate (**LPR**), *i.e.*, Rs. 17,850/-, in Tender No. 20131138 of the Eastern Railway and was not aware as to how other OPs had quoted the same rate; however, when informed that his statement was factually incorrect, since the LPR was Rs. 17,160/- for the Eastern Railway, he admitted the same.
43. During the course of recording his statement, the DG showed the late Mr. Sushanta Chandra several emails sent to him by his competitors that contained the allocation details of Axle Bearings in various Railway tenders, including the said Eastern Railway tenders. However, the DG observed that he stonewalled every question relating to emails sent by his competitors. He admitted that the said emails were received by him; however, he refused to provide any explanation for the contents of such emails and also did not provide any reasons as to why the said emails were sent to him by his competitors. He submitted that he had not seen the emails and was unaware of their contents. When the DG gave him an opportunity to open his email, he refused. He could not submit any explanation as to why emails containing details of tenders of Axle



Bearings, order quantities, sharing details, *etc.*, with request to update quantities, were sent to him by his competitors. His only reply was “I do not know”.

44. He submitted to the DG that he never asked the sender of the emails to stop sending him such mails as he was busy diversifying his business and did not find these emails to be of any importance. However, how he could consider an email to be unimportant without viewing it and knowing its contents is inexplicable. Further, he admitted in his statement that he was aware that cartelisation and bid rigging/collusive bidding was illegal as per the Act; even so, he was not alarmed by emails from his competitors with subjects mentioning shared quantity, quantities of bearings, statement of EMU bearing tenders, *etc.*, so as to ask them to refrain from sharing such emails.
45. In reply to a query by the DG regarding the submission of a 26% higher bid rate in the Southern Railway tender compared to that of the Central Railway tender within a span of only two days, he submitted that he was not interested in the Southern Railway tender; however, he had to bid due to a written policy of the Indian Railways/RDSO which prescribed that every approved vendor had to bid for each and every tender whether he is interested or not. When directed to provide a copy of such a policy by the DG, he assured that he would provide the same, but no such written policy/circular was furnished. However, the Eastern Railway *vide* their letter dated 12.08.2020 confirmed to the DG that “*Railways had no such policy in which every approved vendor has to bid for each and every tender*”. Given these facts, it appears that the Southern Railway bid of OP-2 could have been a cover bid.



46. Further, the late Mr. Sushanta Chandra initially denied having any interaction through phone, email, *etc.*, with any employee/partner of any other firm participating in railway tenders before or after quoting a bid; however, when the DG confronted him with CDRs of his mobile number showing regular and frequent communication through phone/mobile, (both voice calls and text messages) with other OPs, including various calls during the period of the said three Eastern Railway Tender Nos. 20125122, 20131138 and 20141116, *i.e.*, August 2012 to August 2014, he admitted to be in touch with his competitors and apologised for being untruthful earlier. However, he submitted that the discussions on phone/SMS were regarding market-related information such as price of the metal and demands by the Railways, seeking help in Hyderabad or Kolkata, *etc.*, and not to discuss railway bid/tender-related information. Such reasons do not seem plausible, particularly when tenders were under process. Apart from these, the DG noted several other instances of apparent contradictions, untruthful submissions and an attempt to hide facts by the late Mr. Sushanta Chandra.
47. Upon considering the deposition of the late Mr. Sushanta Chandra as above, the Commission finds that the contrary, evasive and ambiguous replies provided by him to the DG indicate an attempt on his part to hide the involvement of OP-1 and OP-2 in the cartel, whereas the other partner of OP-2, Mr. Subrata Chandra, in his statement, has accepted that the cartel had existed in the supply of Axle Bearings to the Railways and OP-1 and OP-2 were part of the same.
48. On behalf of OP-2, Mr. Subrata Chandra, being the partner of OP-2 during the period of contravention, deposed during investigation and submitted that he had retired from the said firm on 31.03.2016. He submitted that, prior to his retirement, he was holding 50% shares in the said firm. The



remaining 50% stake was held by his cousin Mr. Sushanta Chandra. Mr. Subrata submitted that he, along with his partner, were responsible for finalising the bid prices to be quoted in the Railway tenders for Axle Bearings and that they used to discuss the rates to be quoted in the tenders for Axle Bearings with other competitors on phones and through personal meetings.

49. During deposition before the DG, Mr. Subrata accepted that a cartel had existed in the supply of Axle Bearings to the Railways and that the OPs were members of a cartel for the Axle Bearings, which was supplied to the Railways. When probed as to how the rates quoted by all the bidders were exactly the same in the three Eastern Railway tenders, he stated that price was same because it was mutually decided by the cartel members through telephonic conversation. Further, he submitted that the price was usually decided mutually by all the bidders keeping in view the previous rate on which the Railways awarded the tender.
50. When questioned as to why details of Railway tenders, including quantities of Axle Bearings received by various approved suppliers of the said part, *i.e.*, Axle Bearings for EMU traction motor, were so meticulously maintained and circulated to various approved firms/competitors, he submitted that this was done so that the share amongst the competitors could be decided and shared equally by mutual consent so that everybody would get the share proportionately.
51. On being confronted with an email dated 01.01.2015 containing an email attachment that mentioned “shared quantity” in the subject, Mr. Subrata explained that the attachment and “shared quantity” pertains to the sharing of quantity of Axle Bearings by the competitors/group members in different Railway zones. Further, Mr. Subrata stated that a cartel member



who received less quantity of Axle Bearings was compensated by other cartel members in the forthcoming tenders so that it could get its due share.

52. With respect to an email dated 31.08.2015 sent by OP-6 to his partner, the late Mr. Sushanta Chandra, he submitted that the said email pertained to information regarding the forthcoming Axle Bearings tenders of different Railway zones. The email was shared so that timely discussions could be held amongst all the cartel members regarding the price to be quoted mutually in these tenders.
53. Thus, from the aforesaid evidences collected by the DG against OP-1 and OP-2 in the form of statements of its officials, namely, the late Mr. Sushanta Chandra and Mr. Subrata Chandra, email and CDRs, the Commission is of the considered opinion that OP-1 and OP-2 were part of the cartel arrangement amongst the OPs. The evidence adduced by the DG, including the email evidence, CDRs and the statement of Mr. Subrata Chandra, confirms that OP-1 and OP-2 were active members of the cartel for the supply of Axle Bearings to Indian Railways and were also involved in bid rigging or collusive bidding along with other cartel members in the three Eastern Railway tenders referred by Informant namely, Tender Nos. 20125122, 20131138 and 20141116.
54. OP-1 and OP-2, in their objections/suggestions to the investigation report of the DG and during hearing, have contended that evidence against them in the investigation report of the DG, *i.e.*, the emails, CDRs and statement of Mr. Subrata Chandra, should not be considered reliable evidence for the reason that the emails and CDRs do not correspond to the period of the three tenders under investigation and such emails were ignored by the late Mr. Sushanta Chandra when he received them as he did not place



importance on them, and Mr. Subrata Chandra's statement was merely an attempt to malign OP-1 and OP-2 on account of personal grudge.

55. Having noted the submissions, the Commission is of the considered opinion that the e-mails pieced together by the DG which range from 2013 to 2017, clearly indicate that the OPs were maintaining, updating and sharing the quantities allocated to them in various tenders floated by Indian Railways. Firstly, exchange of such commercial information by competitors amongst themselves is clearly beyond the legitimate domain of interactions amongst the bidders who are otherwise competing with each other to secure tenders. Furthermore, it has come in evidence that the purpose of maintaining such records was to ensure that shortfalls in respect of any bidders/ manufacturers can be compensated in the forthcoming tenders by other parties by quoting high price bids than the agreed price or not bidding at all. This is clearly borne out from the testimony of Shri B. N. Palit, Chief Executive of OP-3 and for the sake of felicity of reference the same is excerpted below:

Q. 27. What are these records as mentioned in the attachment to the aforesaid mail pertaining to?

A. 27. These records as shown in Exhibit-2 pertains to various railway tenders for Axle Bearing for EMU/ DEMU and the quantities allotted to various bidders during those tenders. The purpose of maintaining such records is to ensure so that forthcoming tenders short fall in respect of any bidders/ manufacturers can be compensated by other parties by quoting high price bids than the agreed price or not bidding at all.



56. Furthermore, when confronted with these emails, the late Mr. Sushanta Chandra could not categorically refute them and submitted contradictory and evasive replies. Similarly, when confronted with CDRs during his deposition, he accepted that there were calls amongst him and certain OPs, including during the period of the three Eastern Railway tenders, even though he stated that such calls did not pertain to conversations regarding the impugned tenders. Be that as it may, the conversations amongst bidders during the currency of tenders raises strong suspicion of collusion and coupled with other evidence, it is safe to assume that the purpose of such interactions could not have been innocuous.
57. Lastly, the Commission finds that OP-1 and OP-2 have made a plea for disregarding the statement made on oath by Mr. Subrata Chandra frivolously, without providing any reason. Considering that during the period of contravention, Mr. Subrata Chandra was a partner of the firm and a key person responsible for finalising the price/bids and that, upto March 2016, bids in Railway tenders for OP-2 were uploaded using his digital signature as stated by the late Mr. Sushanta Chandra, the Commission finds no reason to disregard his statement merely on a bald surmise of a personal grudge put forth by OP-1 and OP-2. Thus, for the foregoing reasons, the Commission does not find merit in any of these contentions of OP-1 and OP-2.

M/s Sriguru Melters & Engineers (OP-3):

58. The Commission observes that the available evidence and the admission of Mr. B.N. Palit, Chief Executive of M/s Sriguru Melters & Engineers (OP-3), clearly show that OP-3 was actively involved in the cartel for the supply of Axle Bearings to the Indian Railways.



59. In his statement before the DG, Mr. Palit admitted that there existed a cartel amongst the Axle Bearing suppliers which, through collusive bidding/bid rigging in Railway tenders, shared the quantities of Axle Bearings to be supplied to the Railways. He also admitted that the details of order quantities of Axle Bearings received by Axle Bearing manufacturers in various tenders floated by Railways were being maintained and that emails having such details were shared amongst suppliers to ensure that an accurate account of the order quantities of Axle Bearings received by Axle Bearing suppliers in various Railway tenders could be arrived at so that any shortfall with respect to quantities received by any firm/supplier with respect to agreed-upon quantities could be compensated in future tenders.
60. The DG found that the compensation mechanism revealed by OP-3 in his statement was confirmed upon perusal of the attachment to email dated 31.12.2014, which was sent by OP-3 to M/s Janardan Engineering Industries (OP-6). In this e-mail, OP-3 had informed OP-6 that he had not bid in the tenders of Axle Bearings floated by the Central Railway and Western Railway for last three years. Also, the data provided to the DG by the Central and Western Railway Zones regarding their tenders of Axle Bearings showed that OP-3, along with OP-1, OP-2, OP-4 and OP-5, had either abstained or submitted high price bids in their tenders to support OP-6. As a result, OP-6 was the L1 firm in all three Central Railway and Western Railway tenders for which it had submitted its bids.
61. Responding to a query raised by the DG regarding an email received by OP-3 from OP-6 dated 21.08.2017 on the subject “quantities of bearing” along with attachment named “High_Lead_Bearing_Qnty_19.08.2017_.xlsx” and “Revised_Quantities_of_Bearing_after_SGM_confirmation.docx” with a copy to OP-2, OP-4 and OP-5, Mr. Palit explained the formula for sharing



of Axle Bearing orders. He submitted that the phrase “Total quantities Janardan Engg Ind should have received when part I approved source = $2731/7=390$ ” means that “the entire ordered quantity of 2731 pairs of Axle Bearing are to be divided among the seven parties mentioned in the attachment to the said mail...” It was noted that the seven parties mentioned in the attachment were the OPs herein.

62. Mr. Palit further confirmed the existence of cartel when confronted with an email sent from OP-3 to OP-6 on 21.08.17 on the subject “quantities of bearing” as follows:

Q. 19. What did you mean by “C.RLY,W.RLY AS WE ARE NOT QUOTING TDK BEARING AND EMU BEARING WE ARE NOT AGREED TO SINDICATE THIS TENSER” as mentioned in the aforesaid email dated 21.08.17?

A. 19. It means that we are not going to agree to jointly bid along with other manufacturer/bidders in the forthcoming Western Railway tender for Axle Bearings.

Q. 20. What is the “syndicate” referred in the said email dated 21.08.2017?

A. 20. Syndicate means bidding in agreement with other parties in terms of price bids and sharing of tender quantities by bidding higher price bids than agreed price or not bidding at all in the tenders issued by various Railway zones.



63. Further, in reply to another question of the DG, Mr. Palit explained that the rationale for sharing of Axle bearing quantities was “so that all the manufacturers can have few orders to make their business economically viable.”
64. The DG also showed Mr. Palit the record of his telephonic calls and text messages exchanged with other OPs, to which Mr. Palit replied that he had discussed and exchanged information such as prices to be quoted in various Railway tenders, including those to be quoted in the three Eastern Railway tenders. He admitted that he was in regular communication with other competitors through telephone calls and SMS during the period mentioned in the CDRs, including when the three tenders referred by Eastern Railway were under process. He further admitted that, during said telephonic calls, they discussed and finalised bid prices to be quoted in Railway tenders for Axle Bearing, including those of the concerned Eastern Railway tenders.
65. Thus, the Commission observes that the statement of Mr. B.N. Palit, along with the other evidence available on record, establishes that OP-3 was involved in the cartel for the supply of Axle Bearing to the Indian Railways and colluded with the other OPs to rig the bids in the three tenders of Eastern Railway, namely Tender Nos. 20125122, 20131138 and 20141116 opened on 12.10.2012, 01.11.2013 and 17.10.2014, respectively.
66. The Commission further notes that OP-3 in its objections/suggestions to the investigation report of the DG has *inter alia* prayed for the grant of benefit under LP Regulations despite the fact that its priority status was forfeited for not submitting information in compliance with the provisions of LP Regulations. It is argued that the benefit ought to be granted to OP-



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3 as it failed to fulfil the conditions of the LP Regulations on account of a *bona fide* omission and that the Commission may overlook the procedural deficiency and grant OP-3 full benefit of the lesser penalty provisions.

67. The Commission finds that such argument is entirely misplaced and cannot be accepted. Firstly, OP-3 has itself submitted that it was aware that its status had been forfeited by the Commission; however, it did not approach the Commission at the appropriate time and instead, preferred to bring up the issue at this delayed stage. It is also pertinent that, once the priority status granted under the LP Regulations is forfeited, it becomes null and void. If a party whose priority status is forfeited is still desirous of availing the benefit of LP regulations, it is required to submit a new application. Even then, its priority status would not be restored. It would only get a place in the queue which is available at the time of a new application. In any case, according to the first proviso to Section 46 of the Act, such an application cannot be made once the investigation report is submitted by the DG. Further, the plea of *bona fide* omission made by OP-3 cannot be accepted when a clear position is already laid down in the Act and Regulations. Such contentions, if accepted, would have wide-ranging ramifications and would make the provisions of the Act as well as LP regulations meaningless. Thus, OP-3 cannot be granted benefit under Section 46 of the Act read with the provisions of LP regulations at this stage. However, the admission of cartel and cooperation extended by OP-3 during investigation can be considered as mitigating factors while imposing penalty.

68. Another issue that has been raised by OP-3 is that telephone service providers had not supported the CDRs with a 65B Certificate for the reasons mentioned therein. In this regard, suffice to note that Mr. Palit admitted before the DG that he was in regular communication with other



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competitors through telephone calls and SMS during the period mentioned in the CDRs, including when the three tenders referred by Eastern Railway were under process. Thus, in the backdrop of such admission and admitted position, the issue of 65B Certificate loses its salience. Further, it is pertinent that such CDRs are not the sole basis upon which contravention is established against the OPs, a fact that OP-3 also accepts. Apart from CDRs, there are other evidence which establish the contravention of the provisions of the Act by OP-3, such as emails exchanged among the OPs and the statement of Mr. B.N. Palit of OP-3 admitting the contravention and statements of certain other OPs corroborating Mr. Palit's statement. Thus, on an overall assessment of the entire gamut of evidence, the Commission finds that the contravention by OP-3 stands proved.

M/s Rama Engineering Works (OP-4):

69. During deposition before the DG, Mr. Vallabhaneni Chakrapani was confronted with evidence which indicated cartelisation and bid rigging; however, he only submitted replies like, "I don't know/I am not aware/I have no understanding", which indicate that he was trying to evade or intentionally suppress information. Moreover, he also made several contradictory submissions.
70. For instance, with respect to the same quote of OP-4 as that of other Part II firms in the Eastern Railway Tender No 20125122 with opening date 12.10.2012, Mr. Chakrapani submitted that the price matched because Rs. 17,056/- was the LPR made by the Railways (any zone). However, when questioned about how the original bid of OP-4 in the Tender No. 20125122 for Rs. 17,160/- was exactly the same as that of other Part I bidders, while the revised bid of Rs. 17,056/- submitted by OP-4 in the same tender was exactly the same as the bids submitted by the other Part II firm, he stated that he did not remember.



71. Further, when questioned as to why he quoted an 85% higher price within a year in the South East Railway Tender No. 31131406A with opening date 08.10.2013, Mr. Chakrapani stated that he had quoted a high price as he did not want to have the order from South Eastern Railway (SER) because he had limited production capacity and would not have been able to fulfil the order quantity required by SER in the said tender, and his only objective was to know the rates quoted by other firms in the said tender. It is, however, instructing to note that within one month of submission of the aforesaid bid, on 01.11.2013, Mr. Chakrapani submitted a bid of Rs. 17,850/- in the Eastern Railway tender No. 20131138 opening date on 01.11.2013, where the tender quantity on offer was 2852 units, which was much higher than the quantity of the SER tender. Therefore, the Commission finds that such a sequence of events indicate that OP-4 submitted a cover bid in SER Tender No. 31131406A, as per arrangement/agreement among cartel members.
72. The DG also raised a query regarding an email dated 21.07.2017 on Axle Bearing tenders with allocation details sent by Mr. Krishnakant Singh of OP-6, to which Mr. Chakrapani replied that he had not seen the said email, as emails that landed in his mailbox may have been overlooked. However, when shown the email dated 22.07.2017, which was sent by him to Mr. Krishnakant Singh, he admitted that the said email was sent by him in response to the email of Mr. Krishnakant Singh. When probed about the contents of said email on Axle Bearings tenders sent by Mr. Krishnakant Singh, along with a message "Please confirm your's quantities" Mr. Chakrapani replied "I don't know". These statements of OP-4 are contradictory, as earlier, he denied having seen the said email; however, when later shown his reply email, he immediately accepted having received the said email sent by his competitor Mr. Krishnakant Singh, and when asked about the contents, he again feigned ignorance. This shows



the intention on the part of Mr. Chakrapani to hide the facts during his deposition before the DG.

73. Further, in reply to a number of subsequent questions regarding emails on Axle Bearing tenders sent by his competitors, Mr. Chakrapani replied “I do not know” or “I have no idea”, explaining that this was so because he did not open the emails and hence, he was unaware of the contents of these emails. Apart from this, there were also many inconsistencies in his submissions as brought out in ensuing paras, which indicate his attempt to suppress the truth.
74. It is observed that when Mr. Chakrapani was questioned regarding an email sent by OP-3 to OP-6 on 18.08.2017 with a copy to OP-4 among others, he simply said that “I have not received the email in my inbox.” When questioned as to how he could say with confidence that he did not receive the said email in his mailbox, he claimed he said that because he did not remember. Further, when he was provided an opportunity to open his email to confirm his submission, he refused to do so, claiming that the password of his email was with one of his staff members and he did not have this staff’s mobile number.
75. Initially, during the deposition, Mr. Chakrapani denied having any interactions through phone or email, *etc.* with any of partner/employees of other firms participating in Railway tenders before or after quoting a bid; however, when he was confronted with the CDRs of his mobile phone number, according to which he was in regular touch with his competitors/OPs during the period of bidding for the Tender Nos. 20125122, 20131138, 20141116 of Eastern Railway for supply of Axle Bearings, he accepted that he was in regular communication with his competitors whenever he supplied material to Eastern Railway, Kolkata, to discuss providing local assistance as they had local manpower. Further,



when questioned about the contents of SMSs sent by him to his competitor, he stated that he “does not know”. However, he later submitted that the SMSs sent by him to his competitors contained dispatch details of previous orders sent to Kachrapara in the Eastern Railway Zone, as they were locals.

76. Such inconsistent responses indicate an attempt on the part of Mr. Chakrapani to suppress the truth, and his explanations cannot be relied upon, considering that there was regular and frequent communication with competitors/OPs during the period of the three Eastern Railway tenders under investigation, for which the only probable reason could be the discussion and sharing of information regarding price bids mutually agreed upon for the said Eastern Railway tenders.
77. In addition, the fact that the OP-4, despite having manufacturing units in different locations, different manufacturing costs, overhead costs, transportation costs and profit margins, quoted exactly same price as OP-1 in Tender No. 20125122 and the same price as other Part I suppliers/OPs in the other two tenders of Eastern Railway, *i.e.*, Tender No. 20131138 and Tender No. 20141116, appears to be highly unlikely and unfeasible, except if the parties have rigged bids in the said tenders through cartelisation.
78. The Commission thus finds that the contradictory and evasive responses submitted by Mr. Chakrapani during his deposition lead to the apparent conclusion that there was an attempt on his part to hide facts. From the email evidence, it is obvious that Mr. Chakrapani, had received and sent emails related to Axle Bearing allocations in Railway tenders from/to competitors. The emails received and sent by him clearly show that cartel members, through concerted efforts, were diligently maintaining,



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updating and sharing the allocation details of Axle Bearing quantities received by each member in various Railway tenders, including the said Eastern Railway tenders in which OP-4 had submitted its bids. From the contents of the emails, it is clear that the only plausible reason for the exchange of such emails amongst OPs could be that, as per an arrangement/understanding/agreement amongst them, they were sharing quantities of Axle Bearings in Railway tender as well as deciding allocations in respect to each party/member in future Railway tenders.

79. Thus, on an analysis of the evidence available on record as well as the statements of Mr. V. Chakrapani, the Commission observes that OP-4 was actively involved in the cartel for the supply of Axle Bearings to the Railways and bid rigging the Eastern Railway Tender No. 20125122, 20131138 and 20141116 for supply of Axle Bearings in collusion with other cartel members/ OPs.

M/s Krishna Engineering Works (OP-5) and Mr. Vallabhaneni Venkata Ram:

80. Mr. Vallabhaneni Venkata Ram, Partner of OP-5, when confronted with evidence of cartelisation and bid rigging during his deposition, gave one-line evasive replies like, “I don’t know/I am not aware/I have no understanding”. He denied having any interaction with any of the partners/employees of the other firms that had submitted their bids in the said tenders under investigation before or after quoting bids.
81. During his deposition, the DG confronted him with various emails sent from as well as received in the email account of OP-5 showing quantity allocation amongst suppliers with respect to railway tenders pertaining to the product under consideration; however, he refrained from answering any questions regarding the emails or contents thereof by denying



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knowledge. He admitted that emails were sent from his email ID to his competitor M/s Janardan Engineering Industries (OP-6); however, he replied “I do not know” as to why such emails were sent and why information regarding allocation of Axle Bearings was being maintained. For instance, when he was shown emails dated 13.11.2013 and 02.01.2015 sent from his email id to OP-6 and requested to explain the contents of the said email, he submitted that “This mail has been sent from my email; however, I am not aware how and who sent this mail to my competitor and I am not aware and I do not know why this was sent”.

82. Further, he also gave evasive replies with respect to his own phone number, stating that the said number did not belong to him. When shown the call records of his telephone number from which calls were made to Mr. Krishnakant Singh of M/s Janardan Engineering Industries, Mr. Sushanta Chandra of M/s Chandra Brothers/M/s Chandra Udyog, Mr. V. Chakrapani of M/s Rama Engineering Works and Mr. Naresh Garg of M/s Jai Bharat Industries, he submitted “I do not know anything about the above telephone calls. I am not talking to the above mentioned parties or persons”.
83. Further, when Mr. Venkata Ram was shown the call records of his phone number for confirmation, he stated that the said number belongs to Mr. V. Srinivas Rao, who was his cousin brother and also husband of his Partner Ms. V. Rama Devi and did not belong to M/s Krishna Engineering Works. However, on being shown the Techno Commercial Tabulation for Tender No. 20131138 prepared by the Eastern Railway, wherein, against M/s Krishna Engineering Works, the said number as well as his name were listed, he again submitted “I do not know”, and that he had not given the above number to Eastern Railway. Such submissions of Mr. Venkata Ram are clearly contradictory and evasive as, on the one hand, he submitted



that he was the final deciding authority for bidding in tenders, and on the other hand, replied that he was not aware as to who submitted his number to the Eastern Railway in Tender No. 20131138.

84. He was also questioned about the similarities in reply to the notice of RDSO submitted by his firm as well as those submitted by M/s Chandra Udyog (OP-2) and M/s Chandra Brothers (OP-1). However, he again submitted “I don’t know”.
85. Upon going through the statement of Mr. Venkata Ram, it is apparent that he submitted evasive replies with an attempt to suppress information, which indicates his awareness of and involvement in the cartel. Moreover, Mr. B.N. Palit of OP-3, Mr. Krishankant Singh of OP-6 and Mr. Subrata Chandra of OP-2 have admitted to the cartel and participation of OP-5 in the cartel. Apart from this, other evidence pointed out by the DG, such as quotation of same price as that of other Part-I suppliers/OPs in the three Eastern Railway tenders in three different years despite having manufacturing unit at different location and having different manufacturing cost, overhead costs, transport cost and profit, shows the involvement of OP-5 in cartelisation and bid rigging of the tenders.
86. Further, there appears to be no other plausible explanation for diligently maintaining, updating and sharing the allocation details of Axle Bearings quantities received in various Railway tenders, including the said Eastern Railway tenders for which OP-5 had submitted its bids through emails or for regular and frequent communication through phone/mobile (both voice calls and text messages), especially during the period when the said three Eastern Railway tenders under investigation were floated and open for bidding, except that Mr. Venkata Ram and other OPs/cartel members



were discussing and deciding price bids and allocations for the said Eastern Railway tenders.

87. Thus, on an analysis of the evidence available on record, including the statements of Mr. Vallabhaneni Venkata Ram, the Commission concludes that OP-5 was actively involved in the cartel for the supply of Axle Bearings to the Indian Railways and, along with other cartel members, rigged bids in Eastern Railway Tender No. 20125122, 20131138 and 20141116.

M/s Janardan Engineering Industries (OP-6) and Mr. Krishnakant Singh:

88. The DG has recorded the statement of Mr. Krishnakant Singh, Partner M/s Janardan Engineering Industries, which was one of the bidders in the said tenders under investigation, based on CDRs/SMS and the emails which showed that Mr. Krishnakant Singh was in regular communication with other OPs/bidders through emails and calls/SMS and was actively involved in maintaining and updating the records pertaining to Axle Bearing quantity received by various OPs/bidders in the tenders floated by different Railway zones.
89. Initially, during his deposition, Mr. Krishnakant Singh denied either having any knowledge of a cartel or his involvement in such a cartel. The reason cited by him for quoting high bid prices in Eastern Railway Tenders No 20125122, 20131138 and 20141116 was that he did not want to win the said tenders due to insufficient manufacturing capacity, language problem, confining his business to the Central Zone, *etc.*
90. However, when the DG confronted him with emails between him and other parties, of which a number of emails were initiated by him, he confessed that the emails were circulated by him to other OPs/ bidders and



that he had also received emails from his competitors. Further, when he was shown the details of his telephonic calls and text messages exchanged with other OPs/ bidders, he admitted that he was in regular communication with them through phone calls and SMS to decide bid rates as well as pre-decide parties/bidders that would win Railway tenders for Axle Bearings.

91. Mr. Singh confessed during his deposition before the DG that there was an agreement among the parties/firms supplying Axle Bearings to the Railways to share quantities of Axle Bearings offered in Railway tenders amongst them and that records of quantities of Axle Bearings were being maintained and updated so that each party/firm could confirm its quantity of Axle Bearings received in previous railway tenders and it could be evaluated as to which party or firm got more or less number of Axle bearings which, in turn, would help decide which firm needed to be assisted in winning future Railway tenders.
92. Mr. Krishnakant Singh further confessed that an agreement existed among the cartel members to share Axle Bearing quantities and pre-decide winners through bid rigging in the three tenders under investigation and that the agreement for sharing Axle Bearing quantities involved a formula, whereby a Part II supplier's share was 15% of the total order quantities while as a Part-I, RDSO-approved supplier, each firm was entitled to equal share.
93. Mr. Singh submitted that it was decided that certain cartel members/parties would bid at exactly the same prices, while at the same time, cover bids would be submitted by other members/parties and that his role was to submit cover bids, *in lieu* of which, their firms will be supported by other cartel members in future tenders for Axle Bearings.



94. Further, Mr. Krishnakant Singh stated that the said cartel decided in advance the bids to be quoted/submitted in the Railway tenders of Axle Bearings, and the same was informed to each member by telephone or/and through SMS. He also submitted that price bids to be quoted in the said three tenders were also decided by all cartel members and communicated through telephone call or by SMS.
95. OP-6 submitted a breakup of bid price of the Axle Bearing to the DG for the bids submitted in the three Eastern railway tenders. The data provided showed that there was no correlation between the price breakup provided and the bid submitted by OP-6 in the above tenders. Thus, clearly, the bid was submitted in the said tenders after discussion among cartel members as a cover bid—a fact that was admitted by Mr. Singh.
96. Further, when confronted with an email dated 21.08.2017 received by him from OP-3, wherein reference was made to “syndicate”, Mr. Singh admitted that “syndicate” means bidding in agreement with other parties with the common objective of sharing tender quantities of Axle Bearings.
97. Mr. Singh also explained the rationale for the formation of the cartel and sharing of bearing quantities, stating that “As work was getting less and less, it was agreed that to help each firm get some orders there will be equal distribution of Axle Bearings among the group members”.
98. Hence, from the evidence on record and the statement of Mr. Krishnakant Singh, the Commission finds that M/s Janardan Engineering Industries (OP-6) was an active member of the cartel for supply of Axle Bearings to the Indian Railways and was also involved in bid rigging or collusive bidding along with other cartel members in the three Eastern Railway tenders referred by Informant, namely Tender No. 20125122, 20131138



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and 20141116. Moreover, he also submitted an application for lesser penalty under Section 46 of the Act accepting the factum of existence of a cartel.

M/s V. K. Engineering Industries (OP-7) and Mr. Sandeep Mehendale:

99. The DG recorded the statement of Mr. Sandeep Mehendale, Partner M/s V. K. Engineering Industries, based on CDRs/ SMS and emails which showed that Mr. Sandeep Mehendale was in communication with other OPs/bidders, through emails and calls/SMS. Of the three Eastern Railway tenders mentioned by the Informant, M/s V. K. Engineering Industries (OP-7) submitted bid only for Eastern Railway Tender No. 20125122 opened on 12.10.2012. During the recording of his statement, Mr. Sandeep Mehendale submitted that he managed the affairs of his firm as well as decided the bid prices to be quoted in Railway tenders.
100. The DG pointed out that Mr. Mehendale's statement was ridden with several contradictions and false submissions which clearly showed an attempt on his part to deliberately suppress information. For instance, he initially stated that he had only one email id/account, viz., *mbsandy21@yahoo.com*, and that he did not use any other email ID. However, when confronted with an email dated 13.04.2013 regarding Axle Bearing orders sent by his competitor OP-6 to his other email ID *vkengg87@gmail.com*, he admitted that the same was his email id but said he had not seen the said email. Mr. Mehendale also submitted that he had no access to the email account *vkengg87@gmail.com*. When questioned as to how the competitor was aware of this email ID, he replied "I do not know". He also replied with "I do not know" when questioned about the contents of the said email sent by his competitor. Further, when given an opportunity to open his email account *vkengg87@gmail.com*, he submitted that he did not have the password for the said email account.



101. Further, Mr. Mehendale submitted that, even though his firm was not RDSO-approved, he had bid in Tender No. 20125122 since he had no work order and the Railways could give orders to non-approved source at its discretion—a reply which was found to be contradictory by the DG to his reply to an earlier question, wherein he submitted that he had bid Rs. 22050/- in Eastern Railway Tender No. 20125122 as he knew that he would not get the order. Then again, in the objections/suggestions to the investigation report of the DG, he submitted that it had bid for the said tender as an educational order and that its bid was not merely for the sake of participation but to explore the opportunity for additional work.
102. Mr. Mehendale further submitted that he had bid on only one tender as his firm was not RDSO-approved and apart from the said Railway tender, he had never submitted a bid for any other Railway tender for Axle Bearing for traction motors. However, when he was confronted with records of other Railway tenders, he accepted having bid in other tenders for the said part.
103. Further, Mr. Mehendale denied interacting through phone, email, *etc.*, with the employee/partner of any other firm participating in Railway tenders before or after quoting a bid. However, when he was confronted with the CDRs, he admitted to being in communication with his competitors for the supply of Axle Bearing to Railways.
104. The Commission notes that Mr. Mehendale provided no conceivable reason for receiving emails from his competitors regarding tenders for Axle Bearings, including Eastern Railway Tender No. 20125122, with details such as allocation of quantities among various OPs/suppliers and the L1 rates of high lead bearings. Also, no credible explanation was provided by him for regular and frequent communication through



phone/mobile (both voice calls and text messages) during the period of Tender No. 20125122. Therefore, the only conceivable explanation that could be drawn on the plain reading of such communication is that Mr. Sandeep Mehendale and other cartel members were discussing and sharing price bids mutually agreed for the Railway tenders.

105. With respect to the price quoted in the Eastern Railway Tender No. 20125122 dated 12.10.2012 by OP-7, Mr. Mehendale, in his statement, admitted that he had quoted a high price in the said tender as he knew he would not get any orders. This has no rationale other than that his firm had colluded to submit a cover bid in the said Eastern Railway tender. Mr. Mehendale did not submit a break-up of his bid in Tender No. 20125122, stating they did not have any old records for the said tender.
106. Hence, from the material on record, including the statement of Mr. Sandeep Mehendale, it is apparent that he made evasive responses during his deposition and suppressed information. The Commission observes that such conduct shows his awareness of and involvement in the cartel for the supply of Axle Bearings to the Indian Railways and rigging the Eastern Railway Tender No. 20125122 in collusion with other OPs.

M/s Jai Bharat Industries (OP-8) and Mr. Naresh Garg

107. During the process of investigation, the DG noted from the emails and CDRs received from various service providers that Mr. Naresh Garg, Proprietor of M/s Jai Bharat Industries, one of the bidders in the said tenders under investigation, was in regular communication with other OPs/bidders. Accordingly, based on emails and CDRs/SMS which showed that Mr. Naresh Garg was in communication with other OPs/bidders, the DG summoned Mr. Naresh Garg to record his statement. It was noted that, out of the three Eastern Railway tenders, OP-8 had



submitted a bid only for Eastern Railway Tender No. 20141116 opened on 17.10.2014.

108. Mr. Naresh Garg submitted in his statement that, being a sole proprietor of his firm M/s Jai Bharat Industries, he was entirely responsible for the affairs of his firm. When Mr. Garg was confronted by the DG with evidence in the form of numerous emails regarding the allocation of Axle Bearing quantities among parties, received in various Railway tenders, sent and received by him from his competitors, Mr. Garg submitted replies like “I cannot comment”, “I do not know”, “Cannot say”, “Cannot confirm” “Cannot verify”, *etc.*, to a number of questions about contents of the emails and the reasons for sharing the same among various parties.
109. With reference to an email dated 21.07.2017 from Mr. Krishnakant Singh of OP-6, circulated among RDSO-approved Axle Bearing manufacturers, which had details of the Railway tenders, including Tender No. 20141116 of the Eastern Railway, and the sender had requested the email recipients to confirm their quantities of Axle Bearing as mentioned in the attachments, the DG questioned Mr. Garg as to why details of Railway tenders and total quantities of Axle Bearing were being maintained and circulated, to which Mr. Garg replied that he was not aware and could not comment.
110. The DG further found that Mr. Garg had himself sent an email dated 14.08.2017 from his email with the subject “Details of emu recd from KEW” to his competitor Mr. Krishnakant Singh of OP-6. The email mentioned that “In ER tender JB Recd 238 nos and not 290 nos”. It also had an attachment containing details of the “EMU statement on 12.08.17(JB)”. However, when Mr. Garg was questioned regarding the contents of the said email and why he had sent such an email to his



competitor, he replied that “I cannot comment” and “I cannot confirm whether I sent it or not”.

111. It was confirmed from records of Eastern Railway that M/s Jai Bharat Industries had indeed received an order of only 238 units of Axle Bearing instead of 290 bearings in Tender No. 20161157, as informed by him in his aforesaid email dated 14.08.2017, which implied that he was part of the cartel for the supply of Axle Bearing to Railways.
112. Mr. Garg accepted that he was in communication with his competitors for the supply of Axle Bearings to Railways, and submitted that they used to communicate through phone regarding help or assistance required in each other’s respective cities. He further submitted that they used to exchange SMSs relating to personal matters and not related to prices to be quoted in the tenders.
113. Mr. Garg stated that he had bid in the Eastern Railway tender because he was supplying to BHEL and was hopeful of getting some orders based on the track record even though his firm was not RDSO-approved. It was observed that OP-8 had submitted a bid of Rs. 17000/- in the Eastern Railway Tender No. 20141116, which was also the lowest bid by any bidder in the said tender; however, no order was placed on it by Eastern Railway as it was unapproved by RDSO. OP-8 had also raised this issue *vide* its letter dated 17.11.2014 with the CMM Eastern Railway, requesting them to place an order with them since they were the lowest bidder and an approved supplier to BHEL although not approved by RDSO.



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114. Further, OP-8, in its objections/suggestions to the investigation report of the DG as well as during hearing before the Commission, repeatedly stressed that, considering it could not get an order on account of cartel formation by OP-1 to OP-5 in spite of being L1 in a tender floated by the Eastern Railway in the year 2014, it was, in fact, a party aggrieved with the conduct of cartelisation by OP-1 to OP-5 rather than a cartel participant. Further, it submitted that it was owing to its consistent efforts and complaints with different government authorities that the present reference was filed before the Commission.
115. In this light, it appears that OP-8 was not involved in bid rigging in the Eastern Railway Tender No. 20141116 referred by the Informant. However, this does not *ipso facto* show that it was not a part of the cartel. The evidence available on record clearly shows that OP-8 was in contact with competitors/OPs through emails containing details of Axle Bearing allocations among parties. Further, he was also communicating with his competitors through phone (both voice call as well as text messages). Additionally, no reasons were put forth by Mr. Garg for sending and receiving emails from competitors regarding the allocation of Axle Bearings among parties in Railway tenders, including the Eastern Railway Tenders No. 20131138 and 20141116 either during the recording of his statement before the DG or in its submissions before the Commission.
116. Furthermore, the emails received and sent by Mr. Garg clearly show that the OPs, through concerted efforts, were diligently maintaining, updating and sharing allocation details of Axle Bearing quantities received by each member in various Railway tenders, including the Eastern Railway Tender No. 20141116, in which OP-8 had submitted its bids. The Commission considers that there can be no other plausible reason for the same except that the cartel members, as per an arrangement/understanding/agreement amongst them, were sharing quantities of Axle Bearings in Railway



tenders as well as deciding allocations in respect to each party/member in future Railway tenders.

117. Thus, on the analysis of the evidence available on record as well as the statements of Mr. Naresh Garg, the Commission concludes that, though OP-8 may not have been involved in the rigging of three impugned tenders of the Informant, it was involved in the cartel for the supply of Axle Bearings to the Railways.

O R D E R

118. In view of the aforesaid discussion, statements of representatives of OPs, communicative evidence by way of e-mails exchanged amongst the OPs and other material on record, the Commission is of the considered opinion that there is overwhelming evidence on record to conclude that there was an agreement/arrangement/understanding amongst the suppliers of Axle Bearings to share quantities offered in Railway tenders issued by different Railway zones, and under such arrangement, they rigged the price bids for the three Eastern Railway tenders, namely, Tender Nos. 20125122, 20131138 and 20141116.
119. It has come in evidence that Mr. Subrata Chandra, Partner in OP-2, Mr. B.N. Palit, CEO of OP-3 and Mr. Krishnakant Singh, Partner in OP-6, admitted in their statement on oath that there existed a cartel of Axle Bearing suppliers to the Railways, which was sharing Axle Bearing quantities in Railway tenders, including the three Eastern Railway tenders. They also admitted that the price bids for the three Eastern Railway tenders were discussed and decided through telephonic calls and informed individually through SMS/telephonic calls.



120. However, Mr. Sushanta Chandra (OP-1)/(OP-2), Mr. V. Chakrapani (OP-4), Mr. V. Venkata Ram (OP-5), Mr. Sandeep Mehendale (OP-7) and Mr. Naresh Garg (OP-8) in their statements recorded on oath submitted evasive, vague, contradictory replies and suppressed information when confronted with evidence of their role in cartelisation and bid rigging, as adumbrated *supra*. Nevertheless, the evidence on record, such as emails and CDRs supported by the statements of the key persons/Partner/Proprietor of the other OPs are sufficient to conclude that the OPs were members of the cartel for the supply of Axle Bearings to the Railways and colluded to rig bids in the three Eastern Railway tenders referred by the Informant.
121. The Commission is of the view that the emails relied upon by the DG are direct evidence of involvement of OP-1 to OP-8 and their respective officials in the cartel. The emails show that the OPs discussed quantity allocation with respect to the tenders of the Indian Railways for Axle Bearings amongst themselves and rigged the bids in accordance with their agreement. They also discussed the compensation mechanism if some of them did not win the allocated quantities, as agreed amongst them, from previous or earlier tenders. The Commission is of the opinion that such emails, along with the other evidence of CDRs and the statements given by the officials of OP-1 to OP-8, are sufficient to hold the OPs liable for the contravention of the provisions of the Act.
122. At this stage, it is apposite to note that the definition of 'agreement' as given in Section 2(b) of the Act requires, *inter alia*, any arrangement or understanding or action in concert whether or not formal or in writing or intended to be enforceable by legal proceedings. The definition, being inclusive and not exhaustive, is a wide one. An understanding may be tacit and the definition under Section 2(b) of the Act covers even those



situations where parties act on the basis of a nod or a wink. The Commission notes that the Act envisages civil liability. Thus, the standard of proof required to prove an understanding or an agreement would be on the basis of ‘preponderance of probabilities’ and not ‘beyond reasonable doubt’. There is rarely any direct evidence of action in concert and in such situations, the Commission has to determine whether those involved in such dealings had some form of understanding and were acting in cooperation with each other. In light of the definition of the term ‘agreement’, the Commission has to assess the evidence on the basis of benchmark of preponderance of probabilities.

123. Further, in terms of the provisions contained in Section 3(1) of the Act, no enterprise or association of enterprises or person or association of persons can enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. Section 3(2) of the Act declares that any agreement entered into in contravention of the provisions contained in sub-section (1) shall be void. Further, by virtue of the presumption contained in sub-section (3), any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which- (a) directly or indirectly determines purchase or sale prices; (b) limits or controls production, supply, markets, technical development, investment or provision of services; (c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way; or (d) directly or indirectly results in bid rigging or



collusive bidding, shall be presumed to have an appreciable adverse effect on competition.

124. As per the explanation appended to sub-section (3) of Section 3 of the Act, “bid rigging” means any agreement, between enterprises or persons referred to in sub-section (3) engaged in identical or similar production or trading of goods or provision of services which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.
125. In case of agreements as listed in Section 3(3)(a) to (d) of the Act, once it is established that such an agreement exists, it will be presumed that the agreement has an appreciable adverse effect on competition; the onus to rebut the presumption would lie upon the parties.
126. The OPs have, however, argued that even though they might have cartelised, there was no Appreciable Adverse Effect on Competition (AAEC) in the market for Axle Bearings in India; and the Indian Railways, being a monopolistic buyer, controls the price and quantity to be supplied to it, and thus, the OPs do not have any control over the price or quantity.
127. In this regard, the Commission notes that the pleas are misdirected. Suffice to observe that from a bare reading of the provisions of Section 3 (1) of the Act, it is evident that these provisions not only proscribe the agreements which cause AAEC but the same also forbid the agreements which are likely to cause AAEC. Hence, the plea that there is no contravention of the provisions of the Act in the present matter because allegedly no AAEC has been caused as a result of the alleged cartel between the parties, is misdirected and untenable in the face of clear legislative intent whereby even the conduct which can



potentially cause AAEC, is prohibited. Furthermore, once an agreement of the types specified under Section 3(3) of the Act is established, the same is presumed to have an AAEC within India. Therefore, it is axiomatic to presume in the present matter that the impugned conduct of the parties has caused AAEC within India. No doubt, as per the ratio of the decision given by the Hon'ble Supreme Court in the matter of *Rajasthan Cylinders and Containers Ltd. v. Union of India and Others*, 2018 (13) SCALE 493, the presumption of AAEC in a case involving contravention of the provisions of Section 3(3) of the Act can be rebutted by the parties by placing evidence to the contrary on record. The relevant excerpts of the Hon'ble Supreme court decision in *Rajasthan Cylinders (supra)*, are as follows:

“ 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.”

128. Thus, the parties can rebut such statutory presumption in light of the factors provided under Section 19(3) of the Act. However, save and except contending that the impugned conduct caused no AAEC, the parties have not been able to rebut the said presumption by leading adequate evidence, as held by the Hon’ble Supreme Court of India in Rajasthan Cylinders (*supra*). The parties have singularly failed to show as to how their impugned conduct resulted into any accrual of benefits to consumers; improvements in production or distribution of goods or provision of services; or promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services, in terms of Section 19(3) of the Act. On a holistic evaluation of the replies filed by the parties in light of



the factors enumerated in Section 19(3) of the Act, the Commission is satisfied that the parties have not been able to dislodge the statutory presumption by adducing cogent evidence, as required.

129. With regard to Indian Railways being a monopolistic player with power to determine prices/quantity, the Commission notes that similar pleas were also advanced in previous cases against Indian Railways as well and the same were noted by the Commission as misconceived. Similarly, in the present case, in the presence of overwhelming documentary evidence as adumbrated *supra*, it is futile for the parties to take recourse to such plea. Merely putting emphasis on market conditions in isolation ignoring the actual conduct, such submissions are not helpful. Further, as a consumer, the Indian Railways is free to make a choice as far as selection of goods or services provider is concerned. This has to be also considered in view of direct accrual of benefits to the consumer *i.e.*, the Government of India and the passengers using railway services. Negotiating terms and conditions with the parties to procure items on the best possible bargain price amounts to nothing but ensuring benefit to itself and its end consumer *i.e.* railway passengers. Therefore, the Indian Railways cannot allow the bidders to fix any arbitrary prices and/ or quantities. Negotiations/ bargaining made by the Indian Railways does not detract from the factum of bid-rigging indulged in by the vendors, which is in contravention of the provisions of the Act.

130. Resultantly, the Commission is of the opinion that OP-1 to OP-8 and their respective officials indulged in cartelisation in the supply of Axle Bearings to the Informant by means of directly or indirectly determining prices, allocating tenders, coordinating bid prices and manipulating the



bidding process in contravention of the provisions of Section 3(3)(d) read with Section 3(1) of the Act.

131. Considering that the contravention by the OPs, *i.e.*, OP-1 to OP-8, is established, the Commission now proceeds to analyse the conduct of the officers/employees of the OPs, who would be liable for such anti-competitive acts of the OPs in terms of Section 48 of the Act. The provisions of Section 48 apply to companies and persons responsible to the company. Further, as per explanation to Section 48, the company includes a firm or other association of individuals. In the present case, all parties against whom contravention has been found are either partnership firms or sole proprietorship concerns, as such provisions of Section 48 would be applicable to them. According to the investigation report, the following persons of OP-1 to OP-8 were found to be liable under Section 48 of the Act by the DG:

- i. Mr. Sushanta Chandra, Sole Proprietor, M/s Chandra Brothers (OP-1) and Partner, M/s Chandra Udyog (OP-2)
- ii. Mr. Subrata Chandra, Erstwhile Partner, M/s Chandra Udyog (OP-2)
- iii. Mr. B.N. Palit, CEO, M/s Sriguru Melters and Engineers (OP-3)
- iv. Mr. Vallabhaneni Chakrapani, M/s Rama Engineering Works (OP-4)
- v. Mr. Vallabhaneni Venkata Ram, Managing Partner, M/s Krishna Engineering Works (OP-5)
- vi. Mr. Krishnakant Singh, Partner, M/s Janardan Engineering Industries (OP-6)
- vii. Mr. Sandeep Mehendale, Partner, M/s V.K. Engineering Industries (OP-7)
- viii. Mr. Naresh Garg, Proprietor M/s Jai Bharat Industries (OP-8)



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132. With respect to the above, the Commission observed from the records that Mr. Sushanta Chandra expired on 30.06.2020 and his death certificate was also annexed to the investigation report. Accordingly, the Commission decided to drop the proceedings against Mr. Sushanta Chandra. So far as the liability of the rest of the officials of the OPs under Section 48 of the Act is concerned, the same is made out for following reasons:

S. No.	Name	Role of the key person/official
1.	Mr. Subrata Chandra, Partner, M/s Chandra Udyog (OP-2)	In his statement on oath, Mr. Subrata Chandra submitted that he, along with his partner, were responsible for finalising the bid price to be quoted in Railway tenders for Axle Bearing. Further, as per Eastern Railway records, he had uploaded the bids in Eastern Railway Tender Nos. 20125122 and 20131138 using his own DSC. He confessed discussing with other competitors on phone and through personal meetings the rates to be quoted in the tenders for Axle Bearing. He also confessed that the rates quoted by the OPs were exactly the same in the aforesaid three Eastern Railway tenders, because it was mutually decided by them over telephonic communication. Although he left the firm in 2016 and submitted that he was not liable for the acts of the firm, the Commission is of the view that, by virtue of his role and responsibility in OP-2 during the period of the three Eastern Railway tenders, he was a key person involved in the



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		cartelisation and bid rigging of said Axle Bearing tenders.
2.	Mr. B.N. Palit CEO M/s Sriguru Melters and Engineers (OP-3)	In his statement on oath, Mr. B.N. Palit admitted to exchanging emails containing the allocation details of Axle Bearing quantities with his competitors/OPs for the supply of Axle Bearing to Railways with an objective to sharing Axle Bearing quantities through cartelisation and bid rigging in Railway tenders. He also confessed that, during the telephonic discussions with the OPs, he used to discuss and finalise bid prices to be quoted in various Railway tenders, including the Eastern Railway Tender Nos. 20125122, 20131138 and 20141116 for the supply of Axle Bearings. He was the key person involved in the cartelisation and bid rigging of said Axle Bearing tenders on behalf of OP-3.
3	Mr. Vallabhaneni Chakrapani, Partner, M/s Rama Engineering Works (OP-4)	It was found that he was in communication with his competitors/OPs through emails and also phone (both calls and SMSs). He admitted that he was responsible for all the commercial and production aspects of the business, including bidding in various tenders and deciding the rates for the same. As per Eastern Railway records, he had uploaded the bids in Eastern Railway Tender



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		Nos. 20125122, 20131138, 20141116 using his own DSC for OP-4. He was the key person involved in the cartelisation and bid rigging of said Axle Bearing tenders.
4	Mr. Vallabhaneni Venkata Ram, Managing Partner, M/s Krishna Engineering Works (OP-5)	It was found that he was involved in the exchange of emails containing the allocation details of Axle Bearing quantities with his competitors/bidders and telephonic communications with other OPs/bidders/competitors from his email/phone number during the three Eastern Railway tenders for the supply of Axle Bearings, which establishes that he was personally involved in the alleged cartel. He also admitted in his statement that he was the final authority for all the affairs of his company. He also admitted that he was the final deciding authority for his firm for matters such as which tender should be bid, bid price and quantity for various tenders. As per Eastern Railway records, he had uploaded the bids in Eastern Railway Tender Nos. 20125122, 20131138, 20141116 using his own DSC for OP-5. He was the key person involved in the cartelisation and bid rigging of said Axle Bearing tenders.
5	Mr. Krishnakant Singh, Partner, M/s Janardan	Mr. Krishnakant Singh was the key person responsible for taking care of all the commercial aspects with respect to his firm,



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	Engineering Industries (OP-6)	which also included follow-up with Railway authorities, submitting bids in Railway tenders, <i>etc.</i> He was the key person responsible for taking all commercial decisions, including submitting bids in Railway tenders. He admitted to sending and receiving emails pertaining to Axle Bearing tenders from his email. As per Eastern Railway records, he had uploaded the bids in Eastern Railway Tender nos. 20125122, 20131138 and 20141116 using his own DSC for his firm. He further admitted to exchanging emails containing allocation details of Axle Bearing quantities with his competitors/OPs, with an objective to share Axle Bearing quantities through cartelisation and bid rigging in Railway tenders. He confessed that he was in regular communication with other OPs/competitors through phone calls/SMS to discuss and decide the final bid price to be submitted in the three Eastern Railway tenders for the supply of Axle Bearing. He also stated that his role was to submit cover bids in the said tenders. He was the key person involved in the cartelisation and bid rigging of Axle Bearing tenders on behalf of OP-6.
6	Mr. Sandeep Mehendale, Partner, M/s V. K.	As per evidence on record and his statement on oath, Mr. Sandeep Mehendale was the key person of OP-7 involved in the



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	Engineering Industries (OP-7)	cartelisation and bid rigging of said Axle Bearing tenders. He also admitted in his statement that he managed the affairs of his firm and was entirely responsible for its running as well as deciding the final bid price. As per Eastern Railway records, he had also uploaded the bids in Eastern Railway Tender No. 20125122 using his own DSC for his firm.
7	Mr. Naresh Garg Proprietor M/s Jai Bharat Industries (OP-8)	In his statement, he admitted that, being the sole proprietor, he was entirely responsible for all the affairs of his company. As per Eastern Railway records, he had uploaded the bids in Eastern Railway Tender No. 20141116, using his own DSC for his firm.

133. In view of the roles and responsibilities mentioned above regarding the aforesaid persons and evidence against them, the Commission agrees with the DG in terms of liability to be fixed under Section 48 and holds 07 persons of OP-2 to OP-8 liable in terms of provisions of Section 48 of the Act.

CONCLUSION

134. In view of the above, the Commission holds that OP-1 to OP-8 have contravened the provisions of Section 3(1) of the Act read with Section 3(3) thereof, as detailed in this order.



135. Further, the Commission, in terms of Section 27 (a) of the Act, directs OP-1 to OP-8 and their respective officials who have been held liable in terms of the provisions of Section 48 of the Act to cease and desist in the future from indulging in practices which have been found in the present order to be in contravention of the provisions of Section 3(3) read with Section 3(1) of the Act, as detailed in the earlier part of the present order.
136. The Commission contemplated at length the issue of imposition of penalty upon the OPs and respective officials keeping in view factors specific to this case, such as market structure, role of Indian Railways as a monopsony buyer, nature of the firms, the staff employed by them and the quantum of their annual and relevant turnover, and considered the same in light of the overall the objective of the Act to prevent practices from having adverse effects on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets in India. It was observed that, with the purpose to give effect to the objective of the Act, the statute confers upon the Commission the power to impose penalty upon such market participants who act in contravention of the provisions of the Act. Such power under the statute is not rigid. It allows flexibility to take such measures that may be appropriate in a given market situation to address market distortions which may, *inter alia*, arise from the behaviour of the market participants.
137. So far as the instant case is concerned, the Commission notes that all the OPs in this case are MSMEs having limited staff and small turnover. Clearly, they have contravened the provisions of the Act, as brought out in the order above, and indulged in anticompetitive conduct, for which corrective measures need to be taken against them. In fact, the Commission notes abject lack of awareness of the provisions of law on



the part of the OPs, which is reflected from the explicit communications and arrangements. Further, the Commission also appreciates the cooperative and non-adversarial approach adopted by OPs in admitting their involvement and coming forward to seek leniency. In this backdrop, the question which is looming large before the Commission is as to whether imposition of penalty would be the appropriate measure and course in the given market situation? As highlighted in the *Composite Brake Blocks* case (*supra*), the Commission is conscious of the fact that the MSME sector in India is already under stress and bearing the impact of the economic situation arising from the outbreak of the pandemic (COVID-19). The Government of India has undertaken various measures to support the liquidity and credit needs of viable MSMEs to help them withstand the impact of economic shock. In such a situation, if any penalty were to be imposed on these firms, it may render these firms economically unviable; some firms may even exit the market, which would further reduce competition in a market already characterised by the presence of few players due to the policy of the Indian Railways to procure items from RDSO-approved vendors.

138. Thus, considering the matter holistically, the Commission decides not to impose any monetary penalty on the OPs and their respective officials in the peculiar circumstances of this case, as noted above. Further, the Commission is of the considered opinion that the objectives of the Act would be met if the parties in the present matter cease such cartel behaviour and desist from indulging in similar behaviour in the future, as directed earlier. The parties are, however, cautioned to ensure that their future conduct is strictly in accord with the provisions of the Act, failing which, any such future behaviour would be viewed seriously as constituting recidivism, with attendant consequences.



139. It is made clear that nothing contained in this order shall be deemed confidential, as the same has been used in the terms of provisions of Section 57 of the Act

140. The Secretary is directed to communicate with the Parties accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi

Date: 12/10/2021