COMPETITION COMMISSION OF INDIA

***Suo Motu* Case No. 06 of 2020**

***In Re:* Cartelisation in the supply of Protective Tubes to Indian Railways**

Against:

1. Polyset Plastics Private Ltd.	**Opposite Party-1**
2. M/s Anju Techno Industries	**Opposite Party-2**
3. M/s Power Mould	**Opposite Party-3**
4. Jai Polypan Private Ltd.	**Opposite Party-4**
5. M/s Rama Engineering Works	**Opposite Party-5**
6. M/s Polymer Products of India	**Opposite Party-6**
7. M/s Hari Narayan Bihani	**Opposite Party-7**

CORAM

Ashok Kumar Gupta
Chairperson

Sangeeta Verma
Member

Bhagwant Singh Bishnoi
Member

Present:

For Polyset Plastics Private Ltd., M/s Anju Techno Industries, M/s Power Mould, Mr. Bhupesh Bafna, Managing Director of Polyset Plastics Private Ltd. and Partner of M/s Power Mould and M/s Anju Techno Industries, and Ms. Shanta Sohoni, employee at Polyset Plastics Private Ltd.	:	Dr. Harsh Surana, Ms. Deepali Sharma and Mr. Sandeep Malik, Advocates
For Jai Polypan Pvt. Ltd., Mr. Vishal Baid, Director of Jai Polypan Pvt. Ltd., Mr. Rajeev Dudhani, Consultant/Advisor at Jai Polypan Pvt. Ltd. and Mr. Rajesh R., Senior Manager at Jai Polypan Pvt. Ltd.	:	Mr. Rohan Arora, Ms. Shweta Shroff Chopra, Mr. Pranav Satyam, Mr. Kshitij Sharma and Mr. Ritesh Puri, Advocates

For Rama Engineering Works and Mr. V. Chakrapani, Partner of Rama Engineering Works		Mr. Tadimalla Bhaskar Gowtham, Advocate
For Polymer Products of India Ltd., Mr. Vishnu N.M. and Mr. Venkata Subramanyam, Managing Partners of Polymer Products of India Ltd., and Mr. Harsha Gumballi, Manager (Admin) of Polymer Products of India Ltd.	:	Mr. Kartikey Nayyar and Mr. Shaurya M. Tomar, Advocates along with Mr. Venkata Subramanyam, party-in-person
For Hari Narayan Bihani and Mr. Keshav Bihani, Partner of Hari Narayan Bihani	:	Ms. Anu Monga, Mr. Rahul Goel and Ms. Neha Mishra, Advocates

ORDER UNDER SECTION 27 OF THE COMPETITION ACT, 2002

Facts:

1. The present matter was initiated by the Commission *suo motu*, pursuant to receipt of an application under Section 46 of the Competition Act, 2002 (**Act**) read with Regulation 5 of the Competition Commission of India (Lesser Penalty) Regulations, 2009 (**LPR**), on behalf of Jai Polypan Private Ltd. (including its individuals), for alleged cartelisation in the supply of protective tubes to the Indian Railways.

2. From the disclosures made in the lesser penalty application, the Commission noted that there appears to exist coordination and collusion amongst the following vendors of protective tubes (**OPs**) from 10.06.2015 to 29.06.2020, in the tenders issued by the Indian Railways for procurement of protective tubes through the *modus operandi* of, *inter alia*, quoting mutually agreed prices and allocating tenders amongst themselves:
    1. Polyset Plastics Private Ltd. (OP-1)
    2. M/s Anju Techno Industries (OP-2)
    3. M/s Power Mould (OP-3)
    4. Jai Polypan Private Ltd. (OP-4)
    5. M/s Rama Engineering Works (OP-5
    6. M/s Polymer Products of India (OP-6)
    7. M/s Hari Narayan Bihani (OP-7)

3. Noting the foregoing, the Commission passed an order dated 17.11.2020 under Section 26(1) of the Act, forming an opinion that, *prima facie*, the conduct of the OPs appears to be in contravention of the provisions of Section 3(1) read with Section 3(3) of the Act, and consequently, directed the Director General (**DG**) to cause an investigation into the matter and submit a report. The DG was also directed to investigate the role of the officials/persons who, at the time of such contravention, were in-charge of and responsible for the conduct of the businesses of respective OPs as well as of the persons/officers with whose consent or connivance such contravention was committed, in terms of the provisions contained in Section 48 of the Act.

<u>Investigation by the DG</u>:

4. Pursuant to the directions issued by the Commission, the DG, after conducting a comprehensive investigation in the matter, submitted the investigation report. Based on investigation, the findings of the DG in its report, in brief, are as under:

(a) All 07 OPs are engaged in the manufacture and supply of protective tubes. As such, they are 'enterprise' within the meaning of Section 2(h) of the Act. They are engaged in identical/similar trade of goods; hence, their conduct can be analysed in terms of Section 3(3) of the Act.

(b) Evidence of common IP addresses from which bids were quoted and common directorship/partnership between 3 OPs is found. Further, exchange of several e-mail communications between the representatives of the OPs is found, wherein:

(i) discussion on prices to be quoted in the tenders is made,

(ii) tender quantity allocation took place,

(iii) the OPs can be seen distributing tenders amongst themselves wherein the OPs mutually agreed to a given rate, and non-allottees were instructed to quote 8–10% higher prices,

(iv) the OPs can be seen asking other OPs to withdraw their offers from tenders, and

(v) the OPs can be seen manipulating the bidding process by forming a pool or cartel of vendors, even for developmental vendors who were entering the market and were in the initial phases of manufacturing.

Representatives of certain OPs also admitted to the above arrangement.

(c) From the above, the DG observed a *modus operandi* which was being followed by the OPs and concluded that all the 07 OPs indulged in contravention of the provisions of Section 3(3)(a), 3(3)(b), 3(3)(c), and 3(3)(d) read with Section 3(1) of the Act. In terms of Section 48 of the Act, the DG identified certain individuals of the OPs who had played an active role in contravention of the provisions of the Act by the respective OP and/or who were in-charge of and responsible for the conduct of the business of the respective OP during the period of contravention, and accordingly, fixed liability upon 10 such individuals.

<u>Proceedings before the Commission</u>:

5. The Commission considered the investigation report submitted by the DG in its ordinary meeting held on 04.01.2022 and decided to forward an electronic copy of the 'non-confidential *qua* OPs version' of the same to the OPs and their individuals found liable by the DG in terms of the provisions of Section 48 of the Act (**Parties**) for filing their respective objections/suggestions, if any, to the investigation report, along with certain financial details. The OPs were directed to furnish their audited Financial Statements, including Balance Sheets and Profit & Loss Accounts for the Financial Years (**FYs**) 2015–16 to 2020–21, along with details of their revenue and profit generated in these FYs from the sale of protective tubes by way of filing Affidavits supported by certificates from chartered accountants, while the individuals were directed to file their income details, including Income Tax Returns (**ITRs**), for the FYs 2018–19, 2019–20, and 2020–21.

6. After receipt of objections/suggestions from the Parties, the Commission, on 30.03.2022 and 31.03.2022, heard the oral submissions addressed by the respective learned counsel(s) for the Parties on the DG Report and also heard OP-4 on its application for lesser penalty through video conference mode. The Commission decided to pass an appropriate order in the matter in due course. Thereafter, the Parties submitted their respective written arguments.

<u>Submissions of the Parties</u>:

7. In their suggestions/objections to the investigation report, written arguments, and during the oral hearing, the Parties took diverse pleas, which are summarised in the succeeding paras:

8. **Polyset Plastics Private Ltd. (OP-1), M/s Anju Techno Industries (OP-2), M/s Power Mould (OP-3), Mr. Bhupesh Bafna, and Ms. Shanta Sohoni**

8.1 The informal market understanding amongst the vendors with regard to the supply of protective tubes to the Railways existed to safeguard and recover the investments in R&D put forth by the vendors and to deliver good quality product at a reasonable price. The answering OPs were not fully aware of the exact and specific competition law in the country and the OPs will certainly be extra careful and cautious of all rules, regulations, and existing compliances in all their future dealings. The informal arrangement between the OPs existed in ignorance of existing laws. Their intentions or actions were not to prevent the entry of any new entity in the tender process, *i.e.*, were not anti-competitive in nature. The field and market were always open for all, and the answering OPs' dealings have always been fair to all.

8.2 In the digital era, the procurement system and subsequent tendering process of the Indian Railways is very robust and in no way can be influenced by the vendors. It is not the case that, due to any action on the part of the answering OPs, the price of the product increased or jacked up.

8.3 The answering OPs have never been party to any earlier inquiry or investigation. The revenue earned by them from the sale of protective tubes is also very less, considering the overall business. Further, in light of the impact of the COVID-19 pandemic and the consequent lockdowns, the businesses of the answering OPs have suffered a lot. Hence, no penalty ought to be imposed upon the answering OPs.

8.4 Already, heavy penalties on the answering OPs have been imposed in *Ref. Case No. 03 of 2018* titled *Chief Materials Manager, North Western Railway v. Moulded Fibreglass Products LLP*, and hence, no further penalties ought to be imposed.

9. **Jai Polypan Pvt. Ltd. (OP-4), Mr. Vishal Baid, Mr. Rajeev Dudhani, and Mr. Rajesh R.**

9.1 OP-4 is a lesser penalty applicant before the Commission. It believes that it has the first marker status and that the Commission was not aware of the existence of the present cartel before the lesser penalty application was filed by OP-4. Therefore, OP-4 and its individuals ought to be granted 100% reduction in penalty, if any, imposed upon them. OP-4 made vital disclosures before the Commission, which enabled the Commission to form a *prima facie* opinion regarding the existence of the present cartel. It also fully co-operated during the course of investigation and inquiry and is not objecting to the findings contained in the DG Report on merits.

9.2 Through its lesser penalty application, OP-4 provided evidence with respect to (i) communication between the OPs for rigging the bids floated by the Indian Railways in relation to protective tubes between June 2015 to June 2020; (ii) the manner in which tenders were allocated amongst the OPs; (iii) the manner in which prices were mutually agreed between the OPs; (iv) the manner of addition of new members to the cartel arrangement and distribution of share percentage between them; and (v) issues with the cartel, monitoring mechanism, and resolution. The DG has relied on the information and evidence provided by OP-4 in its investigation report. In light of this, and considering the fact that OP-4 has fulfilled all conditions for grant of lesser penalty as mentioned under the LPR, penalty should not be levied on OP-4 and its individuals, and if a penalty is to be levied, OP-4 and its individuals ought to be granted 100% reduction in penalty under the LPR.

9.3 The DG has erred in observing that the OPs indulged in geographical allocation of the market. The Indian Railways distributes its operations into different zones across the country geographically, and each railway zone procures its products separately by floating separate tenders. The DG rightly mentions that the OPs had allocated the market percentage to each vendor. However, this market percentage is not allocated on the basis of any geographic segmentation, as the OPs supply their products to the Railways pan-India, *i.e.*, across various railway zones.

9.4 Penalty, if any, ought to be imposed only on relevant turnover/profit of OP-4, *i.e.*, the turnover/profit derived from the sale of Protective Tubes in the relevant time period/duration (*i.e.*, 2015–2020).

9.5 The following mitigating factors ought to be considered in case the Commission deems it necessary to impose a penalty: (i) OP-4 continuously co-operated with the Commission and the DG during the investigation; (ii) OP-4 earned insignificant profits from the cartel arrangement; (iii) OP-4 was forced to join hands with other vendors in order to secure their business because the market is driven and solely controlled by the Indian Railways and vendors have to adhere to the framework and tender conditions stipulated by the Indian Railways; (iv) OP-4 is an MSME unit with limited resources and has suffered significant repercussions of the COVID-19 pandemic, and accordingly, the imposition of penalty will place an additional significant financial burden on OP-4; and (v) OP-4 played a limited role in cartel arrangement as Ms. Shanta Sohoni was responsible for co-ordinating amongst the members of the cartel.

9.6 OP-4 has also disclosed the existence of another cartel arrangement to the Commission. The Competition Law Review Committee, in its report dated 26.07.2019, has acknowledged the challenges faced by the Commission in cartel detection and enforcement and, in view of this, recommended that, where an applicant makes full, true, and vital disclosures with respect to another cartel (Leniency Plus), such applicant may be granted lesser penalty specified in the LPR. In view of this, the Commission, while deciding the quantum of penalty reduction in the present matter, may also take into account the additional disclosure of contravention of Section 3 of the Act made by OP-4 in another matter. Considering the legislative desire for Leniency Plus, in addition to the comprehensive co-operation provided by OP-4 in this matter, the Commission may, considering the fact that OP-4 has also made full, true, and vital disclosures with respect to another anti-competitive agreement, grant OP-4 and its individuals 100% immunity from penalty in the present matter.

10. **Rama Engineering Works (OP-5) and Mr. V. Chakrapani**

10.1 The DG has failed to examine Mr. V. Chakrapani of OP-5 on oath before giving a finding of contravention against OP-5 and him. This is against the principles of natural justice.

10.2 The DG Report is silent on the period of contravention. Though it appears from the DG Report that the transactions relating to the alleged cartel took place from 2015 to 2019, OP-5 has been made liable despite the fact that it became an approved source for the Indian Railways for protective tubes only on 29.05.2019.

10.3 OP-5 never shared any crucial information with the other OPs like bid amount or bid presentation dates in the relevant period, which may establish the existence of a cartel. All that the investigation has found against OP-5 are five e-mails agreeing to a meeting or revealing information about already awarded quantities, which information was already available in the public domain. No independent source has been examined to prove the allegations of cartelisation. In fact, there is no certificate given under Section 65B of the Indian Evidence Act, 1872 in support of such e-mails relied upon against OP-5. The DG's findings are based on an incorrect understanding of the facts and law and there is no direct evidence against OP-5 of indulging in cartelisation. OP-5, in this regard, reserves the right to cross-examine the investigating officer of the present matter.

10.4 In a monopsonist market with a single buyer, price is set by the buyer, conditions are such that sellers can predict demand, there is a repetitive bidding process, and products are identical and specialised; as such, mere price parallelism in such cases cannot be a reason to arrive at a conclusion of bid rigging. In such a market, there is a high degree of predictability of prices and bidders may take business decisions to mirror the prices of competitors quoted in other railway zones by adjusting or averaging prices in other tenders.

10.5 The DG has not found that any loss of revenue to the Indian Railways occurred as a result of the present alleged cartel. Hence, there was no appreciable adverse effect on competition (**AAEC**) within India. In fact, the prices quoted by OP-5 for polyacetal protective tubes to the Indian Railways always remained less than the market price, and the profit margin of OP-5 was also very low (8%).

10.6 After obtaining approval, OP-5 was awarded the first order by the South East Central Railway on 19.08.2019, for which OP-5 had quoted a rate of ₹456, and it was awarded quantity of 5,771; however, in the same railway zone, in 2018, OP-4 had quoted a price of ₹502.95 and it was awarded the tender at this rate. Similarly, OP-5 was awarded the tender of the South Western Railway *vide* P.O. dated 20.10.2020 @₹432 and quantity of 552; however, in February 2020, OP-6 had quoted a price of ₹470 and was awarded quantity of 2,400. These instances clearly show that OP-5 was not a part of the alleged cartel.

10.7 Further, the cost breakup of polyacetal protective tube is as follows: 1 kg of raw plastic Delrin available in the market for ₹250/kg + manufacturing cost ₹100/- (which includes labour, electricity, *etc.*) + consumables ₹50/- = Total ₹400/-. In 2019, OP-5 made supplies to South East Central Railway @₹435/- per piece and to South Central Railway for ₹484/- per piece. In 2020, supplies were made to South Western Railway @₹432/- per piece. These rates were quoted after keeping aside a minuscule portion of profit of approx. 8%. This shows that the Indian Railways were not in any losses, and OP-5 quoted very competitive prices.

10.8 OP-5 had not quoted in any of the tenders through a common IP address with any other OP.

10.9 Further, the inherent nature of the market for Protective Tubes itself precludes the possibility of competition, as the product can only be sourced from RDSO-approved sources, and this creates entry barriers for new entrants in the market. The DG has not examined the factors stated under Section 19(3) of the Act to establish any AAEC.

10.10 Penalty, if any, ought to be imposed only on the turnover/profit derived by OP-5 from the sale of protective tubes to the Indian Railways in FY 2019–20 (after it became an approved source).

10.11 OP-5 is a partnership firm registered with the MSME.

10.12 Certain mitigating factors ought to be considered. The DG has itself brought out in the investigation report that the demand for polyacetal Protective Tubes remained low due to the lower pricing of metallic protective tubes, which the Railways continued to procure. Further, coaches also switched to LHB coaches (which do not require protective tubes) in place of ICF coaches. Hence, the DG itself observed that it appears that the cartel was formed to deal with excess supply and low demand. Average turnover earned by OP-5 during the relevant period from the sale of protective tubes was meagre. Further, due to the COVID-19 pandemic and economic slowdown, it has become difficult for OP-5 to survive in the market.

11. **Polymer Products of India Ltd. (OP-6), Mr. Vishnu N.M., Mr. Venkata Subramanyam, and Mr. Harsha Gumballi**

11.1 OP-6 was only a Part II supplier of protective tubes to the Indian Railways till 25.09.2019. Part II suppliers are not considered for the supply of more than 5% of the tendered quantity, and only if the rate quoted by them is less than a Part I source suppliers' rate. Being a Part II source supplier, OP-6 was in no position to dictate the prices of protective tubes, which are decided on the basis of the prices of Part I source suppliers. Part II source suppliers are left at complete mercy of Part I source suppliers, and they are forced to follow the directions set by Part I source suppliers to survive in the market and procure business. Hence, OP-6, having no control over the market of protective tubes had not entered into any cartel arrangement and/or manipulated the prices of protective tubes.

11.2 Post 26.09.2019, when OP-6 got approved as a regular source of supply, whenever it was informed to quote according to the rates in the market, it flatly ignored. It quoted competitive rates to the Indian Railways based on various factors, such as the cost of raw material, labour cost, freight cost, *etc.* It only quoted such rates which, based on its calculations, were commercially viable for it. OP-6, after underquoting in tenders, was asked several times to withdraw the offer, as reflected in the e-mail dated 09.06.2020; however, it never adhered to any such communications. It was never a part of any allocation table nor replied to any meeting proposal post 2019.

11.3 The DG has failed to establish prior agreement of 'meeting of minds' between the OPs. Rather, the communications referred to between OP-6 and its individuals with the other OPs express differences of opinions and disagreements. OP-6 has always followed fair trade practices and accordingly, avoided any professional communication with any competitor with respect to any tender whatsoever for which OP-6 may or may not bid.

11.4 OP-6 has not indulged in the modification of any prices arising out of the cartel.

11.5 OP-6 had not quoted in any of the tenders through a common IP address with any other OP.

11.6 OP-6 had provided all relevant information, documents, and evidence during the entire proceedings and has co-operated genuinely, fully, continuously, and expeditiously in the present matter. It has not concealed, destroyed, manipulated, or removed any relevant and necessary documents of the present case.

11.7 The COVID-19 pandemic has had a catastrophic impact on the entire world, especially small-scale industries like OP-6, which is a partnership firm and has been facing the brunt of uncertainty that has been looming around the global economy since the onset of COVID-19. Hence, the Commission may consider waiving the levy of any penalty upon OP-6 and its individuals.

11.8 In another similar case bearing *Ref. Case No. 03 of 2018* (*supra)*, the Commission already imposed upon OP-6 and its individuals penalties to the tune of ₹28,80,881/-. As the same relates to substantially similar conduct and for the same duration the Commission ought not impose any further monetary penalty in the instant case.

11.9 The product in question, protective tubes, are no longer in use after the introduction of LHB Coaches. Also considering the redundant nature of the product, the Commission may adopt lenient approach in the matter.

12. **Hari Narayan Bihani (OP-7) and Mr. Keshav Bihani**

12.1 Not all documents/e-mails relied upon by the DG in its investigation report have been supplied along with the DG Report. In fact, the order dated 17.11.2020 passed by the Commission under Section 26(1) of the Act was not even provided to OP-7, but rather, OP-7 had to seek a copy of the same from the DG.

12.2 OP-7 is a partnership firm. It was approved as a Part II supplier of protective tubes to the Indian Railways on 26.07.2017 and upgraded as Part I supplier on 04.07.2019. There is no finding in the DG Report that after grant of approval as

Part I supplier, OP-7 interacted/communicated/met with the other OPs in terms of the alleged cartel. In fact, after approval as Part I vendor, OP-7 quoted independent/competitive prices and was allotted up to 100% tender quantity (higher than any allocation made by OP-1).

12.3 The DG has failed to establish prior agreement of 'meeting of minds' between the OPs. Mere receipt of certain e-mails by OP-7 does not show 'agreement' or 'action in concert' or 'understanding' with respect to it, especially when the actual conduct (price quotations and quantities allotted) of OP-7 is contrary to what has been suggested in the e-mails. Unilateral/independent action not to follow the alleged price dictates/quantity allocation shows that OP-7 was not a part of the alleged cartel.

12.4 There is no evidence in the form of common IP address, call records, meetings, *etc.*, against OP-7. There is also no evidence of any e-mail being sent by OP-7 prior to 25.07.2019.

12.5 Regarding the e-mail dated 25.07.2019 sent by OP-7 to other OPs, it may be noted that the same was sent only after the relevant tender was closed on 11.07.2019. As far as Price List Rate (**PLR**) mentioned in the said e-mail and other e-mails is concerned, the same is the rate fixed/suggested by Indian Railways itself based on its own calculation and estimation of cost of production. The DG has failed to make a comparison between PLR, actual quoted rates, and tender award rates, or between the quoted and awarded quantities.

12.6 Regarding other e-mails, e-mails dated 11.11.2019 and 12.11.2019 do not mention inclusion of OP-7 in the cartel pool or allocation of any quantity to it; there is no proof of any actual conduct/meeting post e-mails dated 15–16.11.2019; e-mails dated 20.09.2019, 07.10.2019, 03.02.2020, 16.03.2020, and 29.06.2020 were not acted upon by OP-7; e-mails dated 10.02.2020, 17.03.2020, and 08.06.2020 were not marked to OP-7; e-mail dated 08.06.2020 in fact states that OP-7 is not following/quoting the dictated prices; and e-mails dated 09.06.2020, 10.06.2020, and 12.06.2020 only show OP-4 threatening to discontinue the cartel if the dictated prices are not followed. It may be noted that OP-7 did not even participate in any Railway tender between February 2020 and 08.06.2020. Further, it was because of non-cooperation of OP-7 only that the cartel arrangement broke and OP-4, the ringleader, approached the Commission by way of filing lesser penalty application, which was nothing but a counter blast to wipe out competitors.

12.7 Market for polyacetal protective tubes is a monopsonist market with a single buyer, *i.e.*, the Indian Railways. Further, with the requirement of RDSO approval for vendors, there exist entry barriers in this market. As such, the buyer, *i.e.*, Indian Railways, has the power to influence the price quoted by the vendors as it finalises the price. PLR is set by the Railways and it, at its sole discretion, gives counter offer and allocates quantities. Vendors have no option but to accept the counter offer. Thus, suppliers can, at no point in time, have any control over the prices. The present case is, therefore, squarely covered by the judgment of the Hon'ble Supreme Court in *Rajasthan Cylinders and Containers Limited v. Union of India and Another (2020) 16 SCC 615*, and the present inquiry against OP-7, in terms of the said judgment, ought to be closed.

12.8 Also, though the Hon'ble Supreme Court had observed in *Rajasthan Cylinders* (*supra*) that the examination of a buyer in a monopsony market is critical for the purposes of investigation, in the present case, neither RDSO nor Indian Railways were summoned by the DG for recording their statements or clarifying any factual position. With respect to polyacetal protective tubes, raw material and its suppliers are also categorially specified by RDSO. Hence, it is difficult to imagine that RDSO/Railways would not be aware of the prices of raw material, cost of production, and final prices of protective tubes. The DG has failed to examine RDSO/Railways on any such aspect.

12.9 The DG has also failed to examine the other parties (apart from the OPs) who were participating in the tenders for protective tubes issued by the Indian Railways.

12.10 The DG has failed to establish any AAEC in the market. It has not examined the factors stated under Section 19(3) of the Act to establish any AAEC. The alleged conduct of the OPs neither created any entry barriers in the market, nor drove existing competitors out of the market, nor led to foreclosure of competition by hindering entry into the market. In fact, with OP-7 quoting competitive rates as Part I supplier, Indian Railways (the consumer) has benefitted.

12.11 Relevant turnover/profit for OP-7 in the present case ought to be the revenue/profit derived from sale of polyacetal protective tubes for Axle Box Guide in ICF to the Indian Railways from the tenders filled by OP-7 between 04.07.2019 to February 2020.

12.12 As OP-7 was not a part of the cartel arrangement, no liability in terms of Section 48 of the Act can be imposed upon Mr. Keshav Bihani, Partner of OP-7. Anyhow, at this stage, penalty upon him cannot be imposed, as the issue of simultaneous invocation of Section 48 proceedings before giving a finding of contravention against the company is presently pending adjudication before the Hon'ble Supreme Court of India.

<u>Analysis</u>:

13. The Commission has perused the application seeking lesser penalty filed by OP-4 under Section 46 of the Act; the investigation report submitted by the DG and the evidences collected by the DG; the suggestions/objections to the DG Report and the written arguments filed by the Parties; and also heard the oral arguments made by the respective learned counsel(s) representing the Parties in the matter. Before proceeding to examine the evidence collected by the DG, the Commission deems it appropriate to note the product/article involved in the present matter.

14. The present matter involves allegations of cartelisation relating to the product 'polyacetal protective tube' for axle box guide in Integral Coach Factory (**ICF**). The DG, in its report, has noted that the primary suspension in ICF bogie is through a dashpot arrangement, which is mainly a cylinder piston arrangement. This arrangement provides the dampening effect during the running of the coach. The cover of this complete dashpot arrangement is known as protective tube.

15. The Indian Railways, in order to ensure reliability, availability, and safe working of Railway assets, follows the practice of maintaining lists of approved vendors for certain specific items. It is noted from the DG Report that polyacetal protective tube is one such item. Research Designs and Standards Organisation (**RDSO**) is the nodal agency of the Indian Railways for vendor approval. It maintains two lists—of Part I and Part II vendors. RDSO-approved vendors included in Part I are eligible for regular supply to the Indian Railways and for getting an order for full quantity of tenders floated by the

Indian Railways, whereas vendors approved and included in Part II are eligible for developmental order and getting an order for part quantity (up to 25% only). The RDSO-approved vendors/suppliers of polyacetal protective tubes to the Indian Railways, along with their timelines of approval, are as follows:

Manufacturer	Date of approval as Part II source	Date of approval as Part I source
Polyset Plastics Private Ltd. (OP-1)	16.09.2009	01.04.2017
M/s Anju Techno Industries (OP-2)	16.09.2009	11.07.2016
M/s Power Mould (OP-3)	16.09.2009	18.07.2016
Jai Polypan Private Ltd. (OP-4)	09.04.2015	01.01.2017
M/s Rama Engineering Works (OP-5)	26.07.2015	29.05.2019
M/s Polymer Products of India (OP-6)	17.06.2017	26.09.2019
M/s Hari Narayan Bihani (OP-7)	26.07.2017	04.07.2019

16. From the evidence on record, it is noted that all the OPs are, *inter alia*, engaged in the manufacture and supply of polyacetal protective tubes to the Indian Railways. Since all the OPs have been engaged in identical/similar trade of goods, their alleged cartel conduct can be analysed by the Commission in terms of Section 3(3) of the Act.

17. Against the above background, the Commission shall analyse the conduct of the OPs and the evidence corroborating the same *w.r.t.* the tenders floated by the Indian Railways for the procurement of polyacetal protective tubes to assess if there was any anti-competitive agreement between them *w.r.t.* such tenders.

18. From the DG Report, it is noted that three out of the seven OPs, *viz*., OP-1, OP-2, and OP-3, were declared sister concerns before the RDSO, yet were participating in the same tenders for the same product as competitors, and they were operated by the following common directors/partners:

S. No.	Company/Firm	Director/Partner
1.	Polyset Plastics Private Ltd	i. Mr. Bhupesh P. Bafna, Managing Director ii. Ms. Anjuu Bafna, Director
2.	M/s Anju Techno Industries	i. Mr. Bhupesh P. Bafna, Partner ii. Mr. Shailesh P. Bafna, Partner (representing HUF of Mr. S. P. Bafna)
3.	M/s Power Mould	i. Mr. Bhupesh P. Bafna, Partner ii. Mr. Shailesh P. Bafna, Partner (representing HUF of Mr. S. P. Bafna)

19. The DG has noted that all three sister concern entities were under the care of one person, *viz.*, Mr. Bhupesh Bafna.

20. Further, upon analysis of the details of IP addresses from which the OPs filed the bids in the Railway tenders for Polyacetal Protective Tubes, which were obtained by the DG from the Centre for Railway Information System (**CRIS**), it is noted that, in the 12 tenders tabulated below, bids were submitted by the three sister concern OPs from a common IP address:

S. No.	Tender No.	Tender floated by	Opening date	Common IP addresses
1.	11142530-A	Central Railways	29.04.2014	OP-1, OP-2, and OP-3
2.	11152530	Central Railways	30.04.2015	OP-1, OP-2, and OP-3
3.	42155371-A	Central Railways	19.05.2015	OP-1, OP-2, and OP-3
4.	11152530-A	Central Railways	28.05.2015	OP-1, OP-2, and OP-3
5.	48156501	Central Railways	26.10.2015	OP-1, OP-2, and OP-3
6.	11161075	Central Railways	22.04.2016	OP-1, OP-2, and OP-3
7.	73160060	Central Railways	27.03.2017	OP-1, OP-2, and OP-3
8.	731600604	Central Railways	17.04.2017	OP-1, OP-2, and OP-3
9.	38181075	Central Railways	11.05.2018	OP-1 and OP-3
10.	51191807	Central Railways	23.08.2019	OP-1, OP-2, and OP-3
11.	07f 90117	Northern Railways	14.11.2019	OP-1, OP-2, and OP-3
12.	07200117A	Northern Railways	01.12.2020	OP-1 and OP-2

21. In the view of the Commission, in light of the above evidences, there appears to be sort of collusion between OP-1, OP-2, and OP-3 *w.r.t.* the tenders issued by the Indian Railways for the procurement of polyacetal protective tubes.

22. In order to understand the exact nature of such collusion/coordination and the involvement, if any, of any other OPs in such collusion/coordination, the Commission proceeds to analyse various e-mail communications exchanged between the following key representatives of the OPs between 18.11.2015 and 29.06.2020 with regard to various tenders issued by the Indian Railways for the procurement of polyacetal protective tubes:

1.	OP-1	Mr. Bhupesh Bafna
		Ms. Shanta Sohoni
2.	OP-2	Mr. Bhupesh Bafna
3.	OP-3	Mr. Bhupesh Bafna
4.	OP-4	Mr. Vishal Baid
		Mr. Rajeev Dudhani
		Mr. Rajesh R.
5.	OP-5	Mr. V. Chakrapani
6.	OP-6	Mr. Vishnu NM
		Mr. Harsha Gumballi
		Mr. A. Venkata Subramanyam
7.	OP-7	Mr. Keshav Bihani

23. Though an argument has been raised by OP-5 that such e-mail communications cannot be relied upon as the same are not accompanied by a certificate in terms of Section 65B of the Indian Evidence Act, 1872, the Commission in this regard notes that such certificate is, in fact, available on record in support of the aforesaid e-mail communications.

24. Relevant excerpts of the aforementioned e-mail communications are tabulated hereunder:

<table>
<tr><th>S. No.</th><th>E-mail (To and From)</th><th>Content of e-mail</th><th>Observation</th></tr>
<tr><td>1.</td><td>Ms. Shanta Sohoni of OP-1 to OP-4</td><td>It is decided that we will do this business on quantity basis. Sharing will be 75% - 25% basis.
(Pl. Inform us as soon as tender gets finalise for update the position time to time)
(P.S.: Pl. Discuss with us before quoting the tender where quantities are splited)</td><td rowspan="3">Ms. Shanta Sohoni divided the forthcoming tenders on a quantity basis (75%–25%) between OP-1 Group (OP-1, OP-2, and OP-3) and OP-4. She kept updating the same as well.</td></tr>
<tr><td>2.</td><td>Ms. Shanta Sohoni of OP-1 to OP-4</td><td>Subject: PT-AC.xlsx
Attachments: PT-AC.xlsx
Allotment of Protective Tubes
Account for Polyacetal Protective Tubes
<table>
<tr><th>S. No.</th><th>Rly.</th><th>Tender No.</th><th>Due date</th><th>Qty.</th><th>PPPL</th><th>JPPL</th><th>Qty. dropped</th><th></th></tr>
<tr><td>1</td><td>ICF</td><td>02151253</td><td>12/06/15</td><td>23879</td><td>16137</td><td></td><td>7742</td><td></td></tr>
<tr><td>2</td><td>CR</td><td>11152530</td><td>30/04/15</td><td>4000</td><td>0</td><td>0</td><td>4000</td><td>Tender dropped</td></tr>
<tr><td>3</td><td>NFR</td><td>30150013</td><td>30/07/15</td><td>1635</td><td>0</td><td>1635</td><td></td><td></td></tr>
<tr><td>4</td><td>NFR</td><td>30150013-A</td><td>09/09/15</td><td>10978</td><td>5489</td><td>5489</td><td></td><td></td></tr>
<tr><td>5</td><td>SCR</td><td>30151051</td><td>23/09/15</td><td>8339</td><td></td><td>8339</td><td></td><td></td></tr>
<tr><td>6</td><td>SR</td><td>04150910</td><td>23/09/15</td><td>11219</td><td>11219</td><td></td><td></td><td></td></tr>
<tr><td>7</td><td>WCR</td><td>30151008-A</td><td>06/10/15</td><td>7810</td><td>7810</td><td></td><td></td><td></td></tr>
<tr><td>8</td><td>CR</td><td>48156501</td><td>26/10/15</td><td>1440</td><td></td><td>1440</td><td></td><td></td></tr>
<tr><td>9</td><td>NWR</td><td>30151015</td><td>29/10/15</td><td>3269</td><td>3269</td><td></td><td></td><td></td></tr>
</table>
<table>
<tr><td>Total Qty.</td><td>72569</td></tr>
<tr><td>Dropped Qty.</td><td>11742</td></tr>
<tr><td>Bal. Qty.</td><td>60827</td></tr>
<tr><td>75% PPPL</td><td>36496</td></tr>
<tr><td>25% JPPL</td><td>12165</td></tr>
</table></td></tr>
<tr><td>3.</td><td>Ms. Shanta Sohoni of OP-1 to OP-4</td><td><table>
<tr><td>Total Qty.</td><td>92042</td></tr>
<tr><td>Dropped Qty.</td><td>23097</td></tr>
<tr><td>Bal. Qty.</td><td>68945</td></tr>
<tr><td>75% PPPL</td><td>51709</td></tr>
</table></td></tr>
</table>

<table>
<tr><th>S. No.</th><th>E-mail (To and From)</th><th>Content of e-mail</th><th>Observation</th></tr>
<tr><td></td><td></td><td><table><tr><td>25% JPPL</td><td>17236</td></tr><tr><td>Excess/ Shortage PPPL</td><td>-527</td></tr><tr><td>Excess/ Shortage JPPL</td><td>527</td></tr></table>It is decided that we will do this business on quantity basis. Sharing will be 75% - 25% basis.
(Pl. Inform us as soon as tender gets finalise for update the position time to time)</td><td></td></tr>
<tr><td>4.</td><td>Mr. Rajeev Dudhani of OP-4 to Ms. Shanta Sohoni of OP-1</td><td>Mam,
Pl. see attached file regarding upto date position in P. Tube (orders received upto 21/03/2016)</td><td>OP-4 shared up-to-date position with Ms. Shanta Sohoni.</td></tr>
<tr><td>5.</td><td>Mr. Rajesh R. of OP-4 to Ms. Shanta Sohoni of OP-1</td><td>-</td><td rowspan="3">OP-4 asked for allocation of new tenders. Ms. Shanta Sohoni updated and divided forthcoming tenders on quantity basis (75%–25%) between OP-1 Group (OP-1, OP-2, and OP-3) and OP-4.</td></tr>
<tr><td>6.</td><td>OP-4 to Ms. Shanta Sohoni of OP-1</td><td>Pl. send allocation for below tenders immediately</td></tr>
<tr><td>7.</td><td>Ms. Shanta Sohoni of OP-1 to OP-4</td><td><table><tr><td>Total Qty.</td><td>94892</td></tr><tr><td>Dropped Qty.</td><td>28007</td></tr><tr><td>Bal. Qty.</td><td>66885</td></tr><tr><td>75% PPPL</td><td>50164</td></tr><tr><td>25% JPPL</td><td>16721</td></tr><tr><td>Excess/ Shortage PPPL</td><td>-2,598</td></tr><tr><td>Excess/ Shortage JPPL</td><td>2,598</td></tr></table>It is decided that we will do this business on quantity basis. Sharing will be 75% - 25% basis.
(Pl. Inform us as soon as tender gets finalise for update the position time to time)</td></tr>
<tr><td>8.</td><td>Mr. Rajesh R. of OP-4 to Ms. Shanta Sohoni of OP-1</td><td>Pl. note that the following P. Tube tender due on 22/04/2016
C. Rly Tender No. 11161075 due on 22/04/2016
Kindly give allocation.</td><td>OP-4 sought allocation for forthcoming tenders from OP-1.</td></tr>
</table>

<table>
<tr><th>S. No.</th><th>E-mail (To and From)</th><th>Content of e-mail</th><th>Observation</th></tr>
<tr><td>9.</td><td>Mr. Rajesh R. of OP-4 to Ms. Shanta Sohoni of OP-1</td><td>Dear Mam,
Pl. Give allocation for NCR tender no. 30161646 due on 14/06/2016.</td><td rowspan="2"></td></tr>
<tr><td>10.</td><td>Mr. Rajeev Dudhani of OP-4 to Ms. Shanta Sohoni of OP-1</td><td>Mam,
Pl. Give allocation for this tender and also give forthcoming tenders allocation.
Regards
Rajeev Dudhani</td></tr>
<tr><td>11.</td><td>Ms. Shanta Sohoni of OP-1 to OP-4</td><td><table><tr><td>Total Qty.</td><td>97048</td></tr><tr><td>Dropped Qty.</td><td>29127</td></tr><tr><td>Bal. Qty.</td><td>67921</td></tr><tr><td>75% PPPL</td><td>50941</td></tr><tr><td>25% JPPL</td><td>16980</td></tr><tr><td>Excess/ Shortage PPPL</td><td>-701</td></tr><tr><td>Excess/ Shortage JPPL</td><td>701</td></tr></table>It is decided that we will do this business on quantity basis. Sharing will be 75% - 25% basis.
(Pl. Inform us as soon as tender gets finalise for update the position time to time)</td><td rowspan="2">Ms. Shanta Sohoni updated and divided forthcoming tenders on quantity basis (75%–25%) between OP-1 Group (OP-1, OP-2, and OP-3) and OP-4.
In reply, OP-4 made certain remarks in the table sent by Ms. Shanta Sohoni in red.</td></tr>
<tr><td>12.</td><td>Mr. Rajeev Dudhani of OP-4 to Ms. Shanta Sohoni of OP-1</td><td>Please see the attached file regarding update of P. Tube account. See the red colour remarks.
The attachment states as follows:<table><tr><td>Total Qty.</td><td>97048</td></tr><tr><td>Dropped Qty.</td><td>29127</td></tr><tr><td>Bal. Qty.</td><td>67921</td></tr><tr><td>75% PPPL</td><td>50941</td></tr><tr><td>25% JPPL</td><td>16980</td></tr><tr><td>Excess/ Shortage PPPL</td><td>-701</td></tr><tr><td>Excess/ Shortage JPPL</td><td>701</td></tr></table>It is decided that we will do this business on quantity basis. Sharing will be 75% - 25% basis.
(Pl. Inform us as soon as tender gets finalise for update the position time to time)</td></tr>
</table>

<table>
<tr><th>S. No.</th><th>E-mail (To and From)</th><th>Content of e-mail</th><th>Observation</th></tr>
<tr><td>13.</td><td>OP-4 to Ms. Shanta Sohoni of OP-1</td><td>Pl. Issue Protective tube allocation for July 2016.</td><td rowspan="2">OP-4 asked Ms. Shanta Sohoni to make allocations. Ms. Shanta Sohoni replied saying allocation will be made after 04.07.2016.</td></tr>
<tr><td>14.</td><td>Ms. Shanta Sohoni of OP-1 to OP-4</td><td>Allotment will be made after 4th July 2016 because SWR tender will be opening on 11/7/16</td></tr>
<tr><td>15.</td><td>Ms. Shanta Sohoni of OP-1 to OP-4</td><td><table>
<tr><td>Total Qty.</td><td>97678</td></tr>
<tr><td>Dropped Qty.</td><td>32231</td></tr>
<tr><td>Bal. Qty.</td><td>65447</td></tr>
<tr><td>75% PPPL</td><td>49085</td></tr>
<tr><td>25% JPPL</td><td>16362</td></tr>
<tr><td>Excess/ Shortage PPPL</td><td>-2557</td></tr>
<tr><td>Excess/ Shortage JPPL</td><td>2557</td></tr>
</table>
It is decided that we will do this business on quantity basis. Sharing will be 75% - 25% basis.
(Pl. Inform us as soon as tender gets finalise for update the position time to time)</td><td>Ms. Shanta Sohoni updated and divided forthcoming tenders on quantity basis (75%–25%) between OP-1 Group (OP-1, OP-2, and OP-3) and OP-4.</td></tr>
<tr><td>16.</td><td>Ms. Shanta Sohoni of OP-1 to OP-4</td><td>For Protective tube also we are charging ED @ 6% and CST @ 5.5%
SWR tender was dropped because you have charged ED @ 12.5%.
If you are paying ED @ 12.5% for this item, then you have to reduce your basic rate to match our rate.
Pl. confirm</td><td rowspan="3">Ms. Shanta Sohoni informed OP-4 that SWR tender was dropped because of OP-4 charging higher excise duty. She stated that if OP-4 charged higher Excise Duty, it has to reduce the basic rate to match the rate with OP-1.</td></tr>
<tr><td>17.</td><td>OP-4 to Ms. Shanta Sohoni of OP-1</td><td>Due to mistake we were quoted ED @ 12.5% but it is 6% only.
So kindly confirm the rates to be quoted by JPPL for all the future tender as there is little bit increase in the rate of Part – 1 (PPPL) rate.
Please decide the final rate (basic + 6% +5.5%) for JPPL & PPPL.</td></tr>
<tr><td>18.</td><td>Ms. Shanta Sohoni of OP-1 to OP-4</td><td>Now, recent tender we have quoted Rs. 432 /- + ED 6 % + CST 5.5% + freight Rs. 35/- (depend on destination)
You should quote 425/- +++...</td></tr>
</table>

<table>
<tr><th>S. No.</th><th>E-mail (To and From)</th><th>Content of e-mail</th><th>Observation</th></tr>
<tr><td>19.</td><td>Mr. Rajeev Dudhani of OP-4 to Ms. Shanta Sohoni of OP-1</td><td>Thanks
We will quote ICF & WCR tender basic 425 +6% +5.5% + Rs.35/- freight = Total Rs. 510.27 (all inclusive).
Pl. Confirm.</td><td>OP-4 replied that it had quoted wrongly and what final rates should be quoted in the future.</td></tr>
<tr><td>20.</td><td>Ms. Shanta Sohoni of OP-1 to OP-4</td><td><table>
<tr><td>Total Qty.</td><td>147593</td></tr>
<tr><td>Dropped Qty.</td><td>32231</td></tr>
<tr><td>Bal. Qty.</td><td>115362</td></tr>
<tr><td>75% PPPL</td><td>86522</td></tr>
<tr><td>25% JPPL</td><td>28841</td></tr>
<tr><td>Excess/ Shortage PPPL</td><td>-2,557</td></tr>
<tr><td>Excess/ Shortage JPPL</td><td>2,557</td></tr>
</table>
It is decided that we will do this business on quantity basis. Sharing will be 75% - 25% basis.
ATI got Part I status w.e.f. 11/07/16. Therefore, all tenders will be shared 75% - 25%.
(Pl. Inform us as soon as tender gets finalise for update the position time to time)
Regards
PPPL
(P.S.: Pl. Discuss with us before quoting the tender where quantities are splited)</td><td>Ms. Shanta Sohoni updated and divided forthcoming tenders on quantity basis (75%–25%) between OP-1 Group (OP-1, OP-2, and OP-3) and OP-4. It was also advised to discuss before quoting in tenders where quantities are to be split. It is also mentioned that OP-2 got approval as a Part I vendor.</td></tr>
<tr><td>21.</td><td>Mr. Rajeev Dudhani of OP-4 to Ms. Shanta Sohoni of OP-1</td><td>Mam,
Pl. see attachment file regarding the remark of JPPL for P. Tube accounts as on date 05/09/2016
Rajeev Dudhani</td><td rowspan="3">OP-4 pointed out to OP-1 the remarks made by it in the attachment file sent by OP-1 to OP-4.
In reply, OP-1 stated that the allocation has been updated on the basis of remarks made by OP-4.</td></tr>
<tr><td>22.</td><td>Mr. Rajesh R. of OP-4 to Ms. Shanta Sohoni of OP-1</td><td>Mam,
Pl. see P. tube accounts updated.
Pl. accommodate the surplus/ deficit figures in the accounts.</td></tr>
<tr><td>23.</td><td>Ms. Shanta Sohoni of OP-1 to OP-4</td><td>As per your remarks, updated statement is enclosed herewith. Future tender will be allotted accordingly.</td></tr>
</table>

<table>
<tr><th>S. No.</th><th>E-mail (To and From)</th><th>Content of e-mail</th><th>Observation</th></tr>
<tr><td>24.</td><td>Mr. Rajesh R. of OP-4 to Ms. Shanta Sohoni of OP-1</td><td>Mam,
Pl. see update accounts of PT.AC
Regards
Rajesh
Jai Polypan</td><td>OP-4 pointed out to OP-1 the remarks made by it in the attachment file sent by OP-1 to OP-4.</td></tr>
<tr><td>25.</td><td>Mr. Rajesh R. of OP-4 to Ms. Shanta Sohoni of OP-1</td><td>Mam,
Pl. send new allocation for forthcoming tenders of Protective tube.</td><td>OP-4 asked Ms. Shanta Sohoni to make allocations.</td></tr>
<tr><td>26.</td><td>Ms. Shanta Sohoni of OP-1 to OP-4</td><td><table>
<tr><td>Total Qty.</td><td>168356</td></tr>
<tr><td>Dropped Qty.</td><td>39087</td></tr>
<tr><td>Bal. Qty.</td><td>129269</td></tr>
<tr><td>75% PPPL</td><td>96952</td></tr>
<tr><td>25% JPPL</td><td>32317</td></tr>
<tr><td>Excess/ Shortage PPPL</td><td>8,092</td></tr>
<tr><td>Excess/ Shortage JPPL</td><td>-6,997</td></tr>
</table>It is decided that we will do this business on quantity basis. Sharing will be 75% - 25% basis.
ATI got Part I status w.e f. 11/07/16. Therefore, all tenders will be shared 75% - 25%.
(Pl. Inform us as soon as tender gets finalise for update the position time to time)
Regards
PPPL
(P.S.: Pl. Discuss with us before quoting the tender where quantities are splited)</td><td>Ms. Shanta Sohoni updated and divided forthcoming tenders on quantity basis (75%–25%) between OP-1 Group (OP-1, OP-2, and OP-3) and OP-4. It was also advised to discuss before quoting in tenders where quantities are to be split. It is again mentioned that OP-2 got approval as a Part I vendor.</td></tr>
<tr><td>27.</td><td>Mr. Rajeev Dudhani of OP-4 to Ms. Shanta Sohoni of OP-1</td><td>While seeing the comparative statement of CR tender, it is clear that we will not get order for Polyacetal Protective Tube and the rate is very higher than metal protective tube.
In future we will get any information regarding the issue or order from CR we will inform you.
Pl. allot forthcoming tenders of Protective tube while in LT or OT.
Also note as per our Kolkata office Tender No. 11155165C opened on 5/5/2017(Polyacetal tubes), the order issued to BBC for full qty.
If you have any information for this tender.</td><td>OP-4 informed OP-1 that, since the Central Railways tender has not been allotted to OP-4, the same should be removed from its account under the cartel arrangement.</td></tr>
</table>

<table>
<tr><th>S. No.</th><th>E-mail (To and From)</th><th>Content of e-mail</th><th>Observation</th></tr>
<tr><td></td><td></td><td>Please remove this amount from our account against this tender.
Regards
Rajeev Dudhani
JPPL</td><td></td></tr>
<tr><td>28.</td><td>Mr. Rajesh R. of OP-4 to Ms. Shanta Sohoni of OP-1</td><td>Mam,
Pl. issue allocations for coming tenders in August, 2017 for Protective tube.</td><td rowspan="2">OP-4 asked Ms. Shanta Sohoni to make allocations.
Ms. Shanta Sohoni divided forthcoming tenders on quantity basis (60%–20%–20%) between OP-1 Group (OP-1, OP-2, and OP-3), OP-4, and OP-6.</td></tr>
<tr><td>29.</td><td>Ms. Shanta Sohoni of OP-1 to Mr. Harsha Gumballi of OP-6 and OP-4</td><td>
<table>
<tr><th>S. No.</th><th>Rly.</th><th>Tender No.</th><th>Due date</th><th>Qty.</th><th>PPPL</th><th>JPPL</th><th>Polymer</th><th>Qty. dropped</th></tr>
<tr><td>1</td><td>SCR</td><td>30171051</td><td>16/08/2017</td><td>9563</td><td>7650</td><td></td><td>1913</td><td></td></tr>
<tr><td>2</td><td>SR</td><td>04170910</td><td>16/08/2017</td><td>6590</td><td></td><td>5272</td><td>1318</td><td></td></tr>
<tr><td>3</td><td>WCR</td><td>30171008</td><td>29/08/2017</td><td>10413</td><td>8330</td><td></td><td>2083</td><td></td></tr>
<tr><td></td><td></td><td></td><td>Total</td><td>26566</td><td>15981</td><td>5272</td><td>5313</td><td>0</td></tr>
</table>
<table>
<tr><th></th><th></th><th>Earlier Excess</th><th>Earlier Shortage</th><th>Net Excess/ Shortage</th></tr>
<tr><td>Total Qty.</td><td>26566</td><td></td><td></td><td></td></tr>
<tr><td>Dropped Qty.</td><td>0</td><td></td><td></td><td></td></tr>
<tr><td>Bal. Qty.</td><td>26566</td><td></td><td></td><td></td></tr>
<tr><td>60% PPPL</td><td>15940</td><td></td><td>6997</td><td>22937</td></tr>
<tr><td>20% JPPL</td><td>5313</td><td>8092</td><td></td><td>-2779</td></tr>
<tr><td>20% Polymer</td><td>5313</td><td></td><td></td><td></td></tr>
</table>
It is decided that we will do this business on quantity basis. Sharing will be 20% for each firm. Polyset is having 3 firms therefor share of Polyset will be 60%, JPPL 20% & Polymer 20%
(Pl. Inform us as soon as tender gets finalise for update the position time to time)</td></tr>
<tr><td>30.</td><td>Ms. Shanta Sohoni of OP-1 to OP-4 and</td><td>For S.C. Rly. Tender 30171051 due on 16/08/2017, Polyset will quote Basic Rate Rs. 441/- + Freight Rs. 38/- per pc. +GST @5% = Total Rs. 502.95 per pc. (all inclusive).
Polymer is requested to quote Rs. 432/- + Freight Rs. 35/- +GST @5% = Total Rs. 490.35 per pc. (all inclusive).</td><td>OP-1 informed rates to be quoted in the South Central</td></tr>
</table>

<table>
<tr><th>S. No.</th><th>E-mail (To and From)</th><th>Content of e-mail</th><th>Observation</th></tr>
<tr><td></td><td>Mr. Harsha Gumballi of OP-6</td><td>Non – allotties should quote minimum 8% higher than above rates.
Regards
Shanta Sohoni</td><td rowspan="2">Railway tender to OP-4 and OP-6.
OP-4, in reply, inquired about the rates to be quoted in Southern Railway and West Central Railways tenders also.</td></tr>
<tr><td>31.</td><td>Mr. Rajeev Dudhani of OP-4 to Ms. Shanta Sohoni of OP-1</td><td>What rate to be quoted below tenders by JPPL & Polymer.
Kindly decide and inform us.
<table>
<tr><th>S. No.</th><th>Rly.</th><th>Tender No.</th><th>Due Date</th><th>Qty.</th><th>PPPL</th><th>JPPL</th><th>Polymer</th></tr>
<tr><td>1</td><td>SR</td><td>04170910</td><td>16/08/2017</td><td>6590</td><td></td><td>5272</td><td>1318</td></tr>
<tr><td>2</td><td>WCR</td><td>30171008</td><td>29/08/2017</td><td>10413</td><td>8330</td><td></td><td>2083</td></tr>
</table></td></tr>
<tr><td>32.</td><td>Mr. Rajesh R. of OP-4 to Ms. Shanta Sohoni of OP-1</td><td>Protective tender for Central Railway allotted to us. But it was both metal and polyacetal P. Tube tender and P. Tube (Metal) parties have quoted low rates hence we are not getting order and kindly remove this qty. from our account and issue fresh allocations for the forth coming tenders. Also let me know the status of SWR tender where we both are equally allotted.
Details of tender CR
<table>
<tr><td>CR</td><td>11171075</td><td>21/07/17</td><td>10284</td><td></td><td>10284</td></tr>
</table></td><td>OP-4 informed OP-1 that it could not get the Central Railways tender, as vendors of metal-based protective tubes had quoted a lower price. Hence, it requested OP-1 to remove such quantity from the allocation table under cartel arrangement and issue fresh allocations.</td></tr>
<tr><td>33.</td><td>Ms. Shanta Sohoni of OP-1 to Mr. Harsha Gumballi of OP-6 and OP-4</td><td>
<table>
<tr><th></th><th></th><th>Earlier Excess</th></tr>
<tr><td>Total Qty.</td><td>43005</td><td></td></tr>
<tr><td>Dropped Qty.</td><td>1201</td><td></td></tr>
<tr><td>Bal. Qty.</td><td>41804</td><td></td></tr>
<tr><td>60% PPPL</td><td>25082</td><td>-988</td></tr>
<tr><td>20% JPPL</td><td>8361</td><td>1173</td></tr>
<tr><td>20% Polymer</td><td>8361</td><td>-184</td></tr>
</table></td><td>Ms. Shanta Sohoni divided forthcoming tenders on quantity basis (60%–20%–20%) between OP-1 Group (OP-1, OP-2, and OP-3), OP-4, and OP-6.</td></tr>
</table>

<table>
<tr><th>S. No.</th><th>E-mail (To and From)</th><th>Content of e-mail</th><th>Observation</th></tr>
<tr><td></td><td></td><td>It is decided that we will do this business on quantity basis. Sharing will be 20% for each firm. Polyset is having 3 firms therefor share of Polyset will be 60%, JPPL 20% & Polymer 20%
(Pl. Inform us as soon as tender gets finalise for update the position time to time)</td><td></td></tr>
<tr><td>34.</td><td>Mr. Rajesh R. of OP-4 to Ms. Shanta Sohoni of OP-1</td><td>-</td><td rowspan="2">OP-4 asked Ms. Shanta Sohoni to make allocations.</td></tr>
<tr><td>35.</td><td>Mr. Rajesh R. of OP-4 to Ms. Shanta Sohoni of OP-1</td><td>Pl. issue allocation for SWR Tender No. 30171519 due on 12/01/2108 for 87725 nos. immediately.</td></tr>
<tr><td>36.</td><td>Ms. Shanta Sohoni of OP-1 to Mr. Harsha Gumballi of OP-6 and OP-4</td><td>For NFR due 06/03/2018, Polyset will quote Rs. 441/- + Freight Rs. 40/- per pc + GST @ 5% extra = Total Rs. 505.05 (All incl)
Non-allotties should quote 8-10% higher than PLR and Polymer Products is requested to quote 8-10% higher rate than PLR because his account is surplus</td><td>Ms. Shanta Sohoni gave a price quote of OP-1 for NFR tender and asked non-allotties and OP-6 to quote 8–10% higher than PLR.</td></tr>
<tr><td>37.</td><td>Ms. Shanta Sohoni of OP-1 to OP-4</td><td><table>
<tr><td></td><td></td><td>Earlier Excess</td></tr>
<tr><td>Total Qty.</td><td>86535</td><td></td></tr>
<tr><td>Dropped Qty.</td><td>13138</td><td></td></tr>
<tr><td>Bal. Qty.</td><td>73397</td><td></td></tr>
<tr><td>60% PPPL</td><td>44038</td><td>1439</td></tr>
<tr><td>20% JPPL</td><td>14679</td><td>-787</td></tr>
<tr><td>20% Polymer</td><td>14679</td><td>-651</td></tr>
</table>It is decided that we will do this business on quantity basis. Sharing will be 20% for each firm. Polyset is having 3 firms therefor share of Polyset will be 60%, JPPL 20% & Polymer 20%
(Pl. Inform us as soon as tender gets finalise for update the position time to time)</td><td rowspan="2">Ms. Shanta Sohoni updated and divided forthcoming tenders on quantity basis (60%–20%–20%) between OP-1 Group (OP-1, OP-2, and OP-3), OP-4, and OP-6.
In reply, OP-4 asked Ms. Shanta Sohoni to provide rates for WCR tender, and Ms. Shanta Sohoni supplied the</td></tr>
<tr><td>38.</td><td>Mr. Rajesh R. of OP-4 to Ms. Shanta</td><td>Dear Mam,
Pl. send the rates we have to quote in the below P. Tube tender immediately.</td></tr>
</table>

<table>
<tr><th>S. No.</th><th>E-mail (To and From)</th><th>Content of e-mail</th><th>Observation</th></tr>
<tr><td></td><td>Sohoni of OP-1</td><td><table><tr><td>Rly.</td><td>Tender No.</td><td>Due Date</td><td>Qty.</td><td>PPPL</td><td>JPPL</td><td>Polymer</td></tr><tr><td>WCR</td><td>30181008</td><td>29/05/2018</td><td>7910</td><td>3164</td><td>3164</td><td>1582</td></tr></table></td><td rowspan="3">rates to be quotes rates of both OP-1 and OP-4, to which OP-4 agreed.</td></tr>
<tr><td>39.</td><td>Ms. Shanta Sohoni of OP-1 to OP-4</td><td>Polyset will quote Rs. 441/- + Freight Rs. 35/- per pc. + GST @ 5% = Total Rs. 499.80 per pc all incl
JPPL will quote Rs. 441/- + Freight Rs. 40/- per pc. + GST @ 5% = Total Rs. 505.05 per pc all incl.
Pl. confirm</td></tr>
<tr><td>40.</td><td>OP-4 to Ms. Shanta Sohoni of OP-1</td><td>OK. We will quote as per your mail.</td></tr>
<tr><td>41.</td><td>Ms. Shanta Sohoni of OP-1 to OP-4 and Mr. Harsha Gumballi of OP-6</td><td>It is decided that we will do this business basis. Sharing will be 20% for each firm. Polyset is having 3 firms therefore share of Polyset will be 60%, JPPL 20% & Polymer 20%.
(Pl. Inform us as soon as tender gets finalize for update the position time to time)</td><td>Ms. Shanta Sohoni updated and divided forthcoming tenders on quantity basis (60%–20%–20%) between OP-1 Group (OP-1, OP-2, and OP-3), OP-4, and OP-6.</td></tr>
<tr><td>42.</td><td>Ms. Shanta Sohoni of OP-1 to OP-4</td><td><table><tr><td></td><td></td><td>Earlier Excess</td></tr><tr><td>Total Qty.</td><td>100792</td><td></td></tr><tr><td>Dropped Qty.</td><td>14483</td><td></td></tr><tr><td>Bal. Qty.</td><td>86309</td><td></td></tr><tr><td>60% PPPL</td><td>51785</td><td>397</td></tr><tr><td>20% JPPL</td><td>17262</td><td>186</td></tr><tr><td>20% Polymer</td><td>17262</td><td>-582</td></tr></table>It is decided that we will do this business basis. Sharing will be 20% for each firm. Polyset is having 3 firms therefore share of Polyset will be 60%, JPPL 20% & Polymer 20%.
(Pl. Inform us as soon as tender gets finalize for update the position time to time)</td><td>Ms. Shanta Sohoni updated and divided forthcoming tenders on quantity basis (60%–20%–20%) between OP-1 Group (OP-1, OP-2, and OP-3), OP-4, and OP-6.</td></tr>
<tr><td>43.</td><td>Mr. Rajesh R. of OP-4 to Ms. Shanta Sohoni of OP-1</td><td>Pl. see the attachment file regarding our updated accounts.
Also please refer our earlier mail dt. 8/8/2018 for SWR tender 100 Nos.
Kindly update our account and issue allocation accordingly.</td><td>OP-4 asked OP-1 to see the attachment file regarding its updated accounts and updated</td></tr>
</table>

<table>
<tr><th>S. No.</th><th>E-mail (To and From)</th><th>Content of e-mail</th><th>Observation</th></tr>
<tr><td></td><td></td><td></td><td>OP-4’s allocation accordingly.</td></tr>
<tr><td>44.</td><td>Ms. Shanta Sohoni of OP-1 to OP-4</td><td>
<table>
<tr><td></td><td></td><td>Earlier Excess</td></tr>
<tr><td>Total Qty.</td><td>123682</td><td></td></tr>
<tr><td>Dropped Qty.</td><td>14483</td><td></td></tr>
<tr><td>Bal. Qty.</td><td>1091199</td><td></td></tr>
<tr><td>60% PPPL</td><td>65519</td><td>215</td></tr>
<tr><td>20% JPPL</td><td>21840</td><td>808</td></tr>
<tr><td>20% Polymer</td><td>21840</td><td>-1022</td></tr>
</table>
It is decided that we will do this business basis. Sharing will be 20% for each firm. Polyset is having 3 firms therefore share of Polyset will be 60%, JPPL 20% & Polymer 20%.
(Pl. Inform us as soon as tender gets finalize for update the position time to time)</td><td>Ms. Shanta Sohoni updated and divided forthcoming tenders on quantity basis (60%–20%–20%) between OP-1 Group (OP-1, OP-2, and OP-3), OP-4, and OP-6.</td></tr>
<tr><td>45.</td><td>Ms. Shanta Sohoni of OP-1 to OP-4</td><td>
<table>
<tr><td></td><td></td><td>Earlier Excess</td></tr>
<tr><td>Total Qty.</td><td>131139</td><td></td></tr>
<tr><td>Dropped Qty.</td><td>14483</td><td></td></tr>
<tr><td>Bal. Qty.</td><td>116656</td><td></td></tr>
<tr><td>60% PPPL</td><td>69994</td><td>-1276</td></tr>
<tr><td>20% JPPL</td><td>23331</td><td>2300</td></tr>
<tr><td>20% Polymer</td><td>23331</td><td>-1022</td></tr>
</table>
It is decided that we will do this business basis. Sharing will be 20% for each firm. Polyset is having 3 firms therefore share of Polyset will be 60%, JPPL 20% & Polymer 20%.
(Pl. Inform us as soon as tender gets finalize for update the position time to time)</td><td>Ms. Shanta Sohoni updated and divided forthcoming tenders on quantity basis (60%–20%–20%) between OP-1 Group (OP-1, OP-2, and OP-3), OP-4, and OP-6.</td></tr>
</table>

S. No.	E-mail (To and From)	Content of e-mail	Observation
46.	Mr. Rajesh R. of OP-4 to Ms. Shanta Sohoni of OP-1	NWR tender JPPL will quote Rs. 479/- basic + 5% GST = Rs. 502.95 per pc. Pl. Confirm the rates. PPPL & JPPL are equally allotted in this tender. Regards Rajesh Nair	OP-4 informed OP-1 about the price it would quote in North Western Railway tender and requested OP-1 to confirm, as the said tender was allocated equally between OP-1 and O-4. In reply, OP-1 informed OP-4 about its price and the price that OP-4 should quote. OP-4 then informed OP-1 that it has submitted a revised bid on the basis of discussions between OP-1 and OP-4.
47.	Ms. Shanta Sohoni of OP-1 to OP-4	Recently we have received the order @ Rs. 463.50 per pc. + Freight Rs. 35/- per pc. + GST 5% = Total Rs. 523.42 per pc. (All incl.) You are requested to quote Rs. 498.50 + GST 5% = Rs. 523.42 all incl. Pl. Confirm.	
48.	Mr. Rajesh R. of OP-4 to Ms. Shanta Sohoni of OP-1	OK. As per our discussion, I have submitted revised BID today @ 498.50 + 5% GST. Regards Rajesh Nair	
49.	Mr. Rajesh R. of OP-4 to Ms. Shanta Sohoni of OP-1	Pl. see the updated P. Tube account. Our excess pcs=449 Nos. only instead of 2300 Nos. Pl. update the same in the record issue coming allocation accordingly.	OP-4 asked OP-1 to see its updated accounts sent as attachment and update OP-4's allocation accordingly.
50.	Mr. Rajesh R. of OP-4 to Ms. Shanta Sohoni of OP-1	Pl. issue allocation for tender No. 30181519 SWR due on 5/2/2019 for P. Tube Urgent Thanks and Regards, Rajesh Nair	OP-4 asked Mr. Shanta Sohoni to make allocations for South Western Railway tender. In reply, Ms. Shanta Sohoni informed OP-4 to quote 8–10%
51.	Ms. Shanta Sohoni of	Subject: Allotment of SWR Protective tube due 5-2-2019	

<table>
<tr><th>S. No.</th><th>E-mail (To and From)</th><th>Content of e-mail</th><th>Observation</th></tr>
<tr><td></td><td>OP-1 to OP-4</td><td>Pl. quote strictly 8-10% higher than PLR (PLR Rs. 441/- + Freight Rs. 35/- + GST 5% = 499.80 all incl)</td><td>higher than the Price List Rates in SWR tender.</td></tr>
<tr><td>52.</td><td>Ms. Shanta Sohoni of OP-1 to OP-4</td><td><table>
<tr><td></td><td></td><td>Earlier Excess</td></tr>
<tr><td>Total Qty.</td><td>142685</td><td></td></tr>
<tr><td>Dropped Qty.</td><td>19960</td><td></td></tr>
<tr><td>Bal. Qty.</td><td>122725</td><td></td></tr>
<tr><td>60% PPPL</td><td>73635</td><td>-734</td></tr>
<tr><td>20% JPPL</td><td>24545</td><td>2783</td></tr>
<tr><td>20% Polymer</td><td>24545</td><td>-2048</td></tr>
</table>
It is decided that we will do this business basis. Sharing will be 20% for each firm. Polyset is having 3 firms therefore share of Polyset will be 60%, JPPL 20% & Polymer 20%.
(Pl. Inform us as soon as tender gets finalize for update the position time to time)</td><td>Ms. Shanta Sohoni updated and divided forthcoming tenders on quantity basis (60%–20%–20%) between OP-1 Group (OP-1, OP-2, and OP-3), OP-4, and OP-6.</td></tr>
<tr><td>53.</td><td>Ms. Shanta Sohoni of OP-1 to OP-4 and OP-5</td><td>Rama Engineering joined the pool w.e f. 19/06/2019
We have made allotment accordingly with discussion with REW.
<table>
<tr><td>Firm</td><td>Share</td><td>Earlier Excess/ Shortage</td><td>Allotted Qty.</td><td>Net Excess/ Shortage</td></tr>
<tr><td>PPPL (3)</td><td>60%</td><td>-3483</td><td>6894</td><td>2086</td></tr>
<tr><td>JPPL (1)</td><td>20%</td><td>3483</td><td>2298</td><td>212</td></tr>
<tr><td>REW (1)</td><td>20%</td><td>0</td><td>2298</td><td>-2298</td></tr>
<tr><td>Total</td><td>100%</td><td>0</td><td>11490</td><td>0</td></tr>
</table></td><td>Ms. Shanta Sohoni informed that OP-5 has also joined the cartel and circulated a new allotment with sharing pattern of 60%–20%–20% in quantity distribution amongst OPs 1, 2, and 3, OP-4, and OP-5.</td></tr>
<tr><td>54.</td><td>Ms. Shanta Sohoni of OP-1 to OP-4</td><td>We have worked out earlier account taking 80% in account and accordingly excess/shortage taken into new account.
Earlier working file is enclosed herewith for your reference.
It is decided that we will do this business on quantity basis. Sharing will be 20% for each firm
Polyset is having 3 firms therefore share of Polyset will be 60%, JPPL 20% & Polymer 20%
(Pl. inform us as soon as tender gets finalise for update the position time to time)</td><td>Ms. Shanta Sohoni sent an earlier allocation on a quantity basis (60%–20%–20%) between OP-1 Group (OP-1, OP-2, and OP-3), OP-4, and OP-6. She stated that, based on</td></tr>
</table>

<table>
<tr><th>S. No.</th><th>E-mail (To and From)</th><th>Content of e-mail</th><th>Observation</th></tr>
<tr><td></td><td></td><td></td><td>earlier excess/shortage, new allocation has been made.</td></tr>
<tr><td>55.</td><td>Ms. Shanta Sohoni of OP-1 to OP-5, OP-4, and OP-7</td><td>Subject: PT allotment
Attachments: PT2-AC.xlsx
Account for Polyacetal Protective Tubes
M/s. Hari Narayan Bihani, Jaipur got approval
PLR : Rs. 454/- + Freight Rs. 40/- + GST @ 5%
(Non-allotties should quote 8% to 10% higher than PLR)
<table>
<tr><th>S. No.</th><th>Rly.</th><th>Tender No.</th><th>Due date</th><th>Total Qty.</th><th>Allotted Qty.</th><th>PPPL</th><th>JPPL</th><th>REW</th><th>HNB</th><th>Qty. dropped</th></tr>
<tr><td>1</td><td>WCR</td><td>30191008</td><td>11/07/2019</td><td>11452</td><td>9162</td><td>1832</td><td>1832</td><td>0</td><td>5497</td><td></td></tr>
<tr><td>2</td><td>SR</td><td>04190910</td><td>29/07/2019</td><td>2892</td><td>2314</td><td>2314</td><td></td><td></td><td></td><td></td></tr>
<tr><td>3</td><td>SCR</td><td>30191051</td><td>06/08/2019</td><td>9940</td><td>7952</td><td>4771</td><td></td><td>3181</td><td>5497</td><td></td></tr>
<tr><td></td><td></td><td></td><td>Total</td><td>24284</td><td>19427</td><td>8918</td><td>1832</td><td>3181</td><td>5497</td><td>0</td></tr>
</table>
<table>
<tr><td>Dropped</td><td>0</td></tr>
<tr><td>Balance</td><td>19427</td></tr>
</table>
<table>
<tr><th>Firm</th><th>Share</th><th>Earlier Excess(-)/ Shortage(+)</th><th>Allotted Qty.</th><th>Net Excess(+)/ Shortage(-)</th></tr>
<tr><td>PPPL (3)</td><td>50.00%</td><td>5229</td><td>9714</td><td>-6025</td></tr>
<tr><td>JPPL (1)</td><td>16.67%</td><td>-5811</td><td>3239</td><td>4405</td></tr>
<tr><td>REW (1)</td><td>16.67%</td><td>582</td><td>3239</td><td>-640</td></tr>
<tr><td>HNB</td><td>16.67%</td><td>0</td><td>3239</td><td>2258</td></tr>
<tr><td>Total</td><td>1</td><td>0</td><td>19429</td><td>-2</td></tr>
</table></td><td>Ms. Shanta Sohoni informed that OP-7 has also joined the cartel and circulated new allotment with sharing pattern of 50%–16.67%–16.67%–16.67% in quantity distribution amongst OPs 1, 2, and 3, OP-4, OP-5, and OP-7. The PLR to be quoted by the vendor who has been allotted a tender was also circulated and it was stated that suppliers who are not allotted a tender under cartel should quote 8%–10% higher than PLR.</td></tr>
<tr><td>56.</td><td>Ms. Shanta Sohoni of OP-1 to OP-7, OP-5,</td><td><table>
<tr><td>Dropped</td><td>0</td></tr>
<tr><td>Balance</td><td>26857</td></tr>
</table></td><td>Ms. Shanta Sohoni circulated the revised allotment with</td></tr>
</table>

<table>
<tr><th>S. No.</th><th>E-mail (To and From)</th><th>Content of e-mail</th><th>Observation</th></tr>
<tr><td></td><td>and OP-4</td><td>
<table>
<tr><td>Firm</td><td>Share</td><td>Earlier Excess(-)/ Shortage(+)</td><td>Allotted Qty.</td><td>Net Excess(+)/ Shortage(-)</td></tr>
<tr><td>PPPL (3)</td><td>50.00%</td><td>5229</td><td>13429</td><td>-7083</td></tr>
<tr><td>JPPL (1)</td><td>16.67%</td><td>-5811</td><td>4477</td><td>3166</td></tr>
<tr><td>REW (1)</td><td>16.67%</td><td>582</td><td>4477</td><td>2893</td></tr>
<tr><td>HNB</td><td>16.67%</td><td>0</td><td>4477</td><td>1021</td></tr>
<tr><td>Total</td><td>1</td><td>0</td><td>26860</td><td>-3</td></tr>
</table>
</td><td>sharing pattern of 50%–16.67%–16.67%–16.67% in quantity distribution amongst OPs 1, 2, and 3, OP-4, OP-5, and OP-7.</td></tr>
<tr><td>57.</td><td>Ms. Shanta Sohoni of OP-1 to OP-7, OP-5, and OP-4</td><td>
<table>
<tr><td>Dropped</td><td>0</td></tr>
<tr><td>Balance</td><td>27756</td></tr>
</table>
<table>
<tr><td>Firm</td><td>Share</td><td>Earlier Excess(-)/ Shortage(+)</td><td>Allotted Qty.</td><td>Net Excess(+)/ Shortage(-)</td></tr>
<tr><td>PPPL (3)</td><td>50.00%</td><td>5229</td><td>13878</td><td>-5132</td></tr>
<tr><td>JPPL (1)</td><td>16.67%</td><td>-5811</td><td>4627</td><td>3016</td></tr>
<tr><td>REW (1)</td><td>16.67%</td><td>582</td><td>4627</td><td>1243</td></tr>
<tr><td>HNB</td><td>16.67%</td><td>0</td><td>4627</td><td>871</td></tr>
<tr><td>Total</td><td>1</td><td>0</td><td>27759</td><td>-2</td></tr>
</table>
</td><td>Ms. Shanta Sohoni again circulated the revised allotment with sharing pattern of 50%–16.67%–16.67%–16.67% in quantity distribution amongst OPs 1, 2, and 3, OP-4, OP-5, and OP-7.</td></tr>
<tr><td>58.</td><td>Ms. Shanta Sohoni of OP-1 to Mr. Harsha Gumballi and Mr. Surya of OP-6, OP-7, OP-5, and OP-4</td><td>M/s. Polymer Products India Ltd., Bangalore got approval as approved supplier of Polyacetal Protective tube w.e f. 26/09/2019 and join the pool.
Hence, we have revised our working and allotment of new tenders are given in the enclosed statement.
All are requested to quote your tender accordingly.
Non- allotties should quote min. 8-10% higher than PLR.
For any doubt pl. discuss before quoting.
M/s. Hari Narayan Bihani, Jaipur got approval
PLR : Rs. 454/- + Freight Rs. 40/- + GST @ 5%
(Non-allotties should quote 8% to 10% higher than PLR)
<table>
<tr><td>Firm</td><td>Share</td><td>Earlier Excess(-)/</td><td>Allotted Qty.</td><td>Net Excess(+)/</td></tr>
</table>
</td><td>Ms. Shanta Sohoni sent an e-mail to other OPs stating that OP-6 has got approval, and accordingly, the allocation table has been revised. The PLR to be quoted by the vendor who has been allotted a tender was also circulated and</td></tr>
</table>

<table>
<tr><th>S. No.</th><th>E-mail (To and From)</th><th>Content of e-mail</th><th>Observation</th></tr>
<tr><td></td><td></td><td>
<table>
<tr><td></td><td></td><td>Shortage(+)</td><td></td><td>Shortage(-)</td></tr>
<tr><td>PPPL (3)</td><td>42.80%</td><td>-9532</td><td>13016</td><td>-4340</td></tr>
<tr><td>JPPL (1)</td><td>14.30%</td><td>4483</td><td>4349</td><td>134</td></tr>
<tr><td>REW (1)</td><td>14.30%</td><td>2710</td><td>4349</td><td>-348</td></tr>
<tr><td>HNB</td><td>14.30%</td><td>2338</td><td>4349</td><td>101</td></tr>
<tr><td>PPI</td><td>14.30%</td><td>0</td><td>4349</td><td>4451</td></tr>
<tr><td>Total</td><td>1.00</td><td>-1</td><td>30410</td><td>-1</td></tr>
</table>
</td><td rowspan="3">it was stated that suppliers who are not allotted a tender under cartel should quote 8%–10% higher than PLR.
In reply, Mr. Venkata of OP-6 stated that only tenders quoted from the date of their entry into the cartel should be considered in the allocation table, and tenders prior to that should not be considered.
On the other hand, OP-4 informed that, since the vendors, prior to joining the cartel, underquoted and got the tenders on their joining, such tenders which they got prior to joining the cartel should be accounted for in their account in the allocation table under cartel arrangement. The previous underquoting by OP-6 (which was done independently by OP-6) hampered smooth</td></tr>
<tr><td>59.</td><td>Mr. Venkata Subramanyam of OP-6 to Ms. Shanta Sohoni of OP-1</td><td>We are in the group from day before so please consider from that day as our entry, tenders quoted before by us do not consider</td></tr>
<tr><td>60.</td><td>Mr. Rajesh R. of OP-4 to Mr. Venkata Subramanyam of OP-6 and Ms. Shanta Sohoni of OP-1</td><td>JPPL cannot accept the points raised by Polymer Products.
Every time one member is coming with big underquoting and joining the pool. It is not possible.
Polymer products should aware that pool is running in P. Tube. Then how we can accept this type of query.
Our opinion is that where ever the tenders goes to them before joining should be accounted in their account for smooth running of pool otherwise there is no meaning to run the pool.
It was very painful to say that we are not getting any business from this pool such type of quoting by firms.
This is for information to all members.</td></tr>
</table>

<table>
<tr><th>S. No.</th><th>E-mail (To and From)</th><th>Content of e-mail</th><th>Observation</th></tr>
<tr><td></td><td></td><td></td><td>functioning of the pool.</td></tr>
<tr><td>61.</td><td>Shanta Sohoni to OP-5, OP-7, Mr. Venkata Subramanyam of OP-6, and Mr. Vishal Baid of OP-4</td><td>-</td><td rowspan="2">Ms. Shanta Sohoni sent an e-mail to other OPs to hold a meeting of the approved vendors to discuss the business of polyacetal protective tubes.
In reply, OP-5 stated that any date for meeting with prior intimation is fine for it.</td></tr>
<tr><td>62.</td><td>Mr. V. Chakrapani of OP-5 to Ms. Shanta Sohoni with CC to other OPs</td><td>Subject: Re: Meeting regarding business of Protective Tube
Any date with prior intimation is OK for me</td></tr>
<tr><td>63.</td><td>Ms. Shanta Sohoni of OP-1 to OP-7, Mr. Harsha Gumballi, and Mr. Surya of OP-6, OP-5, and OP-4</td><td>PLR : Rs. 454/- + Freight Rs. 40/- + GST @ 5%
(Non-allotties should quote 8% to 10% higher than PLR)
<table>
<tr><th>Firm</th><th>Share</th><th>Earlier Excess(-)/ Shortage(+)</th><th>Allotted Qty.</th><th>Net Excess(+)/ Shortage(-)</th></tr>
<tr><td>PPPL (3)</td><td>42.80%</td><td>-10047</td><td>14645</td><td>-5277</td></tr>
<tr><td>JPPL (1)</td><td>14.30%</td><td>4655</td><td>4893</td><td>-238</td></tr>
<tr><td>REW (1)</td><td>14.30%</td><td>2882</td><td>4893</td><td>-721</td></tr>
<tr><td>HNB (1)</td><td>14.30%</td><td>2510</td><td>4893</td><td>1042</td></tr>
<tr><td>PPI (1)</td><td>14.30%</td><td>0</td><td>4893</td><td>5194</td></tr>
<tr><td>Total</td><td>1.00</td><td>-1</td><td>34217</td><td>-1</td></tr>
</table></td><td>Ms. Shanta Sohoni circulated new allotment with sharing pattern of 42.8%–14.3%–14.3%–14.3%–14.3% in quantity distribution amongst OPs 1, 2, and 3, OP-4, OP-5, OP-6, and OP-7. The PLR to be quoted by the vendor who has been allotted a tender was also circulated and it was stated that suppliers who are not allotted a tender under cartel should quote 8%–10% higher</td></tr>
</table>

<table>
<tr><th>S. No.</th><th>E-mail (To and From)</th><th>Content of e-mail</th><th>Observation</th></tr>
<tr><td></td><td></td><td></td><td>than PLR.</td></tr>
<tr><td>64.</td><td>Mr. Rajesh R. of OP-4 to Ms. Shanta Sohoni of OP-1</td><td>As per WCR officials order goes to HNB and Polyset.
Pl. see the allocation below:<table>
<tr><th>S. No.</th><th>Rly.</th><th>Tender No.</th><th>Due date</th><th>Total Qty.</th><th>Allotted Qty.</th><th>PPPL</th><th>JPPL</th><th>REW</th><th>HNB</th></tr>
<tr><td>1</td><td>WCR</td><td>30191008</td><td>11/07/2019</td><td>11452</td><td>9162</td><td>1832</td><td>1832</td><td>0</td><td>5496</td></tr>
</table>Pl. confirm whether you have received the order and how much quantity. HNB confirmed the order received.
Kindly remove 1832 Nos. from our PT2 account and accordingly issue coming allocations.
During the whole year we have supplied only 2900 Nos. to ICF.
How can we run our factory with this pool.</td><td>OP-4 complained to OP-1 about the allotment of Western Central Railway tender to OP-1 and OP-7. It stated that it has only supplied 2900 quantity in the year to ICF, and so, how can it run its factory in such pool?</td></tr>
<tr><td>65.</td><td>Ms. Shanta Sohoni of OP-1 to OP-5, OP-4, and Mr. Harsha Gumballi and Mr. Surya of OP-6 and OP-7</td><td><table>
<tr><th>Firm</th><th>Share</th><th>Earlier Excess(-)/ Shortage(+)</th><th>Allotted Qty.</th><th>Net Excess(+)/ Shortage(-)</th></tr>
<tr><td>PPPL (3)</td><td>42.80%</td><td>-8871</td><td>17352</td><td>-3355</td></tr>
<tr><td>JPPL (1)</td><td>14.30%</td><td>2823</td><td>5798</td><td>-813</td></tr>
<tr><td>REW (1)</td><td>14.30%</td><td>2882</td><td>5798</td><td>-666</td></tr>
<tr><td>HNB (1)</td><td>14.30%</td><td>3166</td><td>5798</td><td>543</td></tr>
<tr><td>PPI (1)</td><td>14.30%</td><td>0</td><td>5798</td><td>4289</td></tr>
<tr><td>Total</td><td>1.00</td><td>-1</td><td>40542</td><td>-1</td></tr>
</table></td><td>Ms. Shanta Sohoni again circulated sharing pattern of 42.8%–14.3%–14.3%–14.3%–14.3% in quantity distribution amongst OPs 1, 2, and 3, OP-4, OP-5, OP-6, and OP-7.</td></tr>
<tr><td>66.</td><td>Ms. Shanta Sohoni of OP-1 to OP-4</td><td>Above mentioned tender is allotted between Polyset and Jai Polypan.
Polyset will quote Rs. 454.50 + Freight Rs. 40/- + GST 12% = Rs. 553.84 per pc all incl.
Jai Polypan will quote Rs. 460/- + Freight Rs. 45/- + GST 12% = Rs. 560.60 per pc all incl.
Pl. confirm the same.</td><td rowspan="3">Ms. Shanta Sohoni of OP-1 provided the rates to be quoted in tender allotted to both OP-1 and OP-4, to OP-4.
In response, OP-4 confirmed that it will quote the price given by OP-1.
However, later, OP-4</td></tr>
<tr><td>67.</td><td>Mr. Rajesh R. of OP-4 to Ms. Shanta Sohoni of OP-1</td><td>Mam,
OK. JPPL will quote 460+45+12% = 565.60 per pc all incl.
Regards
Rajesh Nair</td></tr>
<tr><td>68.</td><td>Mr. R. Nair of OP-4</td><td>Polymer Products underquoted in this tender. Why??
Last year in WCR tender HNB taken our quantity and now this year ICF Polymer Products. How can we run the pool.</td></tr>
</table>

S. No.	E-mail (To and From)	Content of e-mail	Observation
	to Ms. Shanta Sohoni of OP-1	During the year 2019-2020 we have only supplied 2900 Pcs. P. Tubes then how can we run our factory?????? What is the use of this pool???? Regards Rajesh Nair	complained to OP-1 that while ICF tender was allotted to OP-1 and OP-4, OP-6 underquoted in the same without any intimation. In turn, OP-1 advised OP-6 to withdraw its offer immediately. Thereafter, OP-4 can be seen asking OP-1 about the status of OP-6's withdrawal.
69.	Ms. Shanta Sohoni of OP-1 to Mr. Harsha Gumballi, Mr. Surya, and Mr. Venkata Subramanyam of OP-6	ICF tender was allotted to Polyset and Jai Polypan. How Polymer Products underquoted without any advance intimation and also l3-14% lower than the PLR. You are requested to withdraw your offer immediately and copy of withdrawal letter should be forwarded to us for confirmation.	
70.	Mr. Rajeev Dudhani of OP-4 to Ms. Shanta Sohoni of OP-1	Have u received withdrawal letter from Polymer products ? ? ? What is the next step for pool??? Rajeev Dudhani	
71.	Mr. Rajeev Dudhani of OP-4 to Ms. Shanta Sohoni of OP-1	What is the status of withdrawal letter. It seems that Polymer products is not interested in pool? If they not withdraw their offer then it will be very difficult to continue pool.	
72.	Ms. Shanta Sohoni of OP-1 to OP-5, OP-7, OP-4, and Mr. Harsha Gumballi and Mr. Surya of OP-6	Allotment for SR tender due on 01/07/2020 for Protective tube is sent herewith. All are requested to quote the rate as per allotment without underquoting. We have revised the share pattern which may please be noted.	Ms. Shanta Sohoni sent allotment for Southern Railway tender and requested other OPs to quote rates as per allocation table without undercutting. She also informed the revised share pattern.

25. From the above e-mails, it is very clear that there were communications between the OPs w.r.t. the tenders issued by the various zonal railways for the procurement of polyacetal protective tubes. The aforesaid communications clearly indicate the *modus operandi* of the collusion/coordination in the form of cartel pool amongst the OPs, which includes the allocation/allotment of tenders amongst the OPs, revision of sharing pattern, induction of new members to the pool, calculation methods to arrive at the price to be quoted, discussion on rates to be quoted, complaints regarding undercutting, and communication amongst OPs to withdraw offers. Such arrangement between the OPs led to manipulation of Indian Railways' bidding process for the procurement of polyacetal protective tubes.

26. The *modus operandi* of the cartel arrangement emanating from the e-mail communications between the parties seems to be that Ms. Shanta Sohoni, an employee of OP-1 (as well as on behalf of OP-2 and OP-3), used to make allocation of tenders between the OPs. Usually, an e-mail was circulated from Ms. Shanta Sohoni of OP-1 (and also on behalf of OP-2 and OP-3) to the other OPs (OP-4, OP-5, OP-6, and OP-7) allocating forthcoming tenders in total for the period ahead, revising the previously allocated quantity on the basis of excess/shortage value, and also informing and discussing the prices to be quoted.

27. Ms. Shanta Sohoni kept a record of all the forthcoming tenders of Indian Railways updated online on the Indian Railways E-Procurement System (**IREPS**). She allocated tenders on the basis of allotment value (a decided percentage (%) distribution of tenders) to each member, which was maintained similar to an account statement. In this regard, allocation tables were also maintained which also mentioned earlier shortage/excess value and allocated value with net excess. Therefore, tenders were allocated in compliance with the allocation done/allotment share. There were also instances where tenders were allocated to more than one member/vendor/supplier as agreed. In such cases, members mutually agreed to a price before filing the bids. Ms. Shanta Sohoni communicated the basic price which the designated vendor should quote in the allocated tender. Thereafter, the vendors communicated the price based on their respective additional taxes and arrived at a mutually agreed price over e-mails for submitting the bids. It is also seen from the e-mails that Ms. Shanta Sohoni also instructed the members of the cartel *via* e-mail that non-allottee vendors should quote

prices that are 8–10% higher than the basic prices agreed by members. In course of time, various players/vendors kept adding to the pool and the share of each member was adjusted accordingly in order to accommodate new players.

28. The existence of such cartel pool/arrangement between the OPs was also acknowledged by Ms. Shanta Sohoni and Mr. Bhupesh Bafna of OPs 1, 2, and 3 in their statements recorded before as well as by OP-4 in its lesser penalty application.

29. Hence, the following is clearly established from the material on record:

(a) <u>OP-1, OP-2, and OP-3</u>

- They are sister concerns with common partners/directors, who submitted bids in multiple railway tenders from common IP addresses;
- There are several e-mail communications sent and received by Ms. Shanta Sohoni to/from competitors from November 2015 to June 2020, and several CC'ed to Mr. Bhupesh Bafna, wherein allocation of tenders, discussion on prices, complaints regarding undercutting, and OPs asking other OPs to withdraw their bids, were made;
- Representatives of these OPs, Ms. Shanta Sohoni and Mr. Bhupesh Bafna, admitted the cartel arrangement in their respective statements recorded before the DG.

(b) <u>OP-4</u>

- In its lesser penalty application, OP-4 admitted to the cartel arrangement described above;
- As can be seen from the aforementioned e-mail communications, several e-mail communications were sent and received by Mr. Rajesh R. and Mr. Rajeev Dudhani to/from competitors from November 2015 to June 2020, wherein allocation of tenders, discussion on prices, complaints regarding undercutting, and OPs asking other OPs to withdraw their bids, were made.

(c) <u>OP-5</u>

- There were several e-mail communications received by OP-5 from Ms. Shanta Sohoni of OP-1 from June 2019 to June 2020. In the e-mail dated 19.06.2019 sent by Mr. Shanta Sohoni to competitors, it is stated that OP-5 has joined the cartel pool from 19.06.2019, and it can be seen that 20% share is allocated to it. Thereafter, in the e-mail dated 25.07.2019, it can be seen that the share of OP-5 is revised to 16.67%. Then, again, e-mails dated 20.09.2019, 07.10.2019, and 11.11.2019 were marked by Ms. Shanta Sohoni to OP-5 allocating various upcoming tenders. In fact, when Ms. Shanta Sohoni proposed holding of a meeting *vide* e-mail dated 15.11.2019 to discuss the business of polyacetal protective tubes, in reply thereto, Mr. V. Chakrapani of OP-5 agreed to the meeting on any date with prior intimation to him. In the opinion of the Commission, OP-5 was clearly part of the cartel arrangement post June 2019, when it became a Part I vendor as a percentage share and multiple tenders were allocated to it, and by even receiving and even replying to such e-mails from its competitors, OP-5 was not only privy to the information contained in these e-mails, which also, at times, related to prices to be quoted by the vendors in the tenders floated, but also, at one instance, agreed to meet its competitors. This compromised the independence of the OPs while giving quotations to the Railways. In the e-mail dated 03.02.2020 marked to OP-5 also, its share was revised to 14.30%, which continued to remain the same in the e-mail dated 16.03.2020. However, *vide* e-mail dated 29.06.2020 marked to OP-5 also, the share of OP-5 was revised.

- Though OP-5 has made an argument that mere price parallelism cannot be a ground to arrive at a conclusion of bid rigging, specifically in a monopsonist market, the Commission observes that, in the present matter, manipulation of the bidding process by the OPs is largely evident from the communications regarding allocations of tenders and price quotations exchanged between them.

(d) <u>OP-6</u>

- There are several e-mail communications received by Mr. Harsha Gumballi, Mr. Surya, and Mr. Venkata Subramanyam from Ms. Shanta Sohoni of OP-1 and other OPs from August 2017 to July 2018 (as Part II vendor), then again from October 2019 (after OP-6 got approval as Part I vendor on 26.09.2019) to June 2020. As a Part II vendor, e-mails dated 05.08.2017, 10.08.2017, 29.11.2017, 01.03.2018, and 17.07.2018 were received by OP-6. In the e-mails dated from 05.08.2017 till May 2019, 20% share has been allocated to OP-6. In fact, in the e-mail dated 10.08.2017, Ms. Shanta Sohoni even provides OP-6 the rate to be quoted by it in the upcoming tender. Hence, the argument of OP-6, that it was not a part of the cartel arrangement between the OPs any time before September 2019, when it became a Part I vendor, cannot be accepted.

- Thereafter, in reply to the e-mail dated 11.11.2019, Mr. Venkata Subramanyam, *vide* e-mail dated 12.11.2019, stated that allotment should be considered only from the date of OP-6's entry in the cartel group, and tenders quoted prior to its entry should not be considered. Thereafter, multiple e-mails dated 15.11.2019 (for meeting), 03.02.2020, 16.03.2020, 29.06.2020, *etc.*, were received by OP-6.

- OP-6 has argued that even if it was informed about any rate to be quoted, it flatly ignored the same and quoted independent and competitive rates to the Indian Railways, which is evident from the e-mails whereby complaints regarding OP-6 undercutting is made. However, in the opinion of the Commission, even by merely receiving the e-mails relating to allocation of tenders and prices to be quoted from its competitors, the independence of the OPs was compromised while giving quotations to the Railways. OP-6 was indeed a part of the cartel arrangement, as a percentage share and multiple tenders were allocated to it, and by receiving e-mails from its competitors, OP-6 was privy to the information contained in these e-mails, which also at times related to prices to be quoted by other vendors in the tenders floated.

(e) <u>OP-7</u>

- There are several e-mail communications received by OP-7 from competitors from July 2019 to June 2020. In the e-mail dated 25.07.2019 sent by Ms. Shanta Sohoni of OP-1 to competitors, it is clearly stated that OP-7 has got approval (as Part I vendor), and it can be seen that 16.67% share is allocated to it. This share continues in an e-mail dated 20.09.2019. Prior to this, whenever a tender was allotted by the Indian Railways to OP-7, Ms. Shanta Sohoni used to make a remark in her allocation tables regarding the same. However, from

July 2019 onwards, a specific share and specific tenders were allocated to OP-7 in the allocation tables of Ms. Shanta Sohoni, which were also sent to OP-7.

- Thereafter, again, in the e-mail dated 07.10.2019, the share of OP-7 remains the same and was revised to 14.30% in the e-mail dated 11.11.2019. The e-mail dated 15.11.2019 (regarding meeting) was also sent to OP-7. In the e-mail dated 03.02.2020 also, the share of OP-7 remained the same, at 14.30% which continued to remain the same in the e-mail dated 16.03.2020.

- In light of such clear evidences of communication between the OPs relating to tender allocation and prices which compromised independent bidding, it is inconsequential as to whether any other party(ies) were examined by the DG or not. Mere receipt of such e-mails by OP-7 compromised the independence of the OPs while giving quotations to the Railways.

- It is irrelevant as to whether or not the information contained or the share allocated in the said e-mails was implemented by OP-7. It is also inconsequential that OP-7 never replied to such e-mails or sent any such e-mails to any of its competitors. OP-7 was clearly a part of the cartel arrangement post July 2019, when it became a Part I vendor as a percentage share and multiple tenders were allocated to it, and by even receiving such e-mails from its competitors, OP-7 was privy to the information contained in these e-mails, which also at times related to prices to be quoted by the vendors in the tenders floated.

30. Hence, as observed by the DG, the above evidences clearly show the active engagement and participation of the OPs in discussing the bids and controlling the supply and allocation of market for polyacetal protective tubes in various Railway tenders, leading to manipulation of the bidding process of the Indian Railways. The period of involvement of each OP in the cartel seems to be as follows:

S. No.	Name of Opposite Party	Time Period
1.	Polyset Plastics Pvt. Ltd.	November 2015 to June 2020
2.	M/s Anju Techno Industries	November 2015 to June 2020
3.	M/s Power Mould	November 2015 to June 2020
4.	Jai Polypan Pvt. Ltd.	November 2015 to June 2020
5.	M/s Rama Engineering Works	June 2019 to June 2020

6.	M/s Polymer Products of India	August 2017 to July 2018 and again from October 2019 to June 2020
7.	M/s Hari Narayan Bihani	July 2019 to June 2020

31. The OPs have argued that the cartel conduct of the OPs did not lead to any AAEC in the market as there were no entry barriers for new entrants, nor were competitors driven out of the market, nor prices increased for the Indian Railways.

32. In this regard, *firstly*, the Commission notes that the provisions of Section 3(1) of the Act not only proscribe the agreements which cause an AAEC in the market, but also forbid agreements which are likely to cause an AAEC in the market. *Secondly*, the Commission notes that, once an agreement of the types specified under Section 3(3) of the Act is established (including cartel), the same is presumed to have an AAEC within India. Thus, it is axiomatic to presume in the present matter that the impugned conduct of the parties has caused AAEC within India.

33. No doubt, as per the ratio of the decision given by the Hon'ble Supreme Court of India 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; however, it is noted that it is upon the contravening parties to rebut the presumption of AAEC by showing positive effects emanating from the cartel activity such as accrual of benefits to the consumers (in the instant case, the Indian Railways), improvement 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.

34. In this regard, 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."*

35. The Commission notes that, in the present matter, the OPs have been unable to show any positive effects emanating from their cartel activity, such as accrual of benefits to consumers, improvement 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. On a holistic evaluation of the submissions made by the parties and in light of the factors enumerated in Section 19(3) of the Act, the Commission is satisfied that, in the present matter, the parties have not been able to dislodge the statutory presumption of AAEC by adducing cogent evidence to the contrary, as required.

36. Hence, the Commission observes that there was a clear understanding between OPs 1, 2, and 3 and OP-4 *w.r.t.* the determination and revision of prices in regard to tenders floated by the Railways for procurement of polyacetal protective tubes from at least November 2015 to June 2020 (with OP-6 joining from August 2017, OP-5 from June 2019, and OP-7 from July 2019), which is in contravention of the provisions of Section 3(3)(a) of the Act. Further, there were also e-mails exchanged between the OPs, where one OP can be seen pressuring another to quote only the decided prices and not lower,

and where OPs can be seen asking other OPs to withdraw their offers. This amounts to an act of controlling supply and market by regulating who will supply and when they shall supply the products, which is in contravention of the provisions of Section 3(3)(b) of the Act. There was also clear allocation of tenders amongst the OPs qualifying as sharing of market amongst them in terms of percentage with addition and reduction with each tender and in terms of monetary amount as well, wherein the balance sheet was displayed for each player, which is in contravention of the provisions of Section 3(3)(c) of the Act. However, looking at the *modus operandi* of the cartel and the evidences available on record, the Commission finds that the conclusion of geographical allocation of market amongst the OPs cannot be reached, as concluded by the DG. Such *modus operandi* of the OPs amounts to bid rigging in contravention of the provisions of Section 3(3)(d) of the Act by eliminating competition and manipulating the bidding process by forming a pool or cartel of vendors, even for developmental vendors (Part II vendors) who were entering the market and were in the initial phases of manufacturing.

37. Though some OPs have also argued that they were forced to indulge in such pool arrangement and cartel activity due to the market structure and monopsonist position of the Indian Railways, in order to avoid losses and get their fair share of business, the Commission is of the opinion that the same does not bestow a right upon the OPs, *i.e.*, the suppliers/vendors, to collude and fix prices, allocate quantities, and indulge in the illegal conduct of bid rigging in violation of the provisions of the Act. Further, with regard to Indian Railways being a monopolistic player with the power to determine prices/quantity, the Commission notes that the said contention of the OPs is also misconceived. Firstly, in the presence of overwhelming documentary evidence as adumbrated *supra*, it is futile for the parties to take recourse to such a plea. Merely putting emphasis on market conditions in isolation, ignoring the actual conduct in the teeth of overwhelming evidence meticulously pieced together by the DG, the Parties have been selective in projecting their submissions. Further, as a consumer, the Indian Railways is free to make a choice as far as selection of goods or services provider are concerned. This also has to be considered in view of the 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 OPs to procure polyacetal protective tubes

on the best possible bargain price amounts to nothing but ensuring benefit to itself and its end consumers, *i.e.*, railway passengers. Therefore, the Indian Railways cannot allow the OPs 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 in flagrant violation of the provisions of the Act.

Liability under Section 48:

38. Once the contravention of the provisions of the Act by the OPs has been established, the Commission now proceeds to determine and analyse, in the subsequent paragraphs, the role and liability of the respective individuals (directors, officers, and employees) who would be liable for such anti-competitive acts of the OPs in terms of Section 48 of the Act.

39. As per the investigation report, the DG has found the following individuals of the OPs to be liable in terms of Section 48 of the Act for the anti-competitive conduct of the OPs:

OP	Person	Liability u/s
Polyset Plastics Pvt. Ltd.	Mr. Bhupesh Bafna, Managing Director	48(1) & 48(2)
	Ms. Shanta Sohoni, Employee	48(1) & 48(2)
M/s Power Mould	Mr. Bhupesh Bafna, Partner	48(1) & 48(2)
M/s Anju Techno Industries	Mr. Bhupesh Bafna, Partner	48(1) & 48(2)
Jai Polypan Pvt. Ltd.	Mr. Vishal Baid, Director	48(1) & 48(2)
	Mr. Rajesh R., Senior Manager	48(2)
	Mr. Rajeev Dudhani, Consultant/Advisor	48(2)
M/s Polymer Products of India	Mr. Vishnu N. M., Managing Partner	48(1)
	Mr. Venkata Subramanyam, Managing Partner	48(1) & 48(2)
	Mr. Harsha Gumballi, Manager Administration	48(2)
M/s Rama Engineering Works	Mr. V. Chakrapani, Partner	48(1) & 48(2)
M/s Hari Narayan Bihani	Mr. Keshav Bihani, Partner	48(1) & 48(2)

40. The role and liability of each is discussed below.

(1) Mr. Bhupesh Bafna, Director of Polyset Plastics Private Ltd. and Partner of M/s Power Mould and M/s Anju Techno Industries

41. The DG has noted that Mr. Bhupesh Bafna was one of the three directors in the private limited company OP-1. Further, the DG has noted that Mr. Bafna is also a partner in partnership firms OP-2 and OP-3, which Mr. Bafna has stated before the DG are sister entities of OP-1. Hence, his position in all the three OPs makes him in-charge of and liable for the conduct of the business of the said OPs, which has not been denied by him.

42. Further, Mr. Bafna has acknowledged before the DG that an informal market understanding existed amongst the approved bidders of polyacetal protective tubes that they should all have reasonable rates and get a reasonable share of the overall business to recover investments. He was also the person responsible for filing the bids and deciding the prices to be quoted by all three OPs.

43. Hence, in view of the above, the Commission finds Mr. Bhupesh Bafna liable in terms of both Section 48(1) and 48(2) of the Act for cartel conduct of OP-1 as well as OP-2 and OP-3.

(2) Ms. Shanta Sohoni, Employee at Polyset Plastics Private Ltd.

44. The DG has noted that Ms. Shanta Sohoni was an employee at OP-1, who was also working on behalf of OP-2 and OP-3. She was the kingpin of the cartel, who allocated forthcoming tenders amongst the OPs and informed them about the prices to be quoted. Ms. Sohoni was responsible for co-ordination amongst the members of the cartel. As detailed above, there are several e-mail communications to and from the other OPs sent/received by Ms. Shanta Sohoni with respect to the cartel arrangement.

45. Hence, in view of the above, the Commission finds Ms. Shanta Sohoni liable in terms of Section 48(2) of the Act for the cartel conduct of OP-1.

(3) Mr. Vishal Baid, Director of Jai Polypan Pvt. Ltd.

46. The DG has noted that Mr. Vishal Baid was one of the three directors of the private limited company OP-4. In the suggestions/objections to the DG Report, it is not denied

that he had knowledge of the cartel activities of OP-4. In fact, he is also one of the individuals named by OP-4 in the lesser penalty application.

47. Hence, being in-charge of and responsible for the conduct of business of OP-4, the Commission finds Mr. Vishal Baid liable in terms of Section 48(1) of the Act for the cartel conduct of OP-4.

(4) Mr. Rajeev Dudhani, Consultant/Advisor at Jai Polypan Pvt. Ltd.

48. As detailed above, multiple e-mail communications to and from the other OPs have been sent/received by Mr. Rajeev Dudhani with respect to the cartel arrangement.

49. Hence, in view of the above, the Commission finds Mr. Rajeev Dudhani liable in terms of Section 48(2) of the Act for the cartel conduct of OP-4.

(5) Mr. Rajesh R., Senior Manager, Operations at Jai Polypan Pvt. Ltd.

50. Mr. Vishal Baid, Director of OP-4, has submitted before the DG that Mr. Rajesh R., Senior Manager, Operations at OP-7, was the authorised person for filing bids on behalf of OP-4 in the tenders floated by the Indian Railways for protective tubes and he is also authorised to take pricing decisions and quote price in tenders relating to protective tubes. As detailed above, several e-mail communications to and from the other OPs sent/received by Mr. Rajesh R. also show his clear involvement in the cartel arrangement.

51. Hence, in view of the above, the Commission finds Mr. Rajesh R. liable in terms of Section 48(2) of the Act for the cartel conduct of OP-4.

(6) Mr. V. Chakrapani, Partner of M/s Rama Engineering Works

52. Mr. V. Chakrapani is the partner of OP-5. As such, he was in-charge of and responsible for the conduct of business of OP-5, which responsibility has not been denied by Mr. Chakrapani in his suggestions/objections to the DG Report. Further, as detailed above, certain e-mail communications to and from the other OPs have been sent/received by Mr. V. Chakrapani with respect to the cartel arrangement.

53. Though it has been submitted in the suggestions/objections to the DG Report that Mr. V. Chakrapani was not examined on oath by the DG and, as such, he has been denied a fair opportunity to present his case, the Commission notes that, at the stage of enquiry

before the Commission, Mr. Chakrapani was given a fair opportunity to make his defence both in writing as part of suggestions/objections to the DG Report as well as during the oral hearing.

54. Hence, in view of the above, the Commission finds Mr. V. Chakrapani liable in terms of both Sections 48(1) and 48(2) of the Act for the cartel conduct of OP-5.

(7) Mr. Vishnu N. M., Managing Partner of M/s Polymer Products of India

55. The DG has noted that Mr. Vishnu N. M. was one of the Managing Partners of the partnership firm OP-6.

56. Hence, being in-charge of and responsible to OP-6 for the conduct of its business, which responsibility has not been denied by Mr. Vishnu in his suggestions/objections to the DG Report, the Commission finds Mr. Vishnu N. M. liable in terms of Section 48(1) of the Act for the cartel conduct of OP-6.

(8) Mr. Venkata Subramanyam, Managing Partner of M/s Polymer Products of India

57. The DG has noted that Mr. Venkata Subramanyam was also one of the Managing Partners of the partnership firm OP-6. As such, he was in-charge of and responsible for the conduct of the business of OP-6, which responsibility has not been denied by Mr. Subramanyam in his suggestions/objections to the DG Report. Further, as detailed above, few e-mail communications to and from the other OPs have been sent/received by Mr. Subramanyam with respect to the cartel arrangement.

58. Hence, in view of the above, the Commission finds Mr. Venkata Subramanyam liable in terms of Sections 48(1) and 48(2) of the Act for the cartel conduct of OP-6.

(9) Mr. Harsha Gumballi, Manager (Admin) at M/s Polymer Products of India

59. The DG has noted that Mr. Harsha Gumballi was the Manager (Admin) at OP-6. As detailed above, there are several e-mail communications to and from the other OPs sent/received by Mr. Harsha Gumballi with respect to the cartel arrangement.

60. Hence, in view of the above, the Commission finds Mr. Harsha Gumballi liable in terms of Section 48(2) of the Act for the cartel conduct of OP-6.

(10) Mr. Keshav Bihani, Partner of M/s Hari Narayan Bihani

61. Mr. Keshav Bihani is the Partner of OP-7. As such, he was in-charge of and responsible for the conduct of business of OP-7, which responsibility has not been denied by Mr. Bihani in his suggestions/objections to the DG Report. Further, the DG has noted that e-mails, as detailed above, sent to OP-7, were to the e-mail ID of Mr. Keshav Bihani. The DG has also noted that Mr. Bihani decided the final price to be quoted by OP-7 in the protective tube tenders.

62. Hence, in view of the above, the Commission finds Mr. Keshav Bihani liable in terms of Sections 48(1) and 48(2) of the Act, for the cartel conduct of OP-7.

63. It has been argued on behalf of OP-7 that no finding against Mr. Bihani can be given in terms of Section 48 of the Act before a finding of contravention against the firm OP-7 has been given. In this regard, it is noted that, in the paras above, OP-7 has already been found guilty of contravention of the provisions of the Act. Hence, only after determination of guilt of the firm OP-7 has the Commission proceeded to analyse the liability of Mr. Keshav Bihani in terms of the provisions of Section 48 of the Act.

Conclusion:

64. Hence, the Commission holds OP-1 to OP-7 guilty of contravention of the provisions of Sections 3(3)(a), 3(3)(b), 3(3)(c), and 3(3)(d) read with 3(1) of the Act.

65. As far as individuals' liability is concerned, the Commission holds the following individuals of the OPs liable under Section 48 of the Act for anti-competitive conduct of their respective companies:

(i) Mr. Bhupesh Bafna, Director of Polyset Plastics Private Ltd. and Partner of M/s Power Mould and M/s Anju Techno Industries;

(ii) Ms. Shanta Sohoni, Employee at Polyset Plastics Private Ltd.;

(iii) Mr. Vishal Baid, Director of Jai Polypan Pvt. Ltd.;

(iv) Mr. Rajeev Dudhani, Consultant/Advisor at Jai Polypan Pvt. Ltd.;

(v) Mr. Rajesh R., Senior Manager, Operations at Jai Polypan Pvt. Ltd.;

(vi) Mr. V. Chakrapani, Partner of M/s Rama Engineering Works;

(vii) Mr. Vishnu N. M., Managing Partner of M/s Polymer Products of India;

(viii) Mr. Venkata Subramanyam, Managing Partner of M/s Polymer Products of India;

(ix) Mr. Harsha Gumballi, Manager (Admin) at M/s Polymer Products of India;

(x) Mr. Keshav Bihani, Partner of M/s Hari Narayan Bihani.

Penalty and lesser penalty:

66. Once contravention of the provisions of the Act has been established, the Commission now proceeds to determine the penalty, if any, to be imposed upon the contravening parties under the provisions of Section 27(b) of the Act.

67. Under Section 27(b) of the Act, where, after inquiry, the Commission finds that any agreement referred to in Section 3 or action of an enterprise in a dominant position is in contravention of Section 3 or Section 4 of the Act, as the case may be, it may impose upon each such person or enterprise which is party to such agreements or abuse such penalty as it may deem fit, which shall be not more than ten per cent of the average of the turnover for the last three preceding financial years.

68. With regard to the imposition of penalty, certain Parties have submitted that, as penalties have already been imposed upon them in another similar case bearing Ref. Case No. 03 of 2018 (*supra*), the Commission ought not impose further penalty upon them in the present matter, as the period of contravention in both the matters overlap with each other.

69. In this regard, the Commission observes that the products involved in the present case and *Ref. Case No. 03 of 2018* (*supra*) are two entirely different products. OP-1, OP-2, OP-3, and OP-6 and their concerned individuals were part of two separate cartels, even if during the overlapping period of contravention. The revenues earned by these OPs from the sale of these different products during the period of contravention were entirely separate, and penalties in *Ref. Case No. 03 of 2018* (*supra*) were calculated only on the basis of the revenues earned by these OPs from the sale of High Performance Polyamide Bushes/ Self Lubricating Polyester Resin Bushes and not protective tubes.

70. Hence, taking into consideration the revenues earned by the OPs from the sale of protective tubes in the market, the Commission, in terms of the aforesaid provision, decides to compute a separate penalty to be imposed upon the OPs in the present matter. Considering the nature of the cartel arrangement, the mitigating factors submitted by the OPs, and the fact that some of the OPs are MSMEs, the Commission decides to impose upon the OPs penalty @5% of the average of their turnover generated from the sale of protective tubes for the last three preceding financial years.

71. The same is calculated as under:

Polyset Plastics Pvt. Ltd. (OP-1) (In ₹)

FINANCIAL YEAR	RELEVANT TURNOVER
2017–18	-
2018–19	1,51,200
2019–20	-
Total	**1,51,200**
Average	**50,400**
Penalty	**2,520**

M/s Anju Techno Industries (OP-2) (In ₹)

FINANCIAL YEAR	RELEVANT TURNOVER
2017–18	1,70,63,550
2018–19	1,41,37,520
2019–20	96,88,334
Total	**4,08,89,404**
Average	**1,36,29,801**
Penalty	**6,81,490**

M/s Power Mould (OP-3) (In ₹)

FINANCIAL YEAR	RELEVANT TURNOVER
2017–18	13,43,942
2018–19	13,00,068
2019–20	12,42,054
Total	**38,86,064**
Average	**12,95,355**
Penalty	**64,768**

Jai Polypan Private Limited (OP-4) (In ₹)

FINANCIAL YEAR	RELEVANT TURNOVER
2017–18	81,63,604
2018–19	92,19,265
2019–20	14,08,789
Total	**1,87,91,658**
Average	**62,63,886**
Penalty	**3,13,194**

M/s Rama Engineering Works (OP-5) (In ₹)

FINANCIAL YEAR	RELEVANT TURNOVER
2017–18	-
2018–19	-
2019–20	39,01,101
Total	**39,01,101**
Average	**13,00,367**
Penalty	**65,018**

M/s Polymer Products of India (OP-6) (In ₹)

FINANCIAL YEAR	RELEVANT TURNOVER
2017–18	-
2018–19	35,69,901
2019–20	17,95,419
Total	**53,65,320**
Average	**17,88,440**
Penalty	**89,422**

M/s Hari Narayan Bihani (OP-7) (In ₹)

FINANCIAL YEAR	RELEVANT TURNOVER
2017–18	Not filed
2018–19	Not filed
2019–20	2,30,01,080
Total	**2,30,01,080**
Average	**2,30,01,080**
Penalty	**11,50,054**

72. As far as the individuals of the OPs found liable in terms of Section 48 of the Act for anti-competitive conduct of their respective companies/firms are concerned, the Commission notes that certain OPs *i.e.* OP-1, OP-2, OP-3 and OP-6 have pleaded even with regard to their individuals that since they have already been penalised in the other

similar case *i.e.* Ref. Case No. 03 of 2018 (*supra*), the Commission ought not impose further penalty upon them in the present matter.

73. In this regard, the Commission, taking note of the fact that penalties have already been imposed upon Mr. Bhupesh Bafna of OP-1, OP-2 and OP-3, Ms. Shanta Sohoni of OP-1, Mr. Vishal Baid, Mr. Rajeev Dudhani and Mr. Rajesh R. of OP-4, and Mr. Vishnu N.M., Mr. Venkata Subramanyam and Mr. Harsha Gumballi of OP-6, in Ref. Case No. 03 of 2018 for similar period of contravention, and the fact that the OPs with whom such individuals are associated are stated to be MSMEs, decides not to impose any further penalty on them, in the present matter. Such individuals 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, constituting recidivism with attendant consequences.

74. Upon the remaining individuals found liable in terms of Section 48 of the Act *i.e.* individuals of OP- 5 and OP-7, the Commission decides to impose penalty @5% of the average of their incomes, for the last three preceding financial years, which is calculated as under:

Mr. V. Chakrapani of OP-5 (In ₹)

FINANCIAL YEAR	INCOME
2017–18	Not Filed
2018–19	11,59,628
2019–20	11,89,400
Total	**23,49,028**
Average	**11,74,514**
Penalty	**58,726**

Mr. Keshav Bihani of OP-7 (In ₹)

FINANCIAL YEAR	INCOME
2017–18	1,60,04,421
2018–19	1,62,76,749
2019–20	1,63,72,630
Total	**4,86,53,800**
Average	**1,62,17,933**
Penalty	**8,10,897**

75. Regarding lesser penalty, the Commission notes that OP-4 was the first lesser penalty applicant to approach the Commission. As such, it is eligible for up to 100% reduction in the penalty amount imposed upon it. It is noted by the Commission that the order passed under Section 26(1) of the Act in the present matter was based on disclosures made by OP-4 in its lesser penalty application. At that stage, the Commission and/or the DG had no evidence in their possession regarding cartelisation between the OPs. Full and true disclosures of information and evidence and continuous co-operation provided by OP-4 not only enabled the Commission to order investigation into the matter but also helped the Commission establish contravention of the provisions of Section 3(3) of the Act by the OPs. OP-4 extended genuine, full, continuous, and expeditious co-operation not only during the course of investigation before the DG, but also during the subsequent proceedings before the Commission. As such, the Commission decides to grant OP-4, 100% reduction in the penalty amount imposed upon them.

76. In view of the above, the Commission passes the following:

ORDER

77. OP-1 to OP-7 are found guilty of contravention of the provisions of Section 3(3)(a), 3(3)(b), 3(3)(c), and 3(3)(d) read with Section 3(1) of the Act. Further, ten individuals of the OPs are found liable in terms of Section 48 of the Act for the anti-competitive conduct of their respective entities.

78. The Commission, in terms of Section 27(a) of the Act, directs the parties to cease and desist in the future from indulging in any practice/conduct/activity which has been found in the present order to be in contravention of the provisions of Section 3 of the Act, as detailed in the earlier part of this order.

79. Further, under the provisions of Section 27(b) of the Act, the Commission directs the following Parties to pay the following amounts of penalty:

S. no.	Name of Party	Amount of penalty (In ₹)	Amount in words
1.	Polyset Plastics Private Ltd.	2,250	Rupees Two Thousand Two Hundred and Fifty Only
2.	M/s Anju Techno Industries	6,81,490	Rupees Six Lacs Eighty One

S. no.	Name of Party	Amount of penalty (In ₹)	Amount in words
			Thousand Four Hundred and Ninety Only
3.	M/s Power Mould	64,768	Rupees Sixty Four Thousand Seven Hundred and Sixty Eight Only
4.	Jai Polypan Private Ltd.	*Nil*	*Nil*
5.	M/s Rama Engineering Works	65,018	Rupees Sixty Five Thousand Eighteen Only
6.	M/s Polymer Products of India	89,422	Rupees Eighty Nine Thousand Four Hundred and Twenty Two Only
7.	M/s Hari Narayan Bihani	11,50,054	Rupees Eleven Lacs Fifty Thousand and Fifty Four Only
8.	Mr. V. Chakrapani, Partner of M/s Rama Engineering Works	58,726	Rupees Fifty Eight Thousand Seven Hundred and Twenty Six Only
9.	Mr. Keshav Bihani, Partner of M/s Hari Narayan Bihani	8,10,897	Rupees Eight Lacs Ten Thousand Eight Hundred and Ninety Seven Only

80. The parties mentioned in the table above are directed to deposit their respective penalty amounts within 60 days of the receipt of the present order.

81. It is made clear that all information used in the present order is for the purposes of the Act and, as such, in terms of Section 57 of the Act, does not qualify for grant of confidential treatment.

82. The Secretary is directed to forward a certified copy of the present order to the parties through their respective legal counsel, accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 09.06.2022