



PUBLIC VERSION

COMPETITION COMMISSION OF INDIA

Suo Motu Case No. 07 (01) of 2014

In Re: Cartelisation in the supply of Electric Power Steering Systems (EPS Systems)

Against:

1. NSK Limited, Japan
2. JTEKT Corporation, Japan
3. JTEKT Sona Automotive India Limited
4. Rane NSK Steering Systems Ltd.

CORAM

Ashok Kumar Gupta
Chairperson

Sangeeta Verma
Member

Bhagwant Singh Bishnoi
Member

Present:

For [REDACTED]
[REDACTED]
ex-employees of NSK Ltd., Japan:

Mr. Somasekhar Sundaresan, Advocate
with Ms. Prerana De, Advocate

ORDER UNDER SECTION 27 OF THE COMPETITION ACT, 2002

1. The present case pertains to alleged anti-competitive conduct by NSK Limited, Japan ('NSK') and JTEKT Corporation, Japan ('JTEKT') alongwith their Indian subsidiaries namely Rane NSK Steering Systems Ltd. ('RNSS') and JTEKT Sona Automotive India Limited ('JSAI') respectively (hereinafter collectively referred to as the '**parties**'), in the Electric Power Steering ('EPS') Systems market.
2. This case was initiated on the basis of an application received by the Commission under the provisions of Section 46 of the Act read with the Competition Commission of India (Lesser Penalty) Regulations, 2009 ('LPR'), from NSK. Based upon the same, the Commission, forming an opinion that a *prima facie* case of contravention of the provisions of Section 3 (3) (a) and Section 3 (3) (d) read with Section 3 (1) of the



PUBLIC VERSION

Competition Act, 2002 (the 'Act') is made out, had passed an order on 17.09.2014 under Section 26 (1) of the Act and directed the Director General ('DG') to cause an investigation into the matter. During the pendency of investigation before the DG, JTEKT had also approached the Commission by filing an application under the provisions of Section 46 of the Act read with the LPR.

3. The DG, after detailed investigation, had submitted its report finding contravention of the provisions of Section 3 (3) (a) read with Section 3 (1) of the Act by NSK, RNSS, JTEKT and JSAI. The DG had also identified 12 individuals of NSK and 14 individuals of JTEKT in terms of the provisions of Section 48 of the Act.
4. *Vide* order dated 10.10.2018, the Commission had forwarded the investigation report (non-confidential *qua* parties version) submitted by the DG to the 4 companies and their 26 individuals who had been identified by the DG in terms of the provisions of Section 48 of the Act, through the companies' counsel, giving them an opportunity to file their objections/ suggestions, if any, to the DG Report and thereafter, appear for an oral hearing in the matter.
5. In response to the DG Report, JTEKT, JSAI and 14 individuals of JTEKT identified by the DG in terms of Section 48 of the Act filed their common objections/ suggestions, through their counsel. Further, NSK, RNSS and 8 individuals of NSK identified by the DG in terms of Section 48 of the Act also filed their common objections/ suggestions, through their counsel, to the DG Report.
6. However, with respect to the remaining 4 individuals of NSK, the learned counsel for NSK stated that these individuals have already retired from their respective positions in NSK and as such, are no longer associated with NSK. Therefore, the DG Report could not be served upon these 4 individuals by NSK. NSK was stated to be in the process of tracking the current residential addresses of these 4 individuals and it stated that the same would be submitted by it to the Commission in due course. These individuals are as follows:
 - a) [REDACTED]
[REDACTED] from 01.01.2005 to 31.12.2005;



सत्यमेव जयते



PUBLIC VERSION

- b) [REDACTED]
[REDACTED] from 01.01.2006 to 26.06.2006;
- c) [REDACTED]
[REDACTED] from 27.06.2006 to 24.06.2008; and
- d) [REDACTED]
[REDACTED] from 25.06.2008 to 31.12.2011).
7. After receipt of objections/ suggestions to the DG Report from NSK and JTEKT, the final hearing on the DG Report in the matter with regard to NSK, JTEKT, RNSS and JSAI, as well as the 14 individuals of JTEKT and 8 individuals of NSK was held on 12.02.2019 and the Commission decided to pass an appropriate order in the matter, which was eventually passed under Section 27 of the Act on 09.08.2019.
8. *Vide* the order dated 09.08.2019 passed under Section 27 of the Act, the Commission has found contravention of the provisions of Section 3 (3) (a), 3 (3) (c) and 3 (3) (d) read with Section 3 (1) of the Act by NSK, RNSS, JTEKT and JSAI as they indulged into cartelisation in the EPS Systems market from at least 2005 to 25.07.2011. *Vide* the said order, the Commission has also found 8 individuals of NSK and 7 individuals of JTEKT liable in terms of Section 48 of the Act for the contravening conduct of their respective companies. In the said order, the Commission has directed the contravening parties and their respective individuals to cease and desist from indulging in any act of cartelisation in the EPS Systems market in India and has imposed penalties upon them for their contravening conduct. However, in view of the fact that lesser penalty applications under Section 46 of the Act had been filed by NSK and JTEKT, 100% reduction in penalty amounts was granted to NSK and its individuals and 50% reduction in penalty amounts was granted to JTEKT and its individuals.
9. In the meantime, NSK also submitted the last known contact details of its above-named 4 ex-employees. Upon receipt of such contact details, the Commission, *vide* order dated 09.05.2019, decided to undertake separate proceedings against these 4 individuals of NSK and forwarded the investigation report (non-confidential *qua* parties' version) submitted by the DG to them at their addresses filed by NSK giving them an



सत्यमेव जयते



PUBLIC VERSION

opportunity to file their objections/ suggestions, if any, thereto. In response, objections/ suggestions to the investigation report of the DG on behalf of these individuals were filed on 21.08.2019 and they were also given an opportunity of oral hearing on 01.10.2019.

10. The present order pertains to these remaining 4 individuals of NSK, who have been found liable by the DG in terms of Section 48 (1) of the Act. The Commission has considered the investigation report submitted by the DG, the final order passed in the matter on 09.08.2019, the responses to the DG Report filed on behalf of the 4 individuals as well as heard the oral arguments put forth by Mr. Somasekhar Sundaresan, the learned counsel for these 4 individuals.
11. At the outset, the Commission notes that the above-named 4 individuals of NSK to whom the present order pertains, have been found by the DG to be liable under Section 48 (1) of the Act as being persons in-charge of, and responsible to the company NSK, for the conduct of its business, at the time when contravention of the provisions of the Act was committed by NSK.
12. In their objections/ suggestions to the DG Report as well as during the oral hearing, the sole contention that has been raised on behalf of 3 out of these 4 individuals viz. [REDACTED] against such finding of the DG is that since they can be deemed guilty for the conduct of their company NSK only for the period of their employment in the company, which in case of all 3 of them ceased before 20.05.2009 *i.e.* before the enforcement of the provisions of Section 3 of the Act, they ought not to be found guilty of contravention of the provisions of the Act.
13. In regard to such contention raised, the Commission notes that in its order dated 09.08.2019 passed under Section 27 of the Act, the Commission has found that NSK and JTEKT indulged in cartelisation from at least 2005 to 25.07.2011. Further, the Commission in that order found that appreciable adverse effect on competition resulted in India from such cartelisation between NSK and JTEKT. As such, being in-charge of and responsible to NSK for the conduct of its business during the time when cartelisation was committed by NSK, the DG has rightly found [REDACTED]



सत्यमेव जयते



PUBLIC VERSION

█ guilty of contravention of the provisions of the Act under Section 48 (1) of the Act. Further, even with regard to █, the Commission is of the view that being in-charge of and responsible to NSK for the conduct of its business during the time when cartelisation was committed by NSK, the DG has rightly found █ as well to be guilty of contravention of the provisions of the Act in terms of Section 48 (1) of the Act.

14. For such contravention of the provisions of the Act, the Commission is empowered, in terms of Section 27 (b) of the Act, to impose a penalty upon the erring individuals of the contravening entity of upto 10% of the average of their income for the last three preceding financials years. *Vide* final order dated 09.08.2019, penalty @ 10% of the average of their incomes for the financial years 2009-10, 2010-11 and 2011-12, has been imposed upon the other 8 erring individuals of NSK. Further, even upon the erring individuals of JTEKT, penalty @ 10% of the average of their incomes for the financial years 2009-10, 2010-11 and 2011-12, has been imposed by the Commission.
15. Therefore, in parity with such penalty imposed upon the other erring individuals of NSK and JTEKT, the Commission decides to impose upon these 4 ex-employees of NSK also, penalty @ 10% of the average of their incomes for the financial years 2009-10, 2010-11 and 2011-12. However, on the principle of parity again, as requested by these individuals, the Commission decides to grant benefit to them, of reduction in penalty of 100% (percent) in terms of Regulation 4 (a) of the LPR, as has been granted to the other erring individuals of NSK, *vide* the final order dated 09.08.2019 passed in the matter.

ORDER

16. █, former employees of NSK, are directed to desist in future from indulging in any act of cartelisation, in the EPS Systems market in India.
17. In terms of Section 27 (b) of the Act, the penalty to be paid by █ is *nil*.



सत्यमेव जयते



PUBLIC VERSION

18. The Commission directs that two versions of the present order may be prepared *i.e.* non-confidential *qua* parties version and public version. The same shall be prepared keeping in mind the confidentiality requests made by the parties and the provisions of Section 57 of the Act.
19. The Secretary is directed to inform [REDACTED], accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 20.11.2019