



**COMPETITION COMMISSION OF INDIA**

**Case No. 37 of 2019**

**In Re:**

**Abhiraj Associates Private Limited  
Srivastava Kothi, Anandpuri Colony  
Hazaribagh - 825302  
Jharkhand**

**Informant**

**And**

**Eastern Railways, Kolkata  
17, Netaji Subhas Road  
Fairlie Place  
Kolkata- 700001  
West Bengal**

**Opposite Party**

**CORAM**

**Mr. Ashok Kumar Gupta  
Chairperson**

**Ms. Sangeeta Verma  
Member**

**Mr. Bhagwant Singh Bishnoi  
Member**

**ORDER UNDER SECTION 26(2) OF THE COMPETITION ACT, 2002**

1. The present Information was filed by Abhiraj Associates Private Limited ('the Informant') under Section 19(1)(a) of the Competition Act, 2002 ('the Act') against Eastern Railways ('Opposite Party' / 'OP'), alleging *inter alia* contravention of the provisions of Section 3 of the Act.



2. The Informant, a private limited company, is engaged in the business of export of stone aggregates/ boulders and has stated that it exports stone aggregates/ boulders through rakes allotted by OP. For allotment of rakes, the Informant places indent itself or through its consignor at respective railway sidings. The Informant also stated that OP follows quota system for dispatch of rakes. Under such a system, the Informant got rakes allotted to it at various sidings in Howrah and Malda Division of the Eastern Railways, which is OP in the present case.
3. The Informant alleges that from July 2019 onwards, OP stopped allotment of rakes to it and instead, the rakes were allotted to Orient Exports Pvt. Ltd. as per the directions of the Indian Railway Board contained in letter No. 2017/TT-III(M)/71/D/10/Quota dated 18.07.2019. The Informant claims that this decision was taken by Indian Railway Board as per the request of the Bangladesh Railway Board. The Informant has stated that non-allotment of rakes has impacted its goodwill amongst its customers as it is not being able to meet its prior commitments.
4. The Informant has also stated that aggrieved by the decision of the Indian Railway Board, it filed a case before the Hon'ble Calcutta High Court against OP/ Indian Railways and one JHM International Ltd. (a Bangladesh-registered export company). Later on, the same was withdrawn by the Informant after it received verbal assurances from OP that rakes would be allotted to it as usual.
5. The Informant has further averred that for the month of September 2019, Bangladesh Railway Board issued an order for boulders, for which rakes were allotted to JHM International Ltd, as per the request of the former. The Informant has alleged that such an act on part of Bangladesh Railway Board shows its *malafide* and biased decision and the same is being implemented by OP/ Eastern Railways. Accordingly, the Informant has averred that such practice adopted by the OP/ Indian Railways is in violation of the provisions of Section 3(1) of the Act.



6. The Informant has also alleged that the above mentioned conduct of OP/ Indian Railways is also in violation of Rule 201(1) and 201(10) of the ICRA Goods Tariff No. 41 *i.e.* Rules for Registration of Indent and Supply of Wagons. The Informant has also alleged that non-acceptance of the indent is in violation of the provisions of Section 70 of the Railways Act, 1890 and Article 19(1)(g) of the Constitution.
7. Based on the aforesaid averments and allegations, the present Information has been filed by the Informant against OP alleging, *inter alia*, contravention of the provisions of Section 3 of the Act.
8. The Commission notes that the grievance of the Informant essentially arises out of non-allotment of railway rakes to it by OP. To examine the allegations, the Commission considered the Information in its ordinary meeting held on 02.01.2020 and *vide* an order of even date decided to forward a copy of the Information to OP with a direction to file its response thereto on or before 07.02.2020. Accordingly, OP had filed its response to the Information on 04.02.2020.
9. The OP *vide* its reply stated that it loads stone boulders for Bangladesh in SML/ BOXN wagons from different goods sheds in Howrah and Malda Divisions. Further, loading is done as per the quota given by the Indian Railway Board on monthly basis. It was also highlighted that the quota is determined by Indian Railway Board on the basis of the quota/ acceptance given by Bangladesh Railways on monthly basis and the position of indents in the various zones of Indian Railways. In order to give equal opportunity to all stake holders, OP follows a rotational policy for loading of stone boulders to Bangladesh subject to the rake availability.
10. Moreover, OP pointed out that till June 2019, Bangladesh Railway used to give acceptance to Indian Railway's rakes irrespective of any particular consigner/ consignee. In turn, Indian Railway Board was giving monthly quota of boulder



traffic independent of any specific entity requiring rakes for export of stone boulders to Bangladesh. However, *vide* its letter dated 27.06.2019, Bangladesh Railways gave acceptance to 12 SML/ BOXN rakes of stone boulders only on account of Orient Exports Pvt. Ltd. Accordingly, Indian Railway Board *vide* its letter No. 2017/TT-III(M)/71/BD/10/Quota dated 18.7.2019 directed OP to allot all 12 SML/ BOXN rakes for export of stone boulders to Orient Exports Pvt. Ltd. for the months of July and August 2019. Thereafter, quota for SML/ BOXN rakes for the month of September 2019 was initially given without mentioning any specific consignee. However, on 16.09.2019, revised quota was circulated, where 6 SML/ BOXN rakes were loaded for JHM international and 6 rakes for Orient exports Pvt. Ltd. Thus, as per OP, supply of rakes was planned for both the entities but due to the shortage of wagons, only one SML/ BOXN rake was allotted for supply of stone boulders to Bangladesh.

11. The OP has also pointed out that quota for rakes allotment for the months of October, November and December 2019 was general in nature. Accordingly, rakes were loaded for different consignees like the Informant, JHM Overseas Pvt. Ltd., JHM Import Export Pvt. Ltd. and Orient Exports Pvt. Ltd. as per the following details:

**SML/ BOXN rakes allotment by Indian Railways for the months of October, November and December 2019**

Consignee	Number of SML/ BOXN rakes allotted
Abhiraj Associates Pvt. Ltd.	5
JHM Overseas Pvt. Ltd.	4
JHM Import Export Pvt. Ltd.	3
Orient Exports Pvt. Ltd.	6

12. Thus, as per OP, it does not have any discretion in rakes allotment as acceptance of rakes by Bangladesh Railways is governed by bilateral agreement between the Governments of two countries. Further, OP also stated that quota for rakes is fixed



as per the quota relayed by and anticipated acceptance by Bangladesh Railways. The aim of the same being to avoid unnecessary congestions in Indian Railway system due to accumulation of unaccepted rakes by Bangladesh Railways. Accordingly, OP averred that the allegations made by the Informant are false.

13. The Commission has perused the Information and the reply filed by OP.
14. At the outset, the Commission notes that the Informant has made diverse allegations against OP alleging contravention of the provisions of Rule 201(1) and 201(10) of the ICRA Goods Tariff No. 41, provisions of Section 70 of the Railways Act, 1890 and Article 19(1)(g) of the Constitution. Needless to add, appropriate remedies for such alleged contraventions lie elsewhere. In fact, the Informant itself has averred that it has already approached the Hon'ble Calcutta High Court in this regard. However, the same was stated to be withdrawn by the Informant. The Informant has neither placed on record copy of the petition nor the order of the Hon'ble Calcutta High Court whereunder the writ petition was withdrawn.
15. From the material on record, the Commission observes that the quota for SML/ BOXN rakes is determined by Indian Railway Board on the basis of the quota/ acceptance given by Bangladesh Railways on monthly basis and as per the position of indents in the various zones of Indian Railways. It is also instructive to note that *vide* its letter dated 27.06.2019, Bangladesh Railways gave acceptance to 12 SML/ BOXN rakes of stone boulders only on account of Orient Exports Pvt. Ltd. Accordingly, Indian Railway Board *vide* its letter No. 2017/TT-III(M)/71/BD/10/Quota dated 18.7.2019 directed OP to allot all 12 SML/ BOXN rakes for export of stone boulders to Orient Exports Pvt. Ltd. for the months of July and August 2019.
16. From the same, it appears that the decision to allot rakes to Orient Exports Pvt. Ltd. was taken as per the bilateral agreement between Indian Railway Board and Bangladesh Railways, wherein OP does not have any incentive to give preferential



treatment to a particular entity. Furthermore, such inter-governmental bilateral agreements between two sovereign entities cannot be the subject matter of ‘agreement’, as defined under Section 2(b) of the Act.

17. In view of the foregoing, the Commission is of the view that no case of contravention of the provisions of the Act is made out against OP and accordingly, the matter is directed to be closed forthwith in terms of the provisions of Section 26(2) of the Act.
18. Before concluding, the Commission notes that an application dated 07.02.2020 was moved on behalf of the Informant seeking at least 3 weeks from date of the application for filing additional information in relation to the alleged violation of the provisions of Section 3(3), Section 3(4) and Section 4 of the Act by OP. It was averred in the application that the additional information will be detailing the alleged violation of the provisions of Section 3(3) of the Act, indulgence in practice relating to refusal to deal and exclusive supply agreement. The application further stated that additional information will also cover the facts/ evidences as to dominant position of Indian Railways in the market *for 'supply of railway rakes for export of stone boulders to Bangladesh in State of West Bengal'* and abuse of dominant position in terms of provisions of Section 4(2) of the Act. It was further averred in the application that in the absence of adequate understanding/ knowledge about the present Act, on 06.02.2020, the Informant had availed service of a legal representative to put forth its case before the Commission. Thus, the Informant prayed that the Commission grant at least 3 weeks for submission of additional information, to bring out a strong case for alleged violation of the provisions of the Act by Indian Railways.
19. Having considered the aforesaid application and the averments made therein, the Commission, *vide* its order dated 10.02.2020, was of the opinion that through additional information, the Informant is seeking to enlarge the scope of original Information considerably. In this regard, it was observed that based on the original



information filed by the Informant, the Commission has already obtained the response of OP and decided to pass an appropriate order in due course. In these circumstances, the Commission was of the opinion that no such indulgence can be granted to the Informant particularly when such request has been filed after a lapse of about 3 months and 22 days. However, liberty was granted to the Informant to file a fresh Information bringing on record facts, which have not been pleaded in the present Information, in accordance with law, if so advised. With these observations, the application dated 07.02.2020 filed by the Informant was disposed of.

20. Thereafter, the Informant sent an e-mail dated 20.02.2020 and enclosed an application therewith wherein *inter alia* requested the Commission to expunge the following remarks from order dated 10.02.2020 : *“no such indulgence can be granted to the Informant particularly when such request has been filed after a lapse of about 3 months and 22 days”*. It was also stated therein that *“to file a separate information, though being a legal right of the Informant should not be invoked in the present case considering the fact that cause of action remains the same”*. It was also prayed that the Informant be allowed to file an additional application for assisting the Commission to reach a conclusion based on full facts. Lastly, it was averred therein that *“no adverse order should be passed under the provisions of Section 26(2) of the Act before allowing Informant to file additional Information”*. Yet, one more e-mail dated 21.02.2020 has been sent by the Informant whereby an application seeking additional relief in continuation of the previous application dated 20.02.2020 was filed by the Informant praying that the Commission should invoke provisions of Section 45 of the Act against Eastern Railways *“for deliberately furnishing document which he knows or reason to believe to be false in any material particular or omit to state any material fact knowing it to be material”*.



21. The Commission has perused the e-mails dated 20.02.2020 and 21.02.2020 sent by the Informant and the applications filed therewith, and is of the considered opinion that not only the Informant is taking liberty with the process for filing of documents as laid down under the Competition Commission of India (General) Regulations, 2009 by filing random e-mails, but is also indulging in forum shopping by approaching the High Court and thereafter the Commission without even placing the orders passed by the High Court on record. In fact, the Informant *vide* its e-mail dated 20.02.2020 has made a scandalous allegation against the Commission by noting therein that “...*the OP is being a favoured party in the eyes of the Commission...*”. The Commission warns the Informant and its counsel to refrain from making such reckless allegations which have no basis in fact or in law. The Commission is amazed that the Informant has made such wholly unwarranted allegations and imputed motives to the impartiality of the Commission even when, a liberty was granted to the Informant to file a fresh information bringing on record facts which have not been pleaded in the original Information. It is also made clear that no cognizance of e-mails shall be taken by the Commission and the Informant is directed to comply with the due procedure laid down under the General Regulations, as pointed out earlier.
22. The Secretary is directed to communicate to the parties, accordingly.

**Sd/-**  
**(Ashok Kumar Gupta)**  
**Chairperson**

**Sd/-**  
**(Sangeeta Verma)**  
**Member**

**New Delhi**  
**Date: 28/02/2020**

**Sd/-**  
**(Bhagwant Singh Bishnoi)**  
**Member**