



COMPETITION COMMISSION OF INDIA

Reference Case No. 02 of 2023

In Re:

CMM/ Loco BLW Varanasi

Office of PCMM/BLW,
GM Administrative Building,
BLW Varanasi, Uttar Pradesh-221004

Informant

And

Kharagpur Metal Reforming Industries

Private Limited, Koushallya, Kharagpur,
West Bengal-721301

Opposite Party No. 1

Kay Pee Equipment Private Limited

46/6/2 Chatterjee Para Lane, Kadamtala, Howrah,
West Bengal 711101.

Opposite Party No. 2

CORAM:

Ravneet Kaur
Chairperson

Anil Agrawal
Member

Sweta Kakkad
Member

Deepak Anurag
Member

Order under Section 26(2) of the Competition Act, 2002

1. The present case has been referred to the Commission by the Chief Material Manager ('CMM')/ Loco Banaras Locomotive Works ('BLW'), Varanasi ('Informant'). BLW,



Varanasi is a unit of Ministry of Railways, Government of India. The reference case has been filed under Section 19(1)(b) of the Competition Act, 2002 ('Act') against Kharagpur Metal Reforming Industries Private Limited, Kharagpur ('OP-1'/ 'KMRI') and Kay Pee Equipment Private Limited, Howrah ('OP-2') (hereinafter, collectively referred to as 'OPs') alleging, *inter alia*, cartel formation in the supply of electro locomotive item motor suspension unit ('MSU') for WAP-7 and WAG-9 locomotives to various railway production units ('PU') including BLW; Diesel-Loco Modernization Works ('DMW'), Patiala; and Chitranjan Locomotive Works ('CLW'), in contravention of the provisions of Section 3(3)(d) read with Section 3(1) of the Act.

2. It is stated by the Informant that earlier, on receipt of a complaint sent by the Railway Board regarding alleged cartel formation by the OPs in CLW, DLW, DMW & Zonal Railway for electric WAG7 and WAG9 locomotive casting/Mach components, MSU, Gear Case, 6FRA Motor components and many more items for electric/diesel locomotive, the office of the Chief Vigilance Officer ('CVO')/BLW had conducted a detailed investigation and submitted its report to the Railway Board *vide* letter dated 14.01.2021. The vigilance departments of DMW and CLW also submitted their investigation reports on the said matter *vide* DMW's letter No. DMW/Vigilance/Dy.CVO/Comp.07/2021 dated 23.08.2021 and CLW's letter No, 20/VO/CLW/CON/33 dated 11.10.2021 respectively.
3. The Informant further stated that the abovesaid reports were examined by the Railway Board Vigilance. After considering the aforesaid reports, Railway Board Vigilance was of the view that there appeared cartelization in the procurement of the item — Motor Suspension Unit *i.e.* MSU as analysed by BLW. Hence, Railway Board *vide* letter no. 2020/V5/DLW/ST/56 dated 13.07.2022 asked BLW Vigilance, CLW Vigilance and DMW Vigilance, to consider referring the matter of cartelization to the Commission. Vigilance department, BLW forwarded the said direction to the Office of the Principal Chief Materials Manager, BLW for necessary action *vide* letter No. GM/Vig/Stores/09-20/30 Comp. dated 26.07.2022. Accordingly, the present Reference Case has been filed before the Commission for consideration.
4. As per the Information, MSU, a Mild Steel ('MS') casting item, is required in the manufacturing of WAG-9 and WAP-7 locomotives which are manufactured at DLW,



CLW and DMW. Earlier, vendor development authority for MSU was vested with Research Designs and Standards Organisation ('RDSO') and the item was reserved for procurement from RDSO approved sources. However, during year 2017, vendor development authority of MSU was transferred to CLW. The Informant also provided the list of approved vendors and their production capacity, which is as per the table below:

Table 1: MSU's Approved vendors and their Production Capacity

Sl. No.	MSU's Approved Vendors (2017)	Annual Production Capacity in 2018	
		Loco Set Per Year (A)	In Sets (Ax6)
1.	Kay Pee Equipment Pvt. Ltd., Howrah	600	3600
2.	Kharagpur Metal, Kharagpur	240	1440
3.	Simplex Engineering, Bhilai (Simplex)	150	900
4.	Kalyani Engineering, Ghaziabad (Kalyani)	-	-
	Total	990	5940

5. The Informant further stated that the pattern of consumption of MSU in production units shows that overall consumption of item has increased from 1710 sets in 2017-18 to 3687 sets and 5179 sets in 2018-19 and 2019-20, respectively, whereas the number of approved firms to meet the requirement has not increased correspondingly.
6. It was further stated by the Informant that unapproved firms may be considered for only a small quantity up to 20% of the net requirement as developmental order subject to successful capacity cum capability assessment if found technically suitable subject to completion of formalities as per the bid conditions. Also, tenderer must enclose required past credentials of supply of same /similar tendered item to show that they are capable of supplying the tendered item and to substantiate their capacity to develop the tendered item.
7. It was further submitted by the Informant that M/s Simplex, an approved vendor, has supplied total 332 Sets of MSUs in different purchase orders ('POs') at DMW, out of which 22 Sets have witnessed warranty failure. In case of Developmental sources, M/s Indore Nitride's, Indore, has supplied total 96 Sets of MSUs in different POs at DMW, out of which 06 Sets have been rejected. Hence, it can be noted that though quality



reliability of both the approved vendor (6.63%) as well as the developmental vendor (6.25%) is almost same but implementation of quality and safety is not fairly applied at developmental sources. However, in terms of overall reliability of product, most of the vendors failed to execute the order within the contractual delivery period.

8. It has been submitted by the Informant that delay in granting approval led to fewer suppliers which resulted in procurement at higher rates and cartelization. At present, total value of all POs placed (during 2016-2020) by Railway PUs on different developmental sources is INR 17.42 crores (approx.) for 1249 sets of MSUs. All these POs which are at substantially lower rate are pending against developmental sources. Arbitrariness in execution of the vendor approval process is prevalent.
9. In this regard, a table has also been submitted by the Informant which is being reproduced below. On the basis of this table, it is alleged by the Informant that there were sufficient interested vendors present in the market for supplying MSU and the item is lucrative for the suppliers as 21 tenderers have recently quoted and expressed their interest.

Table 2: Number of participants in various tenders

Sl. No.	Tender No.	Date	PU	No. approved vendors quotes	No. of other vendors quotes	Total No. of vendors quotes
1.	8130366	31.08.2015	CLW	3	4	7
2.	83170366	25.07.2016	CLW	3	5	8
3.	83180366	13.07.2017	CLW	4	9	13
4.	04171102	17.07.2017	DLW	4	5	9
5.	041713681	23.01.2018	DLW	4	10	14
6.	83190366	17.07.2018	CLW	4	13	17
7.	041813800	16.01.2019	DLW	3	8	11
8.	21197414	22.07.2019	DMW	1	1	2
9.	83190366A	11.03.2020	CLW	3	7	10
10.	04201105	10.07.2020	DLW	3	18	21

10. It is further submitted by the Informant that in subsequent tenders, increase in quoted rate of OP-1 and OP-2 are similar in nature with a narrow difference of about 0.5% to 1.75%. This arrangement is alleged to be not coincidental as such arrangements



continued for years. This indicates that there is some secret agreement between these firms for submitting identical/similar bids with marginal difference so that majority of quantity could be distributed between them.

11. It is also alleged by the Informant that in the case of CLW's tenders up to the year 2017, the rates of OP-1, OP-2 and Simplex were following different trends from each other. But after that the rate of OP-1 has always been lower than the rate of OP-2 and M/s Simplex in all subsequent tenders.
12. It is further submitted that as per Railway Board guidelines, if the difference between bid amounts is up to 3%, then order quantity will be distributed between firms in the ratio of 65:35. However, in 2020-21, both the OPs got the order for quantity 700 Sets each *i.e.* 50:50, though their quoted rates were different.
13. It is alleged by the Informant that there seems to be some understanding between OP-1 and OP-2 and the trend of increasing rate continued till 2020-21. When Wholesale Price Index' ('WPI') of MS Casting was having increasing trend (between 2015 to 2017), the PO rate was following decreasing trend. Again, between 2019 to 2020 WPI of MS Casting was decreasing, but rates of POs were increasing. Hence, as per the Information, firms had quoted rate without considering input cost & nominal profit, and contract rate had little relation with the WPI of MS Casting *i.e.* input cost of material and labor *etc.* had little relation with the PO rate.
14. It is stated by the Informant that RDSO received 4 applications prior to 2017 for vendor development and the same were transferred to CLW in 2017. Since 2017, CLW considered 3 applicants for development of vendor base, but from last 8 years no vendor could enter the market. It is also submitted by the Informant that about two years waiting time has been noticed to clear one intermediate stage of approval process. There are many anomalies in unnecessarily long vendor approval process due to which two potential vendors M/s Bhupendar Engineering and M/s Indore Nitriders are not getting vendor approval since last five to eight years. Thus, entry barriers exist in the system. It is also alleged by the Informant that the OPs are creating hurdles in enlargement of vendor base.



15. It is alleged that lower vendor base and abnormal delay in vendor approval provides suitable environment and sufficient time to approved vendors to increase the rate by cartelization resulting in economic loss to Railways.
16. The Commission considered the matter in its ordinary meeting held on 24.04.2024 and, *inter alia*, directed the Informant to provide further information/data related to bid rigging. To establish a suspicious pattern of bid rigging, the Commission directed the Informant to provide details related to tenders such as date of tenders, tender numbers, production units, bid rates, IP addresses, date & time of submission of bids, award rates, total quantity awarded, *etc.* The Informant was also directed to provide evidence regarding meeting of minds of OPs.
17. After multiple extension of time by the Commission, the Informant submitted the response on 09.11.2024. Table-3 below provides the details of tenders provided by the Informant:

Table-3

Sl No.	Date of Tender	Tender No	PU	KP's Bid rate (Rs.) all incl. & IP address & Time of submission	KM's Bid rate (Rs.) all incl. & IP address & time of submission	Simplex Bid rate (Rs.) all incl. & IP address & time of submission	Kalyani Bid rate (Rs.) all incl. & IP address & time of submission	Award Rate (All Inclusive) (Rs.)	Total Qty	KP's Award Qty	KM's Award Qty	Remarks if any
1	16.04.2021	04211302	BLW	240461.76 115.96.78.186 09.04.2021 12:15:58	239551.20 103.76.80.228 12.04.2021 02:43:03	246400.00 203.193.170.10 14.04.2021 12:39:30	Not quoted	240130.00	1078 sets	227 sets	511 sets	-
2	28.10.2021	04211033	BLW	250980.10 115.96.128.142 11.10.2021 14:4:31	252520.00 103.76.80.228 23.10.2021 19:30:19	255470.00 136.232.184.198 27.10.2021 14:48:33	Not quoted	245558.00	1823 sets	863 sets	576 sets	-
3	27.05.2022	04221291	BLW	288146.56 115.96.108.142 14.05.2022 14:32:56	291224.00 136.232.76.214 18.05.2022 19:26:37	289100.00 136.232.184.198 16.05.2022 12:52:32	Not quoted	259007.64	460 sets	319 sets	141 sets	-
4	01.12.2022	04221033	BLW	261603.64 115.96.158.150 21.11.2022 16:14:36	264261.00 136.232.76.214 29.11.2022 11:20:38	260777.64 136.232.184.198 30.11.2022 14:43:38	Not quoted	254762.00	993 sets	314 sets	470 sets	-



5	20.07.2023	04231033A	BLW	252770.16 115.96.123.20 18.07.2023 13:53:28	265146.00 103.27.143.164 17.07.2023 14:37:10	259543.36 136.232.184.198 19.07.2023 13:30:19	Not quoted	221899.00	1327 sets	796 sets	Nil	-
6	27.06.2024	04241033	BLW	226821.96 115.96.106.169 24.06.2024 14:18:10	Not quoted 136.232.71.2 20.06.2024 15:12:44	245607.56 122.177.193.133 25.06.2024 19:55:44	Not quoted	192145.30	1875 sets	1406 sets	Nil	-
7	07.12.2020	83200366	CLW	Not available on IREPS	Not available on IREPS	Not available on IREPS	Not available on IREPS	233640.00	832 sets	416 sets	416 sets	-
8	22.06.2021	83210366	CLW	Not available on IREPS	Not available on IREPS	Not available on IREPS	Not available on IREPS	244932.60	1922 sets	904 sets	615 sets	-
9	21.06.2022	83220366	CLW	287032.64 203.163.237.218 13.06.2022 16:13:12	285678.00 136.232.76.214 17.06.2022 13:19:43	294410.00 203.193.170.10 16.06.2022 11:53:37	Not quoted	258538.00	343 sets	206 sets	137 sets	-
10	24.01.2023	83220366B	CLW	259597.64 115.96.133.79 20/01/2023 14:00:56	264768.40 136.232.76.214 21/01/2023 12:22:29	260423.64 136.232.184.198 23/01/2023 10:50:06	Not quoted	228625.00	2594 sets	1556 sets	1038 sets	-

11	05.07.2023	83230366	CLW	259798.24 115.96.128.119 01.07.2023 15:33:50	257417.00 103.27.143.164 01.07.2023 16:37:23	266550.20 136.232.184.198 04.07.2023 19:27:07	Not quoted	221899.00	2695 sets	1617 sets	1078 sets	-
12	15.04.2021	21211494	PLW	Not available on IREPS	Not available on IREPS	Not available on IREPS	Not available on IREPS	230160.00	999 sets	339 sets	660 sets	-
13	02.07.2021	21211724	PLW	Not available on IREPS	Not available IREPS	Not available on IREPS	Not available on IREPS	225398.41	192 sets	Nil	Nil	-
14	16.11.202	21211864	PLW	253106.46 115.96.127.199 22.10.2021 16:21:42	255519.56 103.76.80.228 30.10.2021 17:40:32	Not quoted	Not quoted	246148.00	2009 sets	803 sets	1206 sets	-
15	21.11.2022	21221148	PLW	261131.64 115.96.128.225 16.11.2022 11:00:27	262668.00 136.232.76.214 16.11.2022 18:31:36	265143.64 136.232.184.198 19.11.2022 17:20:30	Not quoted	258998.20	550 sets	220 sets	330 sets	-



16	21.09.2023	21231461	PLW	266795.64	267860.00	271518.00	Not quoted	229038.00	758 sets	Nil	758 sets	-
				115.96.122.84	136.232.76.214	136.232.184.198						
				19.09.2023 16:17:37	20.09.2023 14:12:51	21.09.2023 11:38:33						
17	12.07.2024	21241381	PLW	Not quoted	229026.20	277300.00	Not quoted	229026.20	178 sets	178 sets	Nil	-
					136.232.71.2	103.39.237.202						
					09.07.2024 17:36:45	10.07.2024 19:35:00						

18. Based on the table provided above by the Informant, the Commission has carefully reviewed a range of information submitted by the Informant regarding various tenders. The details provided include bid rates, IP addresses, bid submission dates and times, awarded tender rates, awarded quantities, and other relevant data regarding the bidders involved in the tender process. Upon conducting a thorough and detailed examination of the data submitted, the Commission found no indications or evidence of bid rigging between OPs, as alleged by the Informant. Despite the comprehensive nature of the data, no suspicious patterns or irregularities were identified that would suggest coordinated or anti-competitive behaviour. Therefore, the alleged bid rigging claims could not be substantiated.
19. Further, the Commission also observed from the subsequent response of the Informant that the Railway Board, *vide* letter no. 2020/V5/DLW/ST/56 dated 13.07.2022, had not advised any action to be taken against any of the officials of the railways.
20. The Informant, *vide* response dated 09.11.2024, further quoted para 7.6.4.1 of the vigilance investigation report and submitted that “*analyzing the data of tabulation statement of financial bid available at IMMIS module of IREPS of different PUs (Table 7.6.3.1 to 7.6.3.3) indicate the difference in rates quoted by these firms at different PUs has marginal difference of about 0.5% to 1.5% and no other competitor is lying between these two firms in all the tenders. This indicates towards collusive bid behavior and it seems that at DMW Patiala, M/s KMRI is willfully not taking participation in tenders. As per para 7.7.1.1 of the vigilance investigation report, the Informant stated the increase and decrease in the quoted rates of the M/s KMRI and M/s Kaypee at DLW and CLW has similar trend and the margin of the difference in quoted rate also lies in between 0.50% to 1.75%. This arrangement is not coincidental as such arrangement continued for years. This indicates that, there appears to have a secret agreement in*



between these firms for submitting identical bids with marginal difference so that majority of the quantity could be distributed between them. This violates the instructions regarding cartel formation. It means M/s KMRI and M/s Kaypee have violated the declaration submitted by them at the time of bidding.”

21. In connection with the above observation made by the vigilance investigation report, regarding submitting the bids between 0.50% to 1.75% and correlating trends of the OPs, the Commission notes that mere quoting bids in the range of 0.50% to 1.75% does not indicate any suspicion of bid rigging.
22. The Commission, after considering the Information and subsequent response of the Informant, observed that in the absence of any material having been brought on record by the Informant suggesting or indicating meeting of minds between the OPs, the Commission is of the opinion that *prima facie*, no case of contravention of provisions of Section 3 of the Act is made out in the present matter against OPs. Accordingly, the instant reference case is directed to be closed forthwith in terms of the provisions of Section 26(2) of the Act.
23. The Secretary is directed to communicate to the Informant, accordingly.

**Sd/-
(Ravneet Kaur)
Chairperson**

**Sd/-
(Anil Agrawal)
Member**

**Sd/-
(Sweta Kakkad)
Member**

**Sd/-
(Deepak Anurag)
Member**

**New Delhi
Date: 30.04.2025**