



**COMPETITION COMMISSION OF INDIA**

**Reference Case No. 03 of 2016**

**In Re:**

**Chief Materials Manager, South Eastern Railway**

**...Informant**

5th Floor, NAB, #11, Garden Reach Road,  
Kolkata, West Bengal – 700 043.

**And**

**Hindustan Composites Limited**

**...Opposite Party No. 1**

Plot No. D-2/ 1, MIDC Industrial Area,  
Paithan, Aurangabad, Maharashtra – 431 148.

**Industrial Laminates (India) Private Limited**

**...Opposite Party No. 2**

Survey No. 13, Village Aghai, Taluka Shahpur,  
Thane, Maharashtra – 421 301.

**BIC Auto Private Limited**

**...Opposite Party No. 3**

**(now Masu Brake Pads Private Limited)**

E-9, Government Industrial Area, Jhajjar District,  
Bahadurgarh, Haryana – 124 507.

**Escorts Limited (Railway Equipment Division)**

**...Opposite Party No. 4**

Plot No. 115, Sector – 24, Faridabad, Haryana – 121 005.

**Rane Brake Lining Limited**

**...Opposite Party No. 5**

Chennai Plant: Plot No. 30, Ambattur Industrial Estate,  
Chennai, Tamil Nadu – 600 058.

**Om Besco Super Friction Private Limited**

**...Opposite Party No. 6**

Plot No. 60-62, Gandpur Industrial Area,  
Paonta Sahib, Sirmour District, Himachal Pradesh – 173 025.

**Cemcon Engineering Co. Private Limited**

**...Opposite Party No. 7**

Plot No. 385, HSIDC Industrial Area,  
Barhi, Sonapat District, Haryana – 131 001.



**Sundaram Brake Lining Limited**  
Padi, Chennai – 600 050.

...Opposite Party No. 8

**Bony Polymer Private Limited**  
Plot No. 77, Sector – 6, Faridabad, Haryana – 121 006.

...Opposite Party No. 9

**Daulat Ram Brakes Mfg. Co.**  
#25, New Sector, Phase-II, Industrial Area,  
Mandideep, Bhopal, Madhya Pradesh – 462 046.

...Opposite Party No. 10

**Reference Case No. 05 of 2016**

**In Re:**

**Controller of Stores, Central Railways**  
Ministry of Railways, Government of India

...Informant

**And**

**BIC Auto Private Limited**  
(now Masu Brake Pads Private Limited)  
E-9, Government Industrial Area, Jhajjar District,  
Bahadurgarh, Haryana – 124 507.

...Opposite Party No. 1

**Escorts Limited (Railway Equipment Division)**  
Plot No. 115, Sector – 24, Faridabad, Haryana – 121 005.

...Opposite Party No. 2

**Rane Brake Lining Limited**  
Chennai Plant: Plot No. 30, Ambattur Industrial Estate,  
Chennai, Tamil Nadu – 600 058.

...Opposite Party No. 3

**Industrial Laminates (India) Private Limited**  
Survey No. 13, Village Aghai, Taluka Shahpur,  
Thane, Maharashtra – 421 301.

...Opposite Party No. 4

**Reference Case No. 01 of 2018**

**In Re:**

**Chief Materials Manager, Eastern Railways**

...Informant

**And**



**BIC Auto Private Limited**

**(now Masu Brake Pads Private Limited)**

E-9, Government Industrial Area, Jhajjar District,  
Bahadurgarh, Haryana – 124 507.

...Opposite Party No. 1

**Hindustan Composites Limited**

Plot No. D-2/ 1, MIDC Industrial Area,  
Paithan, Aurangabad, Maharashtra – 431 148.

...Opposite Party No. 2

**Industrial Laminates (India) Private Limited**

Survey No. 13, Village Aghai, Taluka Shahpur,  
Thane, Maharashtra – 421 301.

...Opposite Party No. 3

**Rane Brake Lining Limited**

Chennai Plant: Plot No. 30, Ambattur Industrial Estate,  
Chennai, Tamil Nadu – 600 058.

...Opposite Party No. 4

**Reference Case No. 04 of 2018**

**In Re:**

**Chief Materials Manager – I, North Western Railways**

...Informant

**And**

**BIC Auto Private Limited**

**(now Masu Brake Pads Private Limited)**

E-9, Government Industrial Area, Jhajjar District,  
Bahadurgarh, Haryana – 124 507.

...Opposite Party No. 1

**Cemcon Engineering Co. Private Limited**

Plot No. 385, HSIDC Industrial Area,  
Barhi, Sonapat District, Haryana – 131 001.

...Opposite Party No. 2

**Hindustan Composites Limited**

Plot No. D-2/ 1, MIDC Industrial Area,  
Paithan, Aurangabad, Maharashtra – 431 148.

...Opposite Party No. 3



**Rane Brake Lining Limited**

Chennai Plant: Plot No. 30, Ambattur Industrial Estate,  
Chennai, Tamil Nadu – 600 058.

...Opposite Party No. 4

**Bony Polymer Private Limited**

Plot No. 77, Sector – 6, Faridabad, Haryana – 121 006.

...Opposite Party No. 5

**Escorts Limited (Railway Equipment Division)**

Plot No. 115, Sector – 24, Faridabad, Haryana – 121 005.

...Opposite Party No. 6

**Hindustan Fibre Glass Works**

C1B – 231/ 3&4 GIDC Industrial Estate,  
Por Ramangamdi, Vadodara, Gujarat – 391 243.

...Opposite Party No. 7

**Om Besco Super Friction Private Limited**

Plot No. 60-62, Gandpur Industrial Area,  
Paonta Sahib, Sirmour District, Himachal Pradesh – 173 025.

...Opposite Party No. 8

**Industrial Laminates (India) Private Limited**

Survey No. 13, Village Aghai, Taluka Shahpur,  
Thane, Maharashtra – 421 301.

...Opposite Party No. 9

**Precision Industrial System**

Goyal Compound, Industrial Estate, Birla Nagar,  
Tansen Road, Gwalior, Madhya Pradesh – 474 004.

...Opposite Party No. 10

**Reference Case No. 08 of 2018**

**In Re:**

**Chief Materials Manager – Sales,**

North Western Railway, Jaipur

...Informant

**And**

**Rane Brake Lining Limited**

Chennai Plant: Plot No. 30, Ambattur Industrial Estate,  
Chennai, Tamil Nadu – 600 058.

...Opposite Party No. 1



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**BIC Auto Private Limited**  
**(now Masu Brake Pads Private Limited)**

**...Opposite Party No. 2**

E-9, Government Industrial Area, Jhajjar District,  
Bahadurgarh, Haryana – 124 507.

**CORAM**

**Ashok Kumar Gupta**  
**Chairperson**

**Sangeeta Verma**  
**Member**

**Bhagwant Singh Bishnoi**  
**Member**

**Present:**

For Informant in Reference Case No. 03 of 2016	None
For Informant in Reference Case No. 05 of 2016	None
For Informant in Reference Case No. 01 of 2018	Mr. Sumit Kumar Chatterjee, CDMS, Court Cell, Eastern Railways, Kolkata
For Informant in Reference Case No. 04 of 2018	Mr. Ashok Kumar Sihara, OS, North Western Railway, Jaipur and Mr. Neeraj Verma, OS, North Western Railway, Jaipur
For Informant in Reference Case No. 08 of 2018	None
For Hindustan Composites Limited and its individuals Mr. Pawan Kumar Choudhary, Mr. Vinay Sarin, Mr. M.S. Raja Sekar and Mr. Jagdish Gadikar	Mr. Manas Kumar Chaudhary, Ms. Radhika Seth, Mr. Ebaad Nawaz Khan and Ms. Mayuka Sah, Advocates, alongwith individuals in-person
For Industrial Laminates (India)	Mr. R. Sudhinder, Ms. Prerana Amitabh,



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Private Limited and its individuals  
Mr. Virender Singh Negi and  
Mr. Saleh Najmuddin Mithiborwala

Ms. Shreya Singh and Mr. Akshay Singh  
Sengar, Advocates

For BIC Auto Private Limited (now  
Masu Brake Pads Private Limited) and  
its individuals Mr. N.K. Bhattacharya,  
Mr. Subhneet Singh Kohli and  
Mr. Manmeet Singh Kohli

Mr. Karan Chandhiok, Ms. Lagna Panda,  
Mr. Salman Qureshi and Ms. Shruthi Rao,  
Advocates

For Escorts Limited (Railway  
Equipment Division) and its individual  
Mr. Dipankar Ghosh

Mr. Ramji Srinivasan, Senior Advocate with  
Mr. Vijay Pratap Singh Chauhan, Ms. Shruti  
Bhat, Ms. Sylona Mohapatra and Mr.  
Gaurav Desai, Advocates alongwith Mr.  
Rohitashva Chakraborty, Senior Corporate  
Counsel of Escorts Limited (Railway  
Equipment Division)

For Mr. Anderson Thomas and  
Mr. L.R. Murali of Escorts Limited  
(Railway Equipment Division)

Mr. P. Ram Pooranchandran and Ms. Rahat  
Dhawan, Advocates

For Rane Brake Lining Limited and its  
individuals Mr. S.R. Venkat Raj,  
Mr. D. Bheemsingh, Mr. C.V.  
Ananthnarayanan, Mr. K.  
Balasubramaniam, Mr. P.S. Rao,  
Mr. A.S. Chugh and Mr. Vinay  
Laxman

Mr. Samir Gandhi, Ms. Hemangini Dadwal,  
Ms. Nikita Agarwal, Mr. Nitin Nair and  
Ms. Rajshree Sharma, Advocates alongwith  
Mr. Sridhar Kumar, Senior Vice President  
of Rane Brake Lining Limited

For Mr. Umesh Shah, Liaisoning  
Agent of Rane Brake Lining Limited

None

For Om Besco Super Friction Private  
Limited and its individual  
Mr. Madhusudan Tantia

Mr. Suman Jyoti Khaitan, Ms. Rita Dey and  
Mr. Nubair Alvi, Advocates

For Mr. Aditya Vikram Sharma, Senior  
Manager (Marketing) of Om Besco  
Super Friction Private Limited

Mr. Shams Tabrez and Mr. Aman  
Ahluwalia, Advocates



For Cemcon Engineering Co. Private Limited and its individuals Mr. Ankit Tayal and Mr. Ghanshyam Das Tayal

Mr. Sourav Vig and Ms. Mrinal Agrawal, Advocates

For Sundaram Brake Lining Limited and its individuals Mr. Priyankar Bose and Mr. S. Balaji

Mr. Aditya Verma and Mr. Shrey Patnaik, Advocates alongwith Mr. Priyankar Bose, Manager of Sundaram Brake Lining Limited

For Bony Polymer Private Limited and its individuals Mr. S.K. Sharma and Mr. Rajkumar Bhatia

Mr. K.K. Sharma, Mr. Rohit Arora and Ms. Shilpa Singh, Advocates alongwith Mr. K.K. Srivastava, General Manager (F) and Mr. S.K. Sharma, Divisional Manager of Bony Polymer Private Limited

For Daulat Ram Brakes Mfg. Co.

Mr. K.K. Sharma, Mr. Rohit Arora and Ms. Shilpa Singh, Advocates

For Hindustan Fibre Glass Works

Mr. Ashutosh Thakur and Mr. Neeraj Shekhar, Advocates

For Precision Industrial System

Mr. Ashish Vaishya, Proprietor

### **ORDER UNDER SECTION 27 OF THE COMPETITION ACT, 2002**

1. The present cases are references filed under Section 19 (1) (b) of the Competition Act, 2002 ( the ‘Act’) by the Chief Materials Manager, South Eastern Railway (‘IP-1’), the Controller of Stores, Central Railway (‘IP-2’), the Chief Materials Manager, Eastern Railway (‘IP-3’), the Chief Materials Manager-I, North Western Railway (‘IP-4’) and the Chief Materials Manager-Sales, North Western Railway (‘IP-5’) in Reference Case Nos. 03 of 2016, 05 of 2016, 01 of 2018, 04 of 2018 and 08 of 2018, respectively. These references cases have been filed against the following Opposite Parties alleging contravention of the provisions of Section 3 of the Act:
  - i. Hindustan Composites Limited (‘OP-1’);
  - ii. Industrial Laminates (India) Private Limited (‘OP-2’);
  - iii. BIC Auto Private Limited (now Masu Brake Pads Private Limited) (‘OP-3’);



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- iv. Escorts Limited (Railway Equipment Division) ('OP-4');
- v. Rane Brake Lining Limited ('OP-5');
- vi. Om Besco Super Friction Private Limited ('OP-6');
- vii. Cemcon Engineering Co. Private Limited ('OP-7');
- viii. Sundaram Brake Lining Limited ('OP-8');
- ix. Bony Polymer Private Limited ('OP-9');
- x. Daulat Ram Brakes Mfg. Co. ('OP-10')
- xi. Hindustan Fibre Glass Works ('OP-11'); and
- xii. Precision Industrial System ('OP-12').

**Facts of each case:**

**Reference Case No. 03 of 2016**

2. The present reference was filed by IP-1 against OP-1 to OP-10 stating that IP-1 has been procuring various types of Brake Blocks for its train operations from the named Opposite Parties which are companies engaged, *inter alia*, in the manufacture and supply of industrial products including auto components and Brake Blocks. It was stated that these named Opposite Parties are the Research Design and Standards Organisation ('RDSO') approved vendors for the above-mentioned items.
3. IP-1 stated that as per the Railways Policy, Part-II sources are eligible for supplying only 15% to 25% of the tender quantity depending upon their performance. However, there is no quantity restriction on Part-I sources.
4. It was alleged that identical bids were quoted by the above named Opposite Parties in the tenders floated by the South Eastern Railway and identical reductions in quoted rates were offered by them in the subsequent negotiations also. It was stated that quoting of same rates during negotiations by different bidders is highly unusual as negotiations generally take place with each vendor separately. Further, it was stated that the rates quoted by these Opposite Parties in response to the tenders floated by the other railway divisions were also identical despite geographical differences. Based on such facts, IP-1 alleged that OP-1 to OP-10 have contravened the provisions of Section 3 (3) read with Section 3 (1) of the Act.





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5. The Commission, upon consideration of the above facts, passed an order dated 02.02.2017 under Section 26 (1) of the Act, thereby directing the Director General ('DG') to cause an investigation to be made into the matter and submit an investigation report.

Reference Case No. 05 of 2016

6. The present reference was filed by IP-2 against OP-2 to OP-5 stating that IP-2 has been regularly procuring 'Composite Brake Blocks' ('CBB') for its different divisions through the process of e-tendering from the firms/ sources approved by RDSO as per the guidelines issued by the Ministry of Railways from time to time.
7. It was alleged that six bidders comprising OP-2 to OP-5 and two other Part-II RDSO approved firms quoted identical bids in Tender (no. 45155840-E) and also that these were higher than the prices quoted by them in response to a previous tender floated by the Western Railway for procurement of the same item. It was also alleged that even after the price negotiation meeting called by the Tender Committee, OP-3 to OP-5 still quoted the identical price of ₹468/- (all inclusive) for the said product. Based on such facts, IP-2 alleged that OP-2 to OP-5 had rigged the bids, thereby contravening the provisions of Section 3 (3) read with Section 3 (1) of the Act.
8. The Commission, upon consideration of the above facts, passed another order dated 02.02.2017 under Section 26 (1) of the Act, thereby directing the DG to cause an investigation to be made into this matter as well. Thereafter, the Commission, *vide* order dated 20.12.2017, clubbed the present matter with Reference Case No. 03 of 2016 and expanded the scope of investigation in these matters to include all tenders invited by all zonal railways as well as other procurement entities with respect to all types of CBBs including those procured for locomotives, coaches, EMUs and wagons. The Commission directed the DG to carry out a comprehensive investigation with respect to all the allegations levelled in these matters.



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### Reference Case No. 01 of 2018

9. The present reference was filed by IP-3 against OP-1, OP-2, OP-3 and OP-5 stating that the Eastern Railway had floated a tender (No. 20151069) for procurement of Non-Asbestos based K-Type CBB used in EMU coaches. IP-3 alleged that in response to the said tender, identical price bids were received from OP-1, OP-2, OP-3 and OP-5, who are RDSO approved Part-I suppliers. It was alleged that identical prices were quoted by these four entities not only in their initial offer but also in their revised offer submitted after negotiations. Such was the case despite the fact that these bidders were located at different places *viz.* New Delhi, Mumbai and Chennai and were likely to incur different transportation costs.
10. Based on such facts, IP-3 alleged that OP-1, OP-2, OP-3 and OP-5 had contravened the provisions of Section 3 (3) read with Section 3 (1) of the Act.
11. The Commission, upon consideration of the above facts, passed an order dated 01.03.2018 under Section 26 (1) of the Act, thereby clubbing the present case with Reference Case Nos. 03 of 2016 and 05 of 2016 and directed the DG to cause an investigation to be made into this matter as well and submit a consolidated investigation report in all the three matters.

### Reference Case No. 04 of 2018

12. The present reference was filed by IP-4 against OP-1, OP-3, OP-5 and OP-7 stating that the North Western Railway had floated a tender on 01.07.2015 bearing tender no. 30.15.1977 for procuring L-Type CBB for Freight Stock. It was alleged that in response to the said tender, the aforesaid four Part-I approved RDSO vendors, quoted identical bids and emerged as L-1 bidders. Thereafter, on 30.09.2015, by splitting the quantity to be procured as mentioned in the said tender, purchase orders were placed on all these four OPs *i.e.* OP-1, OP-3, OP-5 and OP-7 according to the split clause criteria.
13. IP-4 alleged that the identical prices quoted by the four RDSO approved Part-I bidders in response to the afore-mentioned tender invited for L-Type CBB for Freight Stock shows an anti-competitive agreement/ formation of a cartel amongst the RDSO



approved suppliers in contravention of the provisions of Section 3 (3) read with Section 3 (1) of the Act.

14. The Commission, upon consideration of the above facts, passed an order dated 07.08.2018 under Section 26 (1) of the Act, thereby clubbing the present case with Reference Case Nos. 03 of 2016, 05 of 2016 and 01 of 2018 and directed the DG to cause an investigation to be made into this matter as well and submit a consolidated investigation report in all the four matters.

**Reference Case No. 08 of 2018**

15. The present reference was filed by IP-5 against OP-3 and OP-5 alleging that in response to a tender floated by North Western Railway for procurement of high friction CBB, OP-3 and OP-5 had quoted same rates. Their behaviour was thus, not as per the trade practice. It seems that they had indulged in a cartel for price fixation in contravention of the provisions of Section 3 of the Act.
16. The Commission, upon consideration of the above facts and noting their similarity with the allegations made in Reference Case Nos. 03 of 2016, 05 of 2016, 01 of 2018 and 04 of 2018 which were already pending investigation before the DG, *vide* order dated 05.12.2018, directed to relist the present matter after receipt of the consolidated investigation report of the DG in Reference Case Nos. 03 of 2016, 05 of 2016, 01 of 2018 and 04 of 2018.

**Investigation by the DG:**

17. As per the directions of the Commission, the DG conducted a combined investigation in all the four aforesaid reference matters and submitted one consolidated investigation report.
18. Firstly, the DG described CBB as a product in detail. The DG noted that the Indian Railways has been replacing cast iron brake blocks with CBB, which is a rigid moulded friction material, grey-black in colour, having random fibre asbestos base containing metallic particles. It is stated in the DG Report that CBB is manufactured only in the form of brake blocks and is integrally moulded into a back plate.



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19. Further, it is stated that CBB can be categorised as 'L' Type and 'K' Type. L Type CBB has low co-efficient of friction whereas K Type CBB provides for high co-efficient of friction. On secondary level, L Type and K Type CBB can be further segmented on the basis of their application. CBB being a safety product, its specification and technical requirements are approved in advance by RDSO based on R&D, testing and field trials *etc.*
20. Thereafter, the DG noted the procurement methodology of the Indian Railways. The DG noted that once a vendor is approved by RDSO, it is placed on a list of approved vendors for supplying CBB to the Indian Railways. At first approved vendors are accorded Part-II status. Thereafter, after they have successfully supplied a specific quantity to Indian Railways they are accorded Part-I status. As per the DG report, both Part-I and Part-II vendors can participate in the tenders issued by the Zonal Railways. As per the general tender conditions issued by the various Railway Zones and the policy of procurement, in case of safety items, a minimum of 80% of the quantity has to be procured from RDSO approved Part-I vendors. Part-II vendors, also known as development source, are only eligible for the remaining 20% quantity. For a Part-II vendor to be allotted any quantity in a tender, its bid should be lower than the bid of approved Part-I L-1 bidder in that tender. Similarly, the bid of unapproved bidder needs to be lower than that of Part-II approved bidders to qualify. Once the tender is opened, based on the bids received, the Tender Committee decides whether to invite the L-1 vendor for negotiations or not.
21. The DG mentioned in its report that the Railway Board, *vide* letter dated 18.11.2016, had merged Part-I and Part-II categories of vendors as approved vendors. Thereafter, *vide* another letter dated 29.06.2017, the Railway Board clarified that 20% quantities can also be ordered from the Development Vendors who are not listed as approved vendors. As per the tender conditions, Railways reserved the right to place the order on one or more firms leaving out of the rest without assigning any reason.
22. Understanding the Railways' procurement methodology, the DG, from the various evidences collected by it during investigation including e-mails and messages



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exchanged through SMSes and WhatsApp between the Opposite Parties, from the call detail records of their individuals and from the statements of their officials who were confronted with the evidences available against them, concluded that OP-1 to OP-10 were indulging in cartelisation during the period 2009 to 2017. The DG found that OP-1 to OP-10 used to decide the prices and quantities to be quoted by them in the various tenders floated by Indian Railways and other entities for the procurement of CBBs.

23. The DG found that one of the employees of OP-1 used to keep the records of allocation of tender quantities amongst the Opposite Parties by maintaining excel sheets, which were modified from time to time according to the inputs received from OP-1 to OP-10 based on lower or higher quantities allotted to them in a particular tender. Furthermore, the DG found that OP-1 to OP-10 used to exchange screenshots of their financial bids to ensure that all of them stuck to their promise of quoting the pre-decided prices. It was found by the DG that OP-1 to OP-10 used to meet at different locations to decide the strategy and the *modus operandi* of their cartel and to resolve the differences amongst them.
24. The DG also found that officials of eight of such Opposite Parties *i.e.* OP-1, OP-3, OP-4, OP-5, OP-6, OP-7, OP-8 and OP-9, out of the above ten Opposite Parties, admitted that they had formed a cartel to rig the bids of different tenders of CBBs floated by the Indian Railways and other entities. Further, with regard to the remaining two Opposite Parties *i.e.* OP-2 and OP-10, though they did not admit to be a part of the cartel, they did admit that they had exchanged bid related information through e-mails and messages. Further, another fact that the DG noted was that OP-5 admitted to be part of the cartel only till 2016, though investigation had revealed that the cartel continued upto 2017. Also, the DG found that OP-3 and OP-5 also rigged the bids of CBB for HHP Locomotives. They were the only two RDSO approved vendors for this particular tender.
25. Regarding OP-11 and OP-12 who were the two RDSO unapproved vendors, the DG found no evidence. Even against Allied Nippon and Pioneer Friction, no evidence post 20.05.2009 was found, though these two entities were found to be involved in the cartel prior to 20.05.2009. Thus, from the above investigation, the DG concluded that OP-1 to



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OP-10 had indulged into 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 from 2009 to 2017. However, no contravention of the provisions of the Act by OP-11 and OP-12 was found by the DG. The DG also identified several officials of OP-1 to OP-10 to be liable in terms of Section 48 (1) and/ or 48 (2) of the Act, for the contravention acts committed by their respective companies.

**Proceedings before the Commission:**

26. Upon receipt of the investigation report from the DG, the Commission considered the same along with Reference Case No. 08 of 2018 which had been kept in abeyance awaiting the investigation report, on 29.03.2019. The Commission noted that the Opposite Parties, the product in question, the allegations levelled and the duration of the allegations made in Reference Case No. 08 of 2018 were identical/ substantially similar to the investigation conducted in Reference Case Nos. 03 of 2016, 05 of 2016, 01 of 2018 and 04 of 2018. Therefore, the Commission decided to club Reference Case No. 08 of 2018 also with Reference Case Nos. 03 of 2016, 05 of 2016, 01 of 2018 and 04 of 2018 in terms of Section 26 (1) of the Act read with Regulation 27 (1) of the Competition Commission of India (General) Regulations, 2009 (**‘General Regulations’**).
27. The Commission directed that an electronic copy of the non-confidential version of the investigation report of the DG received in Reference Case Nos. 03 of 2016, 05 of 2016, 01 of 2018 and 04 of 2018 along with an electronic copy of the information filed in Reference Case No. 08 of 2018 be forwarded to all the five Informants and the twelve Opposite Parties involved in the present matters and also to their respective individuals who the DG found liable in terms of Section 48 of the Act. Such parties/ individuals were given the liberty to file their comments/ suggestions/ objections, if any, thereupon. Further, the twelve Opposite Parties were directed to file their turnover and profit details including audited balance sheets and profit & loss accounts for the Financial Years (**‘FYs’**) 2009-10 to 2017-18; and the respective individuals of the Opposite Parties to whom the investigation report and copy of the information in Reference Case No. 08 of 2018 were forwarded were also directed to file their income details including Income Tax Returns (**‘ITRs’**) for the last three FYs *i.e.* 2015-16 to 2017-18.



28. Thereafter, all the parties and individuals involved in the matters were given an opportunity of oral hearing which took place on 22.10.2019 and 23.10.2019. Post conclusion of oral hearing, they were also given the liberty to file their written submissions/ arguments, if any.

**Submissions of the parties:**

29. In their comments/ objections/ suggestions, written submissions, and during the oral hearing, the parties made the following submissions:

**OP-1 and its individuals Mr. Pawan Kumar Choudhary, Mr. Vinay Sarin, Mr. M.S. Rajasekar and Mr. Jagdish Gadikar**

- (i) OP-1 has made vital disclosures by submitting evidences to establish contravention of the provisions of Section 3 of the Act by the Opposite Parties. OP-1 has acted as a ‘smoking gun’ and has provided clinching evidence including the entire e-mail chain exchanged from time to time with the other Opposite Parties, the messages exchanged through the WhatsApp Group known as ‘*Kwality Blocks*’ and the *SMSes* sent from the mobile phones of officials of OP-1. Further, all the senior functionaries of OP-1, including the Managing Director of the company, complied with all the directions issued by the DG and deposed truthfully.
- (ii) Any submission from any other party to the effect that the messages/ communications received were not acted upon by them is baseless as OP-1 has admitted to the existence of the cartel conduct which makes it difficult for the other Opposite Parties to show that there was no agreement. The other Opposite Parties had neither made any attempts to block the communications being received nor had expressly instructed the senders not to send such communications in future, rather they had made attempts to be a part of the e-mail chain and the WhatsApp group.





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OP-2 and its individuals Mr. Virender Singh Negi and Mr. Saleh Najmuddin Mithiborwala

- (i) The DG has not examined the tenders floated by all the Railway Zones in respect of the products under investigation. The investigation is rather piecemeal and not comprehensive and it does not take into account the trade practices that were prevalent amongst the suppliers at the relevant time during the process of investigation in respect of supplies to the Railways. In the absence of any specific allegation of cartel between OP-2 and the other Opposite Parties with reference to any particular tender or tenders, OP-2 is in no position to answer the charge of a cartel.
- (ii) However, there were a few tenders in which there was price parallelism amongst the bids submitted by the Opposite Parties but even the same had no appreciable adverse effect on competition ('AAEC') in India as different prices quoted by different parties in each tender establishes that there was no effect on competition much less any AAEC.
- (iii) The DG Report deals only with admissions, confessions, purported e-mail exchanges, SMSes and purported WhatsApp group messages but none of such e-mails or other communications had been traced and or cross-referenced with the tender details and verified by the Informants.
- (iv) The DG has not alleged that OP-2 had cartelised with any other Opposite Party either in the tender floated for procuring of Non-Asbestos 'L' Type CBB for Locomotives or in the tender floated for procuring of Non-Asbestos 'L' Type CBB used for Wagons/ Freight Coach or in the the tender floated for procuring Non-Asbestos 'K' Type CBB for Coaches.
- (v) For price parallelism, established price prevalent in the industry around the same time is relied upon which stands evidenced by the DG., Therefore, quoting of established rates in the absence of direct evidence of cartel cannot be inferred as cartelisation.





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- (vi) With regard to the period of investigation, the same ought to be from 2013-2017 and not from 2009-2017. In the absence of investigation in respect of any specific impugned tender for the period 2009-2013 along with evidence of the bids offered by the various Opposite Parties in those tenders, there could not be any allegation of cartelisation, even if there were admissions in the form of statements *etc.* by other Opposite Parties for the period 2009-2013.
- (vii) With regard to the confessions made by the officials of certain Opposite Parties, admission made by a co-noticee is not binding upon OP-2, unless the same is corroborated by other independent evidence. None of the e-mails or the so-called admissions/ confessions have been co-related with the respective tenders or validated/ verified with the Railways.
- (viii) OP-2 had not earned even a reasonable profit of 10% for the relevant years, and even Railways had got the CBB at the most competitive price. Hence, there was no economic injury as such. Moreover, there was an increase in the number of suppliers during that time; hence, the alleged cartel did not have the effect of creating barriers to new entrants in the market.

OP-3 and its individuals Mr. N.K. Bhattacharya, Mr. Subhneet Singh Kohli and Mr. Manmeet Singh Kohli

- (i) Even though the Opposite Parties had cartelised, there was no AAEC in the market for CBBs in India. Moreover, the market structure and procurement process ensured that the Opposite Parties were not in a position to increase the prices above competitive levels or artificially reduce supplies.
- (ii) As the Indian Railways is the primary buyer, it is the price maker and has significant countervailing buyer power. Even more so, CBB is a specialised product manufactured primarily to cater to the demands of the Indian Railways.
- (iii) Indian Railways uses its economic strength to seek costing information from the Opposite Parties and it aggressively negotiates/ makes counter-offers to the Opposite Parties. Hence, the structure of the tender process eliminates all possibility of any price effect from the Opposite Parties' side and in the absence



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of any price effect, no AAEC can be caused in the market. Further, owing to the onerous clauses placed by the Indian Railways in its tender documents, not all the Opposite Parties get purchase orders, thus, manufacturing facilities of the certain Opposite Parties remain idle for a significant period of time. This seriously affects the cash flows of the Opposite Parties. Since the Indian Railways used to split quantities amongst the CBB vendors and call the bidders for negotiating prices, this encouraged the Opposite Parties to come together and decide on the quantities and bid prices, so that all of them could keep their capacities utilised and similarity in prices could be achieved. No penalty should be imposed on OP-3 as it had stopped participating in the cartel even before the Commission accorded it a priority status and since then, it has extended full cooperation in the investigation. Further, if any penalty is to be imposed on OP-3, it should impose on its relevant turnover only which would be turnover accruing from the sales made to customers whose tenders were rigged by the cartel.

OP-4 and its individuals Mr. Anderson Thomas, Mr. L.R. Murali and Mr. Dipankar Ghosh

- (i) The involvement of certain employees of OP-4 in the cartel, surfaced from the deposition of Mr. Anderson Thomas, and soon thereafter, OP-4 admitted without any delay to the existence of a cartel through a priority marker application dated 22.11.2017.
- (ii) Through the depositions of Mr. Anderson Thomas and Mr. L.R. Murali, OP-4 made vital disclosure providing detailed and complete description of the cartel including information on the cartelised product, *modus operandi* thereof, the nature of activities, commencement and duration, details of other cartel members and the estimated volume and value of the business that was affected.
- (iii) It was the evidence provided by OP-4 that led to significant broadening of the scope of investigation covering a range of products such as CBB used for electronic multiple units (EMUs), widening of the geographical area of investigation (to all divisions/ zonal railways of Indian Railway), the range of procurement agencies that were subjected to cartelisation, and resultantly, the



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volume and value of the business affected. The DG extensively relied on the documentary information submitted by OP-4, especially for the purpose of confronting several individuals of other Opposite Parties at the time of their depositions.

- (iv) The WhatsApp group 'Kwality Blocks' was admitted to be created by Mr. Anderson Thomas in October 2016 as a platform to co-ordinate with the representatives of certain other CBB manufacturers in connection with the tenders for supply of CBB to the various divisions/ zones of the Indian Railways. Such admission was a result of OP-4's effort in genuinely, continuously and expeditiously extending co-operation to the DG. OP-4 also persuaded Mr. L.R. Murali (former Head of Marketing of the Railway Equipment Division of OP-4, who had left the company in 2014) to make certain vital disclosures about the cartel.
- (v) Mr. Anderson Thomas, in his deposition, has unequivocally admitted that he never informed the senior management of OP-4 about his involvement in the cartel. Further, as soon as OP-4 came to know about such cartelisation being indulged in by its employees, OP-4 not only ensured that its employees ceased to have any further participation in the cartel but went one step further and terminated the services of Mr. Anderson Thomas for having colluded with the other Opposite Parties as soon as the knowledge about his involvement in the cartel was brought to the notice of OP-4.

OP-5 and its individuals Mr. S.R. Venkat Raj, Mr. D. Bheemsingh, Mr. C.V. Ananthnarayanan, Mr. K. Balasubramaniam, Mr. P.S. Rao, Mr. A.S. Chugh and Mr. Vinay Laxman

- (i) OP-5 ought to receive the maximum benefit of penalty reduction as it has provided full, true and vital disclosures on its conduct relating to the supply of CBB to the Indian Railways and other zonal railways, it had ceased participation in the cartel arrangement post June, 2016 as well as conducted competition compliance training to ensure that its employees comply with competition law going forward, and it has contributed substantial evidence towards the



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establishment of the cartel. Further, in order to fully co-operate with the investigation, OP-5 had even granted confidentiality waivers over its certain confidential information. However, the DG has failed to consider the fact of non-participation of OP-5 in the cartel arrangement post June, 2016 while forming its opinion against OP-5.

- (ii) Though the Managing Director of OP-5 did not directly contribute in any of the cartel conduct, such fact has been ignored by the DG. Therefore, OP-5 requests the Commission to extend penalty reduction to its Managing Director also.
- (iii) In determining the quantum of penalty, as the involvement of OP-5 in the cartel arrangement was limited to the period between 20.05.2009 to 01.06.2016 only, penalty to be imposed upon it should be computed based on its relevant turnover and profit from sale of all types of CBB for the above-mentioned period only.

#### Mr. Umesh Shah of OP-5

- (i) Mr. Umesh Shah, Liaisoning Agent of OP-5 had passed on vital information through e-mails and letters relating to the present cases to the DG during the course of investigation. Further, just because Mr. Shah attended negotiations on behalf of OP-5 as a liaisoning agent based on authorisation letter issued by OP-5, the same does not change the status of Mr. Umesh Shah as a liaisoning agent of OP-5. Mr. Umesh Shah was never assigned any pricing responsibility by OP-5 and he challenged OP-5 to exhibit any admissible documentary evidence to substantiate their claim, if any, to the contrary. Between June 2016 to 31.03.2018, only two price negotiations on behalf of OP-5 had taken place – (1) one with Central Railway, Mumbai; and (2) other with East Coast Railway, Bhubaneswar. In both these cases, one Mr. Venkat Raj of OP-5 had nominated Mr. Umesh Shah to attend the negotiations meeting on behalf of OP-5 by issuing an authority letter in his name along with specifying the price to be quoted.

#### OP-6 and its individuals Mr. Aditya Vikram Sharma and Mr. Madhusudan Tantia

- (i) Being a Part-II vendor for Indian Railways, OP-6 could not have rigged the bids with Part-I vendors and in any case, its bid had to be lower than the L-1 price



quoted by the Part-I vendors. Therefore, there was no chance of cartelisation amongst Part-I and Part-II vendors. Furthermore, the bids quoted by OP-6 were advised/ suggested on the WhatsApp group and out of the 76 suggestions that were made/ circulated on the WhatsApp group, the price actually quoted by OP-6 was similar only in 4 instances.

- (ii) OP-6 had been quoting a price range of ₹210/- to ₹220/- for supply of K-Type CBB meant for Railway coaches, as was done by it previously in a tender floated by South Western Railway on 15.12.2016. Further, OP-6 had been quoting a price range of ₹250/- to ₹265/- for supply of L-Type CBB meant for railway freight/ wagons which was much lower than the cost price of the product itself. However, as the factories and resources of OP-6 had been lying completely unutilised for more than 1 year, OP-6 was constrained to quote such low prices. OP-6 was even de-listed by the RDSO as approved vendor for supplying L-Type CBB meant for railway freight/ wagons from 06.07.2016 till 16.05.2017. Therefore, no railway tender for supply of L-Type CBB meant for railway freight/ wagons was granted to it during the said period even if its bid was the lowest.
- (iii) Clubbing of four multiple information/ cases/ complaints and subsequently conducting of consolidated investigation therein has caused prejudice against OP-6, which does not even manufacture most types of CBBs.
- (iv) OP-6 was not given an opportunity to cross-examine any of the individuals examined and relied upon by the DG. More so, the DG has failed to appreciate the distinction between different types of vendors and has erroneously concluded OP-6 to be in violation of the provisions of the Act.

OP-7 and its individuals Mr. Ankit Tayal and Mr. Ghanshyam Das Tayal

- (i) OP-7 has been prejudiced due to clubbing of multiple reference cases as each type of CBB constitutes a separate market and they are not a substitute to each other.
- (ii) As previous bid prices were available on the Indian Railways E-Procurement System (IREPS) portal, any concerned RDSO approved vendor/ bidder could view them prior to quoting their bid. Thus, due to this transparency, similar prices



were likely to be quoted by the Opposite Parties and the same cannot be regarded as a violation of Section 3 (3) of the Act.

- (iii) The DG has carried out its investigation in violation of the principles of natural justice as OP-7 and its officials were not only denied the right to be represented or accompanied by their legal counsels but they were also not provided the right to cross-examine the representatives of other Opposite Parties on the basis of whose statements the DG has formed its opinion against OP-7.
- (iv) Indian Railways, being a monopolistic buyer, controls the price and quantity to be supplied to it. Thus, the Opposite Parties do not have any control over price or quantity which may lead to a violation of the provisions of the Act.

OP-8 and its individuals Mr. Priyankar Bose and Mr. S. Balaji

- (i) OP-8 did not participate in any tender post August, 2013 and hence, the allegations against it pertain only to the tenders floated in 2012-2013. OP-8 was neither a part of the WhatsApp group 'Kwality Blocks' nor had any of its employees or representatives attended any of the meetings held amongst the other Opposite Parties.
- (ii) OP-8 was only a victim and not a member of the cartel as it was a marginal and fledgling entrant in the market. At the time when the cartel was in operation, OP-8 had suffered losses for not participating in the cartel. Therefore, it stopped bidding in railway brake block tenders altogether.
- (iii) There was no evidence of price fixing in the three relevant tenders OP-8 had participated in and none of the e-mails written by the actual participants of the cartel during the relevant period mention about the three relevant tenders in which OP-8 had participated.
- (iv) Statements of Mr. P. Bose, Manager of OP-8, stating that he was a part of the cartel, cannot be accepted as true as neither did Mr. Bose provide any details in this regard nor was his questioning corroborated by any other evidence.



### OP-9 and its individuals Mr. S.K. Sharma and Mr. Rajkumar Bhatia

- (i) OP-9 maintains a high degree of compliance with all the laws of the land. Though at the relevant time Competition Law was a merely novelty, OP-9 had been complying with the same as well. As soon as OP-9 came to know that there is some investigation going on against it in this regard, it directed one of its executive Mr. S.K. Sharma, to respond to the notices and summons issued by the DG. When Mr. Raj Kumar Bhatia presented himself for his testimony before the DG, he got to know that Mr. S.K. Sharma has made some statements which were allegedly incriminating against OP-9. This was shocking for Mr. Bhatia as he had been making all attempts to keep OP-9 Competition Law compliant.
- (ii) The tender committee of the Indian Railways negotiates with the L-1 bidder, which is contrary to guidelines given by the Competition Commission of India, the Central Vigilance Commission, the Indian Railways and the International Practices.
- (iii) The DG harped on the conduct of the Opposite Parties regarding their interaction in the WhatsApp group but it failed to examine the existence of AAEC. Furthermore, OP-9 did not get any opportunity to cross-examine the executives of certain Opposite Parties who deposed against it.

### OP-10

- (i) Investigation of four cases has been wrongly clubbed together violating the principles of natural justice and prejudicing the interests of OP-10. OP-10 only produces K-Type High Friction CBB used for railway coaches, therefore, findings in the other 3 cases cannot be used against OP-10 where OP-10 was not even a party. No admission of Mr. V.P. Sharma of OP-10 was recorded in the investigation report, hence, no direct evidence is available against OP-10. Even the circumstantial evidence collected during the investigation fails to show any involvement of OP-10.
- (ii) OP-10 being a maverick firm had always quoted its bids independent of the discussion with the other Opposite Parties or any anti-competitive forces. Some of



its bids have been labelled as 'identical bids' in the DG Report for wrong reasons, which is going against it.

- (iii) The monopsony power of Indian Railways must be duly examined by the Commission as it dominates the negotiation meetings by asking the vendors to sell at a pre-determined price.
- (iv) Any material or information received by the DG or the Commission before imposition of penalty must be made available to all the Opposite Parties for scrutiny; however, OP-10 was not given any opportunity to cross-examine the executives of certain Opposite Parties in order to challenge the veracity of their statements.

#### OP-11

- (i) OP-11 did not submit any objections/ suggestions to the investigation report of the DG.

#### OP-12

- (i) OP-12 also did not submit any objections/ suggestions to the investigation report of the DG.

#### Informants

- 30. The Informants in all five cases also did not submit any objections/ suggestions to the investigation report of the DG.

#### Analysis

- 31. The Commission has carefully perused the references filed, the investigation report and evidences in support thereof submitted by the DG, the submissions made by the Opposite Parties and the Informants and the other material available on record and has also heard in detail the arguments put forth by the parties during oral hearings. On the basis of the same, the Commission outlines the following two issues for consideration and determination in the matter:

- (i) Whether the Opposite Parties had acted in a manner which is in contravention of the provisions of Section 3 (3) of the Act in the tenders floated by the various





divisions/ zones of the Indian Railways (including by the Informants) and other procuring entities for procuring of different types of CBBs, during the period 2009 to 2017:

- (a) by directly or indirectly determining the sale price of the different types of CBBs in terms of Section 3 (3) (a) of the Act; or
  - (b) by limiting or controlling the supply of CBBs to various Railway Zones and other procuring entities in terms of Section 3 (3) (b) of the Act; or
  - (c) by sharing/ allocating the tender quantities amongst themselves in terms of Section 3 (3) (c) of the Act.; or
  - (d) by collusive bidding/ bid rigging in terms of Section 3 (3) (d) of the Act?
- (ii) In case the answer to any of the above listed issues is in affirmative, then who are the individuals/ persons/ officials of the Opposite Parties, who are liable in terms of Section 48 (1) or Section 48 (2) of the Act?
32. Prior to analyzing the issues, the Commission deals with the preliminary objections raised by some of the OPs on their request of cross-examination. In this regard, the Commission notes that certain OPs such as OP-6, OP-9 and OP-10 along with individual Mr. Umesh Shah moved respective applications for cross-examination of witnesses mentioned therein whereupon the Commission *vide* its detailed orders dated 18.06.2019 and 01.08.2019 had disposed of those application by stating that they have not pointed out any specific portion of the deposition on which the request of cross-examination was made to satisfy the requirement of the Competition Commission of India (General) Regulations, 2009 (General Regulations) for making out a case for cross-examination. Resultantly, the said requests made by them were not found to meet the requirement of necessity or expediency as required under Regulation 41(5) of the General Regulations and were hence disallowed. However, it is pertinent to note that the Commission *vide* orders dated 18.06.2019 and 01.08.2019 granted the above mentioned parties to file Affidavits in rebuttal to dispute the conclusions drawn by the DG based on such depositions or by incorporating such rebuttal in the objection/ suggestion to the DG Report, if so required. It is strange that the parties instead of availing the liberty



granted by the Commission to file affidavits in rebuttal to disprove the conclusions drawn by the DG, are yet again agitating the very same issue of cross-examination without even meeting or demonstrating the thresholds for grant of cross-examination as provided under the General Regulations. Thus, the Commission notes that the preliminary objection raised by the parties on this count is thoroughly misconceived and merits rejection.

### **Issue No. 1**

33. Opposite Party wise analysis and findings of the Commission, upon Issue No. 1 framed above, are as follows:

#### **Hindustan Composites Limited/OP-1:**

- (i) Mr. M.S. Raja Sekar, V.P. (Sales) of OP-1 was found by the DG to have been using his personal e-mail id 'msrajasekar@gmail.com' to communicate with the other Opposite Parties and their officials with regard to several tenders floated by the Indian Railways for procurement of CBB. The DG had even confronted him with several such e-mails along with attachments thereof and he had admitted to his involvement and had explained how the cartel worked. As per the investigation report, Mr. Sekar, in his deposition dated 25.10.2017, had admitted that for the last few years, the Opposite Parties had been quoting prices in various tenders for procuring of CBB floated by the Indian Railways after discussions with each other. He had stated that the Opposite Parties had also been allocating quantities amongst themselves before bidding for any particular tender. He further admitted that in case any Opposite Party was not awarded the pre-decided or agreed upon quantity in a particular tender, then in the forthcoming tender, the same Opposite Party was compensated with higher quantities by way of other Opposite Parties quoting higher prices. He stated that the bidders generally met at different locations such as in Delhi, Mumbai *etc.* to decide the prices and quantity but most of the time, such discussions took place over phone. Mr. Sekar also stated that the e-mail ID 'jagadsharma@rediffmail.com', which was no longer in use, was used by the Opposite Parties to discuss about the bid prices, the allocation of quantities, the agreed upon price, the price to be quoted, setting up of meetings, *etc.* He specifically mentioned that in the following tenders of Indian



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Railways, the Opposite Parties had quoted their bid prices after discussions with each other and they had also allocated quantities, accordingly:

S. No.	Tender No.	Dated
1.	11.13.1084	27.08.2013
2.	11.14.1092	21.08.2014
3.	11.15.1085	27.08.2015
4.	11.15.1085A	25.02.2016
5.	38.12.1486	20.12.2012
6.	38.13.1501	13.08.2013
7.	38.14.1543	23.02.2015
8.	30.12.1364A	21.11.2012
9.	30.13.1351	27.08.2013
10.	30.14.1380	07.01.2015

- (ii) When the DG confronted Mr. Vinay Sarin, Director, Group Business Development of OP-1 with the statements of Mr. M.S. Raja Sekar, he also admitted that whatever Mr. Sekar has stated is true and correct. He further deposed that the e-mail ID 'jagadsharma@rediffmail.com' was created by Mr. Jagdish Gadikar of OP-1 for the purpose of communicating with other the Opposite Parties regarding the bid prices to be quoted and for allocation of quantities, *etc.* Furthermore, Mr. Sarin deposed that there was another e-mail ID *i.e.* 'jgadikar@yahoo.com', which was commonly used by all the Opposite Parties for the same purpose. All the Opposite Parties had the password for the said e-mail ID. Mr. Sarin also stated that OP-1 had been in active contact with other Opposite Parties since it got the approval as a vendor for supplying CBB to the Indian Railways.
- (iii) When Mr. Jagdish Gadikar, General Manager, Institutional Sales of OP-1, was confronted by the DG with the e-mails and statements of his colleagues, he also admitted to his and the other Opposite Parties' involvement in the cartel. In his deposition before the DG, Mr. Gadikar admitted that the e-mail ID 'jagadsharma@rediffmail.com' was created by him. He stated that this e-mail ID was created by him for the purpose of communicating with the other Opposite Parties *namely*, OP-2, OP-3, OP-4, OP-5, OP-6, OP-7, OP-8, OP-9 and Allied Nippon and Pioneer Friction. He also stated that using the said e-mail ID, the



aforesaid Opposite Parties/ companies, including OP-1, used to exchange bid prices, share screen shots of financial bids uploaded by them on the IREPS portal and calculation of quantities shared/ allocated for different tenders of CBB as per the agreement amongst them, scheduled meetings, discussed other business related issues, RDSO technical issues, held discussion on common points to be raised with Railway/ RDSO, exchanged different formats and bid related documents, *etc.* Mr. Gadikar submitted that around April 2013, the officials of the manufacturers of CBB had met in Delhi in which meeting it was decided that a common e-mail ID be created for the purposes of communicating with each other for sharing/ discussing of price bids and allocation of quantities for the upcoming tenders of CBB floated by the Indian Railways. This common e-mail ID was used for a few months for discussions and comments and was then abandoned/ discontinued as Mr. Negi of OP-2 began sharing e-mails as drafts from the drafts folder of his personal account. Mr. Gadikar further stated that there were also other modes of communication available to the Opposite Parties and discussions on the aforesaid issues took place *via* such modes also specifically through other email IDs, SMSes, telephone calls, personal meetings, WhatsApp communications, *etc.* Mr. Gadikar further added that around 2014, OP-10 started manufacturing CBB and its proprietor, Mr. V.P. Sharma also became a part of this cartel arrangement. Mr. Gadikar also stated that till 2013, the arrangement used to take place under the supervision and guidance of Mr. Vinay Sarin. However, post that till December 2017, the arrangement with the Opposite Parties was continued by him and Mr. M.S. Raja Sekar. Specifically, Mr. Gadikar further admitted that in almost all the tenders of CBB floated since 2004 to Oct.-Nov. 2017 by different railway zones/ ICF/ Diesel Loco Works/ Diesel Maintenance, the Opposite Parties had quoted in collusion with each other after discussing/ exchanging and agreeing on the price bid and, accordingly, allocating quantities. The tenders involved in the present two cases were also part of the aforesaid cartel arrangement amongst the Opposite Parties.

- (iv) Even Mr. P. K. Chaudhary Managing Director of HCL, though did not admit to his direct involvement in the cartel, confirmed the use of common e-mail IDs and WhatsApp group after checking the records. As per the DG, he clearly admitted to



have formed a cartel with OP-2, OP-3, OP-4, OP-5, OP-6, OP-7, OP-8, OP-9 and OP-10. He stated that the cartel activities were primarily carried out for equitable distribution of CBB Railways Tenders. He further pointed out that since CBB products could not be used to cater to the needs of other industries but only to Railways, it became an industry practice to co-ordinate and communicate bid prices to be quoted for the forthcoming tenders and allocating tender quantities.

- (v) From the aforesaid admission evidences collected by the DG against OP-1 in the form of statements of its officials, the Commission finds OP-1 to be a part of the cartel arrangement amongst the Opposite Parties from 2009 to 2017.

Industrial Laminates (India) Private Limited/ OP-2:

- (i) The DG has collected evidences in the form of e-mail communications, WhatsApp messages, SMSes, statements of officials of other Opposite Parties *etc.* to establish involvement of OP-2 in the cartel arrangement amongst the Opposite Parties. However, when Mr. Saleh Najmuddin Mithiborwala, Director of OP-2 was confronted by the DG with such statements of some of the representatives of the other Opposite Parties who had incriminated him and OP-2, he gave vague answers and claimed that he had never been a part of any cartel and he had not attended any meetings in this regard. Mr. Mithiborwala, when confronted with the backup of WhatsApp communications exchanged between the parties, by the DG, had the following to say:

*“Q.48. I am putting to you that you were a member of a WhatsApp Group namely ‘Kwality Blocks’ created by A. Thomas of Escorts on 24.10.2016. In the said WhatsApp group, the prices to be quoted by different bidders including your company in the upcoming tenders of Indian Railways for procurement of CBB was being discussed and agreed upon. What do you say on this?”*

*Ans. I do not remember.*

*Q.49. I am showing you backup of the aforesaid WhatsApp group (Exhibit 43) wherein it can be seen that you were regularly discussing the price and getting price related information for different tenders of CBB. What do you say on this?”*

*Ans. The said WhatsApp group was formed to address genuine problems of the industry. When I was realized that it was being used for ulterior motives by few other manufacturers, left the group”.*



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- (ii) From the above, the Commission observes that Mr. Mithiborwala, though admits to be a member of the WhatsApp group formed amongst the Opposite Parties, states that he had left the group on realising that it was being used for ulterior motives. The Commission in this regard notes that Mr. Mithiborwala left the group only on 12.03.2017, however, the WhatsApp messages exchanged by him on 17.01.2017, 31.01.2017, 02.02.2017, 01.03.2017, clearly establish that he was actively involved in deciding the *modus operandi* of the cartel as the prices of CBB were decreasing and the bidders wanted to settle it down. Even the prices to be quoted by OP-2 in forthcoming tenders were shared in the group. Further, the Commission observes that between March 2014 to June 2016, Mr. Mithiborwala had shared personal SMSes and WhatsApp messages with Mr. Gadikar of OP-1 as well. It is seen that he had discussed the details of different Railway Tenders such as prices to be quoted and meetings, *etc.* When Mr. Mithiborwala was confronted with the said communications, he admitted that he had exchanged these communications with Mr. Gadikar of OP-1 to know what others were quoting. However, he attempted to justify his conduct by saying that no arrangement had materialised. The relevant part of his statement to the DG in this regard, is reproduced as under:

*“Q.51. I am showing you the back of SMSs Chat exchanged by you with Mr. Jagdish Gadikar of HCL from March, 2014 to June, 2016 and WhatsApp message from March, 2014 to November 2015 (exhibit 45) wherein you have discussed about the different railway tenders, pricing, meetings etc. What do you say on this?”*

*Ans. I was exchanging the said communication with Mr. Gadikar just to get the industry information about what the others were quoting. No arrangement has been materialized.”*

From the facts, as aforesaid, at para (ii), the Commission observes that the statement given by Mr. Mithiborwala before the DG, appears to be false.

- (iii) Further, the Commission observes that Mr. Virender Singh Negi of OP-2 had also admitted that the officials of OP-2 used to exchange price bids from the aforesaid email id with other manufacturers of CBB and also admitted that the email IDs *i.e.*,



*negi@ovpl.in* and *negi.virbha@rediffmail.com* were created by ILPL under his name for communicating with other bidders and for exchanging price bids.

- (iv) In the view of the Commission, from the evidences collected by the DG against OP-2 and from the statements of Mr. Mithiborwala and Mr. Negi, it is established that OP-2 was a part of the cartel arrangement amongst the Opposite Parties from 2009 to 2017.

BIC Auto Private Limited (now Masu Brake Pads Private Limited)/ OP-3:

- (i) With regard to OP-3, Mr. N. K. Bhattacharya, Vice President, Marketing of OP-3, in his deposition before the DG, admitted that from around 2008-09, when his company was upgraded as a Part-I vendor by RDSO, his company had joined the price arrangement of the Opposite Parties for CBBs procured by Indian Railways through different tenders. He stated that the agreement with the Opposite Parties was entered into only after seeking the assent of the company Directors. He also disclosed about the mode of communications being used and the meetings being held amongst the Opposite Parties at different locations to discuss the bid prices, for allocation of quantities, *etc.* He also admitted to have sent screenshots over to the other Opposite Parties with respect to the bid prices that were submitted by OP-3 to the Indian Railways.
- (ii) Even Mr. Manmeet Singh Kohli, Managing Director of OP-3, in his deposition before the DG, confirmed that the statements given by Mr. N.K. Bhattacharya were true and correct. He, however, clarified that Mr. N.K. Bhattacharya did not take his permission to enter into the cartel but had in fact informed him and Mr. Subhneet Singh Kohli that it was a practice that had been going on even before decentralisation of the Railway tenders with respect to CBBs. Mr. Manmeet Kohli stated that since this was a practice for almost a decade, he allowed Mr. N. K. Bhattacharya to continue with the arrangement as OP-3 had no option but to supply its product to the Indian Railways.
- (iii) From the aforesaid admission evidences collected by the DG against OP-3 in the form of statements of its officials, the Commission finds OP-3 to be a part of the cartel arrangement amongst the Opposite Parties from 2009 to 2017.





Escorts Limited (Railway Equipment Division)/ OP-4:

- (i) With regard to OP-4, Mr. Anderson Thomas, Chief General Manager, Railway Equipment Divisions of OP-4, admitted in his deposition before the DG that since his promotion as the Marketing Head of OP-4, he had discussions with the other CBB manufacturers regarding the bid prices to be quoted and the quantities to be allocated with respect to various tenders floated by the Indian Railways. He stated that prior to him, Mr. L R. Murali, Ex-Marketing Head of OP-4, used to do the same. He admitted to the cartel arrangement amongst the Opposite Parties and disclosed about the mode of communications being used and the meetings being held amongst the Opposite Parties at different locations to discuss the bid prices, for allocation of quantities, *etc.* He further stated that in one of the meetings held in the year 2016, the manufacturers of CBB had requested him to form a WhatsApp group. As a follow up the '*Kwality Blocks*' WhatsApp group was created for all. He stated that as admin of this group, he used the group to discuss about the price bids of OP-1 to OP-10 over telephone and thereafter, he used to put the prices to be quoted by them in a particular Tender of the Indian Railways relating to CBB on the WhatsApp group. Later on, he deleted the group.
- (ii) Even Mr. L.R. Murali, Ex-Marketing Head of OP-4, in his deposition before the DG, admitted to his involvement in the cartel. He stated that manufacturers of CBB used to allocate quantities and agreed to quote identical rates or a pre-decided price. Further, he stated that he was asked by the company to handle the arrangement with the other Opposite Parties *viz.* OP-1, OP-2, OP-3, OP-5, OP-7, OP-9 and Allied Nippon. He started co-ordinating with them regarding tenders floated by Indian Railways for CBB from 2008. He also deposed that Mr. Gadikar of OP-1 used to send e-mails to him highlighting the various upcoming railway tenders with respect to CBB, and shared therein the prices to be quoted and the agreed quantities to be allotted between the Opposite Parties. He stated that the Opposite Parties followed the instructions given by OP-1 and exchanged screenshots of their bid prices after signing the e-tenders to ensure that all the Opposite Parties have stuck to the agreement. He also admitted that he had received e-mails on behalf of OP-4 containing the prices to be quoted by the Opposite Parties and the quantities allocated between them. Further, he admitted





to the cartel arrangement and disclosed about the mode of communications being used and the meetings being held amongst the Opposite Parties at different locations to discuss the bid prices, for allocation of quantities, *etc.*

- (iii) Mr. Murali also stated that in the year 2013, OP-6 joined the cartel and Mr. Vikram Sharma, Senior Manager (Marketing) of OP-6, used to co-ordinate on behalf of OP-6. Mr. Murali specifically mentioned that till he left the company in the year 2014, the following persons – Mr. Vinay Sarin of OP-1, Mr. Jagdish Gadikar of OP-1, Mr. M.S. Raja Sekar of OP-1, Mr. Saleh Najmuddin Mithiborwala of OP-2, Mr. N. K. Bhattacharya of OP-3, Mr. Umesh Shah of OP-5, Mr. Shiv Chugh of OP-5, Mr. C.V. Ananthanarayanan of OP-5, Mr. Aditya Vikram of OP-6, Mr. V.P. Sharma of OP-10, Mr. Ankit Tayal of OP-7 and Mr. S. K. Sharma of OP-9 were the main persons behind the cartel arrangement between the CBB manufacturers. He also stated that during his tenure in OP-4, OP-10 was not a part of the cartel as it was not yet an approved vendor.
- (iv) Another ex-employee of OP-4, Mr. Navneen Sangari, also admitted to have discussed bid prices with the other Opposite Parties. However, he stated that he had left OP-4 in the year 2007 to start his own business. He stated that he had provided consultation to OP-3, another competitor but eventually, OP-3 also joined the cartel of CBB manufacturers. He submitted that he had no connection with the Opposite Parties and his business is unrelated to the manufacture of CBBs. However, he had been copied in all the e-mails sent to different Opposite Parties though he had responded to none.
- (v) Mr. Dipankar Ghosh, Managing Director of OP-4, in his deposition, though denied his direct involvement in the cartel arrangement, but admitted that Mr. Anderson Thomas and other ex-employees of OP-4 were involved in bid-rigging of the CBB tenders floated by the Indian Railways.
- (vi) The Commission is of the view that from the aforesaid evidences collected by the DG against OP-4 including the statements of its present and past officials, it is established that OP-4 was a part of the cartel arrangement amongst the Opposite Parties from 2009 to 2017.



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Rane Brake Lining Limited/ OP-5:

- (i) Mr. S.R. Venkat Raj of OP-5 deposed before the DG that when he joined OP-5 in the year 2014 as General Manager (Marketing), he was informed about the cartel arrangement by Mr. Umesh Shah, Liaisoning Agent of OP-5 (till March, 2017) and Mr. D. Bheemsingh, Senior Vice President of OP-5. He stated that he had received an e-mail from Mr. Umesh Shah informing about the new tenders relating to procurement of CBB by the Indian Railways. Mr. Umesh Shah had discussions with the other Opposite Parties *i.e.*, OP-1 to OP-10 and even non-participation in the tenders or quoting higher rates was all part of the cartel arrangement.
- (ii) Specifically, Mr. D. Bheemsingh also stated in his deposition before the DG that when he took charge of the railway business of OP-5 in the year 2013, he was informed by Mr. Umesh Shah and Mr. C.V. Ananthanarayanan, about the cartel arrangement. He stated that OP-5 had an understanding with the other Opposite Parties. Mr. P.S. Rao, President of OP-5, was also aware of this cartel arrangement. However, Mr. Vinay Laxman, Managing Director of OP-5, was against this arrangement when it was made known to him in September 2015. Mr. D. Bheemsingh also cited an incident about OP-1 whereby he stated that OP-1 under-quoted its rate in a tender despite there being an arrangement amongst the Opposite Parties in regard to the tender. He stated that a meeting in this regard was held in 2014 at India Habitat Centre, Delhi, and there, when the Opposite Parties expressed their unhappiness about the conduct of OP-1, it assured to stick to its promise in the upcoming tenders relating to procurement of CBB by the Indian Railways.
- (iii) Mr. C.V. Ananthanarayanan, Executive Marketing (till 2018) of OP-5 in his deposition, also admitted to his involvement with the rest of his former colleagues in the cartel arrangement. He mentioned about receiving e-mails with regard to the tenders floated by the Indian Railways relating to the procurement of CBB from the competitors of OP-5 with respect to the prices to be quoted which were later forwarded by him to his superiors. He also mentioned that Mr. Umesh Shah used to co-ordinate on behalf of OP-5 with the other Opposite Parties.



- (iv) Mr. K. Balasubramaniam, ex-Senior Manager of OP-5, in his deposition recorded before the DG also admitted to being a part of the cartel during his tenure in OP-5 from the year 2007 to 2011. He admitted to having received e-mails during his tenure from the other Opposite Parties with regard to bid prices, compensations, other arrangements *etc.* He stated that all the e-mails received and sent were done on the instructions of his superiors Mr. A. Rajasekaran, Vice-President of OP-5 and Mr. P.S. Rao, ex-President of OP-5. Mr. K. Balasubramaniam further stated that after decentralisation of the Railway Tenders in the year 2011, the responsibility of getting Railways business for OP-5 was given to agents. At that time, OP-5 had three agents *viz.* Mr. Bindra in Kolkata, Mr. Umesh Shah in Mumbai and Mr. Raj Rajan in Chennai. He also stated that he was not aware about the railways business after the responsibility was handed over to the agents. He submitted that he was not in touch with any other Opposite Parties after that and he had attended only one meeting in the year 2007, that was held at Delhi Gymkhana Club.
- (v) Mr. P.S. Rao, President (2005 -2015) of OP-5, in his deposition before DG, submitted that the cartel arrangement was already in place when he joined OP-5 in 2005. He stated that he was informed of the same by his subordinate Mr. A. Rajasekaran. He affirmed that the statements given by Mr. D. Bheemsingh were true and correct. He stated that as part of the cartel, OP-5 used to share information regarding price bids for the forthcoming tenders relating to CBB floated by the Indian Railways through e-mails. He mentioned that his colleagues Mr. A. Rajasekaran, Mr. Umesh Shah, Mr. S.R. Venkat Raj, Mr. Muralidharan and Mr. K. Balasubramaniam were also involved in the cartel. Furthermore, he stated that for distribution of railway tenders relating to procurement of CBB, there was a system in place by way of which equalisation of tender quantities of CBB used to be undertaken.
- (vi) Mr. A.S. Chugh, Consultant of OP-5 (till March, 2011), in his deposition before DG also admitted that he was a part of the cartel. He stated that he, along with Mr. C.V. Ananthanarayanan, Mr. K. Balasubramaniam and Mr. Sundarram, had met and discussed bid prices with Mr. Naveen Sangari and Mr. Shyam Ahuja of



Pioneer Friction, Mr. Khatri of Allied Nippon, Mr. Vinay Sarin of OP-1, Mr. Saleh Mithiborwala of OP-2, Mr. N. K. Bhattacharya and Mr. Manmeet Singh of OP-3, Mr. Aditya Vikram of OP-6, Mr. Ghanshyam Das Tayal of OP-7, Mr. Priyankar Bose of OP-8, Mr. S. K. Sharma of OP-9 and Mr. Bhatia of OP-9. He stated that after decentralisation of railway tenders around 2010-2011, he was no more involved in co-ordination with other vendors. After his retirement in the year 2011, he worked as a Consultant for OP-5 but had no role in the commercial operations of OP-5 and was only co-ordinating with RDSO and Delhi Metro. Although he denied receiving or communicating with other vendors through e-mails or phones before decentralisation of railway tenders, the DG has found documents negating this submission. The DG has also found documents and other evidence indicating that Mr. A.S. Chugh was involved in the cartel arrangement, even after decentralisation of railway tenders.

- (vii) Mr. Vinay Lakshman, Managing Director of OP-5, in his deposition before the DG, submitted that the statements given by Mr. S.R. Venkat Raj were true and correct. When the DG confronted Mr. Vinay Lakshman with the statements given by Mr. A.S. Chugh, he stated that he had only authorised for a meeting at RDSO, Lucknow for Mr. Barukh and Mr. A.S. Chugh on 23.03.2017 but he had not authorised for the meeting dated 22.03.2017 with the other Opposite Parties. Further, when the DG confronted Mr. Vinay Lakshman with the statements given by Mr. D. Bheemsingh, he admitted that Mr. Bheemsingh had informed him of the cartel arrangement in September 2015. However, he stated that Mr. Bheemsingh did not go into the exact details of the same. Mr. Vinay Lakshman further stated that he had directed Mr. D. Bheemsingh to cease from all such activities also. Mr. Vinay Lakshman admitted that Mr. Umesh Shah was their representative in the cartel arrangement. He disclosed that after he became the Managing Director of OP-5 in November 2015, the company decided not to continue with such arrangement. Consequently, OP-5 did not even renew the contract of Mr. Umesh Shah for the year 2018-19. He further stated that OP-5 takes full responsibility for the actions of Mr. Umesh Shah till 21.07.2016; however, thereafter though Mr. Umesh Shah was no longer with OP-5, he continued to be a part of the cartel and was falsely representing OP-5.



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- (viii) Apart from the above statements, the DG, during its investigation, also noted that Mr. Umesh Shah of OP-5 had exchanged numerous SMSes and WhatsApp communications with the competitors of OP-5. Thus, the DG went on to record the statement of Mr. Umesh Shah. He initially stated that he was added to the WhatsApp group of the cartel participants by Mr. Anderson Thomas of OP-4 without his permission and that he used to ignore the messages exchanged in that group. However, when confronted with the text messages exchanged by him with Mr. Jagdish Gadikar of OP-1 to add him in the WhatsApp group, he admitted that on the directions of the management of OP-5, he had exchanged SMSes pertaining to prices to be quoted and allocation of quantities in the different tenders for CBB floated by the Indian railways.
- (ix) Mr. Umesh Shah confessed that he exchanged bid prices with the other Opposite Parties in the year 2013-14 on the instructions of Mr. D. Bheemsingh and after 2014, on the instructions of Mr. S.R. Venkat Raj. He also admitted that on the directions of Mr. S.R. Venkat Raj, on 04.02.2015, he sent a WhatsApp communication to the other Opposite Parties requesting them not to send/ forward any price/ tender related conversation to any officials of OP-5 and rather send the same directly to him as single window dealing. Although Mr. Umesh Shah initially refuted his involvement in front of the DG, when he was confronted with the statements of the other officials of OP-5, he admitted to his involvement in the cartel. The DG from the statements of Mr. Umesh Shah observed that he had admitted that the meeting held in 2014 was attended by the various representatives of the Opposite Parties and had disclosed that during such meetings, discussions regarding future arrangement with respect to upcoming tenders related to procurement of CBB took place. He also disclosed that another similar meeting was attended by him along with Mr. D. Bheemsingh on behalf of OP-5. He admitted that he had exchanged several messages/ e-mails with Mr. Jagdish Gadikar of OP-1 during the years 2013 and 2014 and the same were exchanged by him on the directions of Mr. D. Bheemsingh, who had instructed him to convey the details of price bids to other Opposite Parties. After 2014, the same practice was adopted by Mr. S.R. Venkat Raj of OP-5. Mr. Umesh Shah stated that the Opposite Parties communicated through various modes on several topics/ issues



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with each other as stated above. He stated that in 2015, Mr. S.R. Venkat Raj made him the hub/ nodal point for receiving and communicating messages directly through WhatsApp thereby forbidding Mr. Jagdish Gadikar of OP-1 from sending any messages to Mr. S.R. Venkat Raj directly. This continued to remain the *modus operandi* of communication in the WhatsApp group until receipt of notice from the office of the DG in May 2017.

- (x) A particular mention was made by Mr. Umesh Shah with regard to a cartel meeting attended by two other officials of OP-5 *i.e.*, Mr. A.S. Chugh and Mr. A. Bharookh. Mr. Umesh Shah disclosed that during the said meeting, there were intensive discussions regarding cartelisation of CBB tenders of Indian Railways and a detailed report in this regard was later on submitted to Mr. S.R. Venkat Raj of OP-5 by these two officials. Mr. Umesh Shah admitted that he used to receive e-mails from Mr. Jagdish Gadikar of OP-1 on a regular basis from 2009 till 2017. These e-mails had excel sheets as attachments containing information pertaining to various railway tenders of CBB, price bids, distribution of CBB tenders among different manufacturers along with compensation and other details relating to location and timing for cartel meetings. Mr. Umesh Shah also submitted details of tender quotations (post 2016) relating to OP-5. In particular, attention was drawn to a WR tender due on 18.04.2017 wherein Mr. Venkat Raj wanted to know the status of competitors quoting, which was indicative of OP-5's participation in the cartel even in 2017. This shows continued collusion/ cartelisation by OP-5 and other Opposite Parties. Thus, from such statements and evidences collected by the DG from Mr. Umesh Shah, it is clear that Mr. Umesh Shah was also very much privy to the anti-competitive conduct of OP-5 and the other Opposite Parties relating to bid-rigging of CBB railway tenders.
- (xi) Apart from the above, the call records collected by the DG also show that Mr. Umesh Shah was constantly in touch with the officials of the other Opposite Parties during the cartel period. This may not be direct and hard proof of his association in the cartel but it confirms the fact that he was constantly and in very frequent touch with the other Opposite Parties.



- (xii) The Commission is of the view that from the aforesaid detailed evidences collected by the DG against OP-5, including the statements of its present and past officials, it is established that OP-5 was a part of the cartel arrangement amongst the Opposite Parties from at least 2009 up till 2017.

Om Besco Super Friction Private Limited/ OP-6:

- (i) Mr. Aditya Vikram Sharma, Senior Manager of OP-6, admitted in his deposition before the DG about his involvement in the cartel arrangement amongst the Opposite Parties. He however, stated that he was only a part of the cartel with respect to a few tenders; with regard to others, he was neither a part of the arrangement nor had he followed any instructions given by the other Opposite Parties in the discussions. He explained the cartel arrangement and stated that Mr. Jagdish Gadikar of OP-1 was the one who had led the team in deciding the quotes, quantities, etc. In this regard, the Commission notes the following deposition made by Mr. Aditya Vikram Sharma before the DG:

*“Q32 I am showing you email dated 26.10.2015 (Exhibit-12) sent by sh. Jagdish Gadikar ([jgadikar@gmail.com](mailto:jgadikar@gmail.com)) to you ([avs\\_1964@yahoo.co.in](mailto:avs_1964@yahoo.co.in)) wherein an excel sheet regarding K frt and L frt distribution with your company upto 29.10.2015 was attached. What do you have to say on this?*

*Ans The said email was sent by Sh. Jagdish Gadikar highlighting the share of business among different bidders upto 29.10.2015. I admit that the distribution of quantity prior to Tenders among different bidders used to take place.”*

- (ii) As far as Mr. Madhusudhan Tantia, Director of OP-6 is concerned, he in his deposition denied being a part of the cartel and stated that in fact, he was against such acts. He however, admitted that a group was formed in the year 2006 by a couple of manufacturers of CBB and those group members used to quote identical rates in the CBB tenders floated by the Indian Railways. He stated that certain staff of OP-6 was also in touch with the other Opposite Parties in this regard as can be seen from the documents but he claimed that the same was against his express directions. When Mr. Tantia was confronted by the DG with the statements of Mr. Jagdish Gadikar of OP-1, Mr. M. S. Raja Sekar of OP-1, Mr.





Vinay Sarin of OP-1, Mr. N.K. Bhattacharya of OP-3, Mr. Anderson Thomas of OP-4, Mr. L.R. Murali of OP-4, Mr. D. Bheem Singh of OP-5, Mr. Ankit Tayal of OP-7, Mr. Priyankar Ghosh of OP-9 and Mr. S. K. Sharma of OP-9, he did not say that his company was not involved in bid-rigging. He simply vaguely answered that he could not confirm the facts disclosed by these witnesses. In this regard, the Commission notes the following deposition made by Mr. Madhusudhan Tantia before the DG:

*“Q40 On the basis of the records shown to you and the confessional statement of Mr. Aditya Vikram Sharma, it is observed that your company was involved in exchanging bid price related information with the competitors which is prohibited under the Competition Act. On the basis of the said conduct of your company, the company may be held guilty of violation of the Competition Act. What do you have to say on this?”*

*Ans. From the documents shown to me it is obvious that my staff was in contact with the competitors which is against my directions but I have no defense for it. I am aware that the conduct of my company may be held in contravention of the provisions of Competition Act, 2002. All this was done without my knowledge and despite my specific instructions not to indulge in anti-competitive practices.”*

- (iii) When the DG asked about the WhatsApp group ‘Kwality Blocks’ to Mr. Aditya Vikram Sharma, he stated that that he was added as a member of the said group and the Opposite Parties used to discuss the prices and quantities to be shared in different Railway Tenders relating to procurement of CBB in the group. He stated that he was earlier a part of the said group; however, he had never replied to any of the arrangement talked about in the group and he had left the group four-five months back. Mr. Sharma claimed that he had never replied to any arrangement made in the group, nor had he acted upon the instructions posted in the group. He rather claimed that he had already had left the group. However, it can be seen from the DG Report that upon scrutiny of the communications exchanged over the WhatsApp group, the DG has found evidence that Mr. Aditya Vikram Sharma had exchanged numerous messages on the WhatsApp group ‘Kwality Blocks’ and from the WhatsApp communication dated 31.01.2017, it can be seen that Mr. Sharma had even confirmed his presence to join a meeting with the other





Opposite Parties as suggested by Mr. Jagdish Gadikar of OP-1 on a particular occasion.

- (iv) Thus, the DG's investigation report clearly reveals that OP-6, through Mr. Aditya Vikram Sharma, had exchanged bid related information through e-mails, WhatsApp communications, *etc.* with respect to the various tenders pertaining to procurement of CBBs by the Indian Railways. Further, even Mr. Madhusudhan Tantia does not refute the same. Moreover, from a comparison of the messages exchanged on the WhatsApp group and the actual quotations made by OP-6, it is noted that in many Railway tenders relating to CBB, OP-6 had actually quoted identical rates as advised in the group prior to closing of the tenders. Some of the Railway Tenders relating to CBB where rates quoted by OP-6 corresponded to the rates advised in the WhatsApp group are as follows:

WhatsApp Message Dated	Tender Number	Advised Rate (in ₹)	Rate quoted by OP-6 (in ₹)
27.01.2017	11161811B of CR due on 30.01.2017	216/-	216/-
27.01.2017	07171585 of NR due on 01.02.2017	219/-	219/-
19.08.2017	07172839 of NR due on 21.08.2017	244.65/-	244.65/-
02.09.2017	38171604 of SER due on 06.09.2017	250.95/-	250.95/-

- (v) In view of the above, the Commission is of the opinion that OP-6 was part of the cartel arrangement from 2009 till Oct-Nov 2017, and it had rigged the bids of different Railway tenders relating to procurement of CBB.

Cemcon Engineering Co. Private Limited/ OP-7:

- (i) Mr. Ankit Tayal, Director of OP-7, in his deposition before the DG, admitted that he had witnessed the existence of an arrangement between some of the Opposite Parties regarding bid prices to be quoted and quantities to be allocated relating to railway tenders for procurement of CBB since he joined OP-7 in 2009. He stated that OP-7 was a part of such arrangement so as to survive in the industry. In this



regard, the Commission notes the following deposition made by Mr. Ankit Tayal, before the DG.

*“Q18 Please open your email id [ank.tayal@gmail.com](mailto:ank.tayal@gmail.com).*

*Ans On your request email id [ank.tayal@gmail.com](mailto:ank.tayal@gmail.com) has been opened and print out of emails dated 30.08.2011, 17.11.2012, 13.12.2012, 18.12.2012, 19.12.2012, 16.01.2013, 09.02.2013, 13.03.2013, 19.03.2013, 22.04.2013, 22.08.2013 (02 No.) 26.07.2013, 14.09.2013, 23.09.2013, 14.06.2014 (03 No.), 23.06.2014, 06.04.2015, 14.04.2015, 28.09.2015, 26.10.2015 along with their attachments have been obtained. Email account opened, checked and closed. I have also executed a certificate under Section 65B of Evidence Act for the said print outs (Exhibits 1 to 25 totalling 85 pages).*

*Q19 It is seen that you have received many emails (as per attached Exhibits shown to you) from ([jagadsharma@rediffmail.com](mailto:jagadsharma@rediffmail.com)) and other officials of OPs of this case wherein it has been mentioned about the Tender quantity distribution for forthcoming Tenders, price discussion for Tenders. In some of the said exhibits, there is also mention of Tender distribution with 30% option, and without 30% option. There is mention of sharing of bid price and allocation of quantities and meetings between the bidders (OPs) for the Tenders of composite brake blocks of Indian Railways. Please clarify about the said emails.*

*Ans. Sir, at this stage I would like to disclose all truth and the arrangement between the OPs for the Tenders regarding composite brake blocks of Indian railways but I humbly state that a lenient and sympathetic view may be taken against me and my company.*

*Sir, since my joining the company in 2009, I have seen that there is an arrangement between different manufacturers (OPs) to allocate quantities and distribution of orders among themselves in which the quantities were pre-decided to be allocated for a particular railway Tender of Composite brake block. With our initial apprehension to join the said practice, we abstained a while to participate in such bid rigging but to survive in the industry, we attended the meetings of OPs for the said practice from time to time...”*

- (ii) He stated that after attending a meeting in 2011, he had started receiving e-mails from the other Opposite Parties, particularly from Mr. Jagdish Gadikar of OP-1, about sharing of quantities and the prices to be quoted in the Railway Tenders



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relating to CBB. He also admitted to attending another meeting in 2013 in OP-1's office/ guest house at Golf Links, New Delhi and another meeting at Delhi Gymkhana Club to discuss about the sharing/ allocation of quantities and prices to be quoted in the upcoming tenders. He admitted that he used to receive messages from Mr. Umesh Shah of OP-5 and Mr. Jagdish Gadikar of OP-1 (from 29.04.2016 to 25.10.2016) regarding prices to be quoted in the forthcoming tenders. He also admitted that OP-7 used to receive information from the other Opposite Parties about prices to be quoted in the railway tenders relating to CBB but stated that prices were quoted by OP-7 in the best interest of the company.

- (iii) In his supplementary statement before the DG, Mr. Tayal even admitted to having received price related and allocation of quantities related information even after 2015. He stated that his company *i.e.*, OP-7 used to exchange information regarding price bids and allocate quantities relating to Railway Tenders for CBB. However, he also clarified that his company and he himself had never been the co-ordinator of the cartel arrangement and they never suggested any price to be quoted or quantity to be allocated amongst the Opposite Parties. He stated that OP-7 only followed the instructions and decisions of the other Opposite Parties.
- (iv) Further, while recording of his supplementary statement, when Mr. Tayal was confronted by the DG with the WhatsApp communications/ messages exchanged by him, he admitted that Mr. Anderson Thomas of OP-4 used to send messages regarding prices to be quoted to all the Opposite Parties but stated that he himself had no say in such pricing arrangement. However, when the DG confronted Mr. Tayal with the statement of Mr. Anderson Thomas of OP-4, he was silent on the same. When Mr. Tayal was confronted with the same price quoted by his company as advised on the WhatsApp group by Mr. Anderson Thomas of OP-4 and Mr. Umesh Shah of OP-5, he maintained silence on that too. In view of the Commission, such repeated silence maintained by Mr. Ankit Tayal to different questions asked and lack of any defence offered against the evidence confronted affirms his and OP-7's involvement in the bid-rigging of railway tenders relating to procurement of CBB on the advice of other Opposite Parties even till 2017.



- (v) Some of the rates quoted by OP-7 which corroborate with the rate advised to be quoted in the WhatsApp group are as under:

<b>WhatsApp Date</b>	<b>Tender No. and Due Date</b>	<b>Bid Price Advised (in ₹)</b>	<b>Bid Price Quoted by OP-7 (in ₹)</b>	<b>Remarks</b>
27.01.2017	Tender No. 11161811A of CR due on 30.01.2017	227.50/-	227.50/-	Identical price quoted as suggested in WhatsApp group
26.07.2017	Tender No. 03171061 of SECR due 27.07.2017	219.50/-	219.50/-	Identical price quoted as suggested in WhatsApp group

- (vi) Further, though Mr. Ankit Tayal has contended that OP-7 started participation in the cartel only in 2011 for the first time, examination of the various documents and other evidences on record negate such contention and suggests a contrary picture. Mr. Ankit Tayal, when confronted with the confessional and incriminating statements of Mr. Vinay Sarin of OP-1 had nothing to say on the same but only stated that these were Mr. Sarin's personal views towards OP-7 incriminating it in the cartel. However, it is clear that Mr. Ankit Tayal did not say that the statement of Mr. Sarin of OP-1 was not correct. Also, there are numerous SMSes on record exchanged between Mr. Tayal and Mr. Jagdish Gadikar of OP-1 in 2015 relating to co-ordination of Railway Tenders relating to CBB whereby Mr. Gadikar of OP-1 used to advice about the price to be quoted. It is also pertinent to mention that the Opposite Parties were not only co-ordinating on price but also on payment terms. The content of these messages exchanged indicate that Mr. Gadikar of OP-1 specifically indicated payment terms as 95% plus 5%. When Mr. Ankit Tayal was confronted with such SMSs, he confessed that he used to co-ordinate for Railway Tenders with Mr. Gadikar of OP-1.
- (vii) The Commission is of the view such admissions of Mr. Ankit Tayal, and the documents and evidences available on record, are sufficient to establish that OP-7 was part of the cartel arrangement from 2009 till 2017, and it had rigged the bids of different Railway tenders relating to procurement of CBB.



Sundaram Brake Lining Limited/ OP-8:

- (i) Mr. Priyankar Bose, Manager of OP-8, in his deposition before the DG, admitted to be part of the cartel. He stated that prior to 2014, he used to receive e-mails containing quotes and allocation of quantities for upcoming Railway Tenders relating to CBB. Mr. Jagdish Gadikar of OP-1 used to plan meetings with different vendors but he himself did not attend any of these meetings. Mr. Bose admitted that OP-8 used to quote identical rates prior to 2014 and that was a result of the understanding. He submitted that all discussions on allocation of quantities were done by his seniors and he had no say in any of such decisions. In this regard, the Commission notes the following deposition made by Mr. Priyankar Bose, before the DG.

*“ Q35 It is seen that on 27.10.2015 your received an email from [oe@tvssbl.com](mailto:oe@tvssbl.com) (Exhibit-6) wherein a report of meeting on CBB on 26-27.10.2015 was attached. In the attachments there is mention of some discussion with you wherein it has also been mentioned ‘Hindustan Composites Ltd (HCL) – centre of cartel activity of CBB business in Indian Railways. They ensure equal sharing of business an price monitoring. SBL used to get information for L wagon CBB and K coaching CBBs. As SBL is no more participating in the business there is no feedback since 2014” Please clarify about the said email.*

*Ans This email refers to my discussion with Sh. L.S. Jayaraman, CP of the Company.*

*At this stage, I would like to disclose all truth about the cartel between my company and OPs. But it is requested that a lenient view may be taken against me as I am a junior officer in the company and I have no role to play in decision taken by my seniors.*

*Sir, prior to 2014, when the company stopped quoting for CBB Tenders of Indian railways, I used to get emails from Sh. Jagad Sharma alias Jadish Gadikar of Hindustan Composites Ltd. About the rates to be quoted in the forthcoming Tenders and allocation of quantities among the manufacturers of that time. I used to pass on the message to my then senior namely Sh. L.S. Jayaraman, Vice President. He used to decide about the Tenders on the basis of the said emails. Sometimes, Sh. Gadikar used to call meetings of different vendors to discuss the said issues. However, I never attended any such meeting. The identical rates quoted by my company prior to*



*2014 may be a result of understanding between sh. L.S. Jayaraman and the other bidders on the basis of emails received from sh. Gadikar which were forwarded by me to him from time to time. I started receiving the emails from sh. Jagdish Gadikar around 2011. Sir, all the price discussion and allocation of quantities has been done by my seniors and management of the company and not by me. Therefore, it is requested that I may be discharged from this investigation. I have also seen the emails extracted by your office from the email accounts of Sh. M.S. RajaSaker, Sh. Ankit Tayal and sh. S.K. Sharma as shown to me, wherein many emails has been copied to be i.e., [pbosesbl@rediffmail.com](mailto:pbosesbl@rediffmail.com). In the said emails, there is discussion about distribution of quantities for CBB for various Tenders among bidders. All these emails were forwarded by me to my seniors at that time...”*

- (ii) Further, Mr. S. Balaji, Vice-President (Marketing) of OP-8, upon being confronted with the confessional statements given by Mr. Priyankar Bose, also admitted that prior to 2014, OP-8 used to receive tender related information from OP-1 regarding prices to be quoted, via e-mail ID of Mr. Bose which Mr. Bose used to pass on to his then senior official in OP-8. In this regard, the Commission notes the following deposition made by Mr. Balaji, before the DG

*“...Q6. I am showing you the statement of Shri Priyanakr Bose, Manager of your company recorded by this office on 02.11.2017 wherein in response to Q35 he stated as under...”*

*Ans. I have seen the statement and admit that prior to 2014, my company used to receive Tender related information regarding price to be quoted from HCL on the email id of Shri Bose which he used to pass on to his then senior Shri L.S. Jayaraman. However, SBL did not participate in any of the meetings. My company’s quotation was always based on our internal estimates....”*

- (iii) Further, upon being confronted with the statement of Mr. Jagdish Gadikar of OP-1 also, Mr. Balaji agreed on such statements. He, however, claimed that he was not aware about Mr. Priyankar Bose of OP-8 having an arrangement with other bidders by way of creating an e-mail ID for regular correspondence. When Mr. Balaji was confronted with the statement of Mr. Vinay Sarin of OP-1, Mr. N.K. Bhattacharya of OP-3, Mr. Thomas of OP-4, Mr. A.S. Chugh of OP-5, Mr.





Venkat Raj of OP-5, Mr. Aditya Vikram of OP-6, Mr. Ankit Tayal of OP-7 and Mr. S. K. Sharma of OP-9, he concurred with their statements relating to cartelisation by the other Opposite Parties. However, regarding OP-8, he reiterated that OP-8 never participated in any cartel arrangement.

- (iv) It had also been mentioned in one e-mail that OP-1 was the centre of cartel activities involving equal sharing of business and monitoring.
- (v) In view of the Commission, the confession made by Mr. Bose of OP-8 and the facts admitted by Mr. Balaji of OP-8 regarding receiving information relating to price bids to be quoted in different tenders of CBB till 2014 establishes that OP-8 was also a part of the cartel arrangement from 2009 till 2014, and it had rigged the bids of different Railway tenders relating to procurement of CBB. Further, there were emails to prove that OP-8 was trying to revive its cartel relationship with competitors. *i.e.*, after 2014 till 2017.

Bony Polymer Private Limited/ OP-9:

- (i) Mr. S.K. Sharma, Divisional Manger of OP-9, admitted in his deposition before the DG that Mr. Jagdish Gadikar of OP-1 had sent information on three tenders *i.e.*, NCR 12.06.2015, SCR 23.06.2015 and ECOR 26.06.2015 to him and had discussed the prices to be quoted before bidding for the same. In this regard, the Commission notes the following deposition made by Mr. S.K. Sharma, before the DG:

*“...Q32 You are being shown email dated 10.06.2015 (Exhibit-I) sent by Sh. Jagdish Gadikar (Hindustan Composite) to you (retrieved from email account) wherein it has been clearly mentioned that in three Tenders i.e. NCR 12.06.2015, SCR 23.06.2015, ECOR 26.06.2015, rates quoted by you and other bidders were pre decided and agreed. This shows that rates quoted by you and other bidders in those Tenders were quoted after discussion and agreement with each other. What do you say on this?”*

*Ans. I admit that said email was sent by Sh. Jagdish Gadikar and that quotes were discussed before bidding for the Tenders. I further state that though the quotes for the aforesaid three Tenders were discussed and agreed before bidding, but I had ensured that the rates quoted would remain below the last Tender rates....”*



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- (ii) When confronted with the e-mails that talked about distribution of quantities with 30% option and without 30% option, Mr. Sharma admitted this aspect also and explained the whole process of how it was pre-decided by the Opposite Parties. He tried to justify by stating that such arrangements were made to survive in the industry and it was never the intention to quote higher rates, which apparently can be seen from the previous tenders. He further shed light on the *modus operandi* of the cartel before decentralisation of the tenders and stated that all the Opposite Parties would agree to quote identical rates so as to get business. Mr. S.K. Sharma also admitted that OP-9 had quoted prices after discussions with the other Opposite Parties even after decentralisation of the railway tenders relating to CBB.
- (iii) On the other hand, Mr. Raj Kumar Bhatia, Managing Director of OP-9, in his deposition before the DG, denied that he was ever a part of the cartel and stated that he was not aware of any such act committed by his staff. He stated that such activities were against OP-9's policy. However, when confronted by the DG with the documents and other material gathered during the investigation, Mr. Raj Kumar Bhatia 'confessed' that Mr. S.K. Sharma of OP-9 committed wrong by indulging in such anti-competitive activities.
- (iv) Further, Mr. R.K. Bhatia, during his statement recorded on 27.08.2018, was also confronted by the DG with the confessional and incriminating statements of Mr. M.S. Raja Sekar of OP-1, Mr. N.K. Bhattacharya of OP-3, Mr. Anderson Thomas of OP-4, Mr. D. Bheemsingh of OP-5, Mr. Aditya Vikram Sharma of OP-6, Mr. Ankit Tayal of OP-7 and Mr. Priyankar Bose of OP-8. Mr. Bhatia refused to comment on the same, but he did not deny that OP-9 was a part of the cartel. Moreover, on the basis of the statement made by Mr. S.K. Sharma and the aforesaid witnesses and documents confronted to him, Mr. Bhatia admitted that Mr. S.K. Sharma of OP-9 had done wrong. Therefore, in view of the Commission, it is clear that OP-9 was also a part of the cartel.
- (v) It can also be seen from the communications exchanged on the WhatsApp group 'Kwality Blocks' that Mr. S. K. Sharma of OP-9 had exchanged bid price related





information with the other Opposite Parties. It is also noted that the rates quoted by OP-9 were identical in the following tenders with the rates that were advised to be quoted in the 'Kwality Blocks' WhatsApp group communications:

WhatsApp Date	Tender No. and Due Date	Bid Price Advised (in ₹)	Bid Price Quoted by OP-9 (in ₹)	Remarks
10.06.2017	Tender of Eastern Railway due on 12.06.2017	286	285.61	Maintained the same positioning by quoting few paise less.
13.06.2017	Tender of Western Railway due on 14.06.2017	287	285.61	Maintained the same positioning by quoting few paise less.
14.07.2017	Tender No. 03171736 of ECOR due on 17.07.2017	223	222.60	Maintained the same positioning by quoting few paise less.
29.07.2017	Tender No. 21171393 for Eastern Railway due on 01.08.2017	252	252	Identical price quoted as suggested in WhatsApp group
15.08.2017	Tender No. 4174081 for ECR due on 16.08.2017	214.80	214.73	Maintained the same positioning by quoting few paise less.
19.08.2017	Tender No. 07172839 for Northern Railway due on 21.08.2017	252	252	Identical price quoted as suggested in WhatsApp group
22.08.2017	Tender No. 03171427 for SER due on 23.08.2017	247	246.75	Maintained the same positioning by quoting few paise less.
29.08.2017	Tender No. 30171612 of NCR due on 30.08.2017	270	269.85	Maintained the same positioning by quoting few paise less.
04.09.2017	SC Railway due on 05.09.2017	287	285.65	Maintained the same positioning by quoting few paise less.
11.09.2017	Tender No. 30171268 for WCR due on 12.09.2017	192.30	192.15	Maintained the same positioning by quoting few paise less.
23.09.2017	Tender No. 15170610 of WR due on 25.09.2017	197	196.88	Maintained the same positioning by quoting few paise less.
03.10.2017	Tender No.	269.85	269.85	Identical price quoted



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	0717D0086 of KRCL due on 04.10.2017			as suggested in WhatsApp group
16.10.2017	Tender No. 38171885 of CR due on 17.10.2017	262.15	261.98	Maintained the same positioning by quoting few paise less.
23.10.2017 at 08:56:36 AM	Tender No. 30171751 of NCR due on 23.10.2017	192.15	192.15	Identical price quoted as suggested in WhatsApp group
27.10.2017	Tender No. 22160116E of NER due on 30.10.2017	192.15	192.15	Identical price quoted as suggested in WhatsApp group

- (vi) It can be noted from the aforesaid table that the prices quoted by OP-9 were very close or identical with the prices advised over the WhatsApp group relating to the Railway Tenders for CBB.
- (vii) Based on the above evidence, the Commission is of the view that OP-9 was also a part of the cartel arrangement from 2009 till 2017, and it had rigged the bids of different Railway tenders relating to procurement of CBB.

Daulat Ram Brakes Mfg. Co./ OP-10:

- (i) It is stated in the DG report that OP-10 was yet another bidder against which allegations of bid-rigging have been levelled. Mr. V.P. Sharma, Proprietor of OP-10 was thus, confronted with the certain emails exchanged between the Opposite Parties. In this regard, the Commission notes the email dated 28.09.2015, retrieved from the email account of Shri Ankit Tayal of Cemcon, sent by Shri Ankit Tayal ([ank.tayal@gmail.com](mailto:ank.tayal@gmail.com)) to his subordinate Sh. Deepak Giri ([deepucemcon@gmail.com](mailto:deepucemcon@gmail.com)) attaching trailing email dated 28.09.2015 received from Sh. Jagad Sharma alias Jagdish Gadikar wherein an excel sheet detailing share of business L Frt. And K Frt. along with distribution of shares of different manufacturers of CBB has been attached. The aforesaid email was confronted to Shri V. P. Sharma wherein the relevant part is as follows:

*“...Q45 As per the records available with this office viz., email dated 28.09.2015 (Exhibit-I), wherein it has been mentioned that for WCR Tender dated 09.04.2015 NWR Tender dated 10.09.2014, NCR Tender dated 28.11.2014, you had to receive or were expected to receive orders totalling 9724, 35319 and 11993 (Composite Brake*



*Blocks for coaches) respectively, which was also found to be exact and identical in your reply dated 17.06.2017. What do you have to say about this?*

*Ans. I don not know about this email dated 28.09.2015 nor we have received any such email. I have given you my figures on the basis of orders we had received.*

- (ii) Upon perusal of the said e-mail and the excel sheets attached therein, the Commission notes that the excel sheets attached with the said e-mail contains data/ information regarding order recommended/ expected by all OPs including OP-10 for various tenders issued by different zonal railways. The Commission observes that Sh. V. P Sharma had vaguely stated that he does not know anything about the aforesaid e-mail dated 28.09.2015. Whereas it was observed that the figures of orders quoted by Daulat Ram (*i.e.*, 9724, 35319 and 11993) was exactly the same as mentioned in the said excel sheets. Further, it is pertinent to note that numerous excel sheets attached in the aforesaid emails establishes arrangements for distribution of tender quantities between Part-I and Part-II vendors also.
- (iii) Mr. V.P Sharma was also confronted with the WhatsApp communications exchanged between the OPs. In his deposition before the DG, Mr. Sharma revealed that he had been added to the WhatsApp group of CBB manufacturers by Mr. Anderson Thomas of OP-4 after his firm had become Part-I vendor in August 2017. He admitted that Mr. Thomas of OP-4 had exchanged messages relating to the price to be quoted in the upcoming three or four railway tenders relating to procurement of CBB in the WhatsApp group.
- (iv) When Mr. Sharma was confronted by the DG on 02.04.2017 with the following message sent by him in the WhatsApp group “*we should distribute railway 2 can take south 2 can take north like that. Two person have better understanding share your views*”, he gave a vague and evasive answer. Thereafter, he admitted that his intention behind sending the said message was that manufacturers had to save their freight for which the manufacturers of CBB in the north area should compete in north only and manufacturers of south should compete in south only.



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- (v) Based on such evidences, the Commission is of the view that OP-10 was also a part of the cartel arrangement in 2017 and it had suggested distribution of areas to the bidders. It is noted by the Commission that in the following tenders, the rates quoted by OP-10 were identical with the bid rates advised to be quoted in the WhatsApp group communications:

WhatsApp Date	Tender No. and Due Date	Bid Price Advised (in ₹)	Bid Price Quoted by OP-10 (in ₹)	Remarks
15.08.2017	Tender No. 04174081 of ECR due on 16.08.2017	230	230	Identical price quoted as suggested in WhatsApp group
19.08.2017	Tender No. 30173628 of SCR due on 22.08.2017	230	230	Identical price quoted as suggested in WhatsApp group
29.08.2017	Tender No. 04170706 of SR due on 30.08.2017	230	230	Identical price quoted as suggested in WhatsApp group
07.09.2017	Tender No. 07171585A of NR due on 08.09.2017	198	191	Remain L1 by quoting few rupees less and shown L1 in message also.
21.09.2017	Tender No. 38179002 for CR due on 22.09.2017	200	200	Identical price quoted as suggested in WhatsApp group
23.10.2017 at 08:56:36 AM	Tender No. 30171751 of NCR due on 23.10.2017	192	192	Identical price quoted as suggested in WhatsApp group

- (vi) It can be noted from the aforesaid table that the prices quoted by OP-10 were very close or identical with the bid price advised on the 'Kwality Blocks' WhatsApp group relating to Railway Tenders for CBB.

- (vii) In view of the above, it is evident that OP-10 was also part of the cartel arrangement and it had rigged the bids of railway tenders of CBB in 2017.

34. Apart from the above detailed specific evidence against OP-1 to OP-10, the DG has found/ retrieved several incriminating e-mails which clearly indicate that OP-1 to OP-10 and their respective individuals had been in the cartel arrangement for rigging tenders



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relating to CBB. In this regard, the Commission notes the following e-mail illustratively:

*Email dated 22.04.2013 sent by Mr Jagdish Gadikar of OP-1 ([jagadsharma@rediffmail.com](mailto:jagadsharma@rediffmail.com)) to OP-2 ([saleh@visionorg.net](mailto:saleh@visionorg.net)), OP-3 ([bhattacharya.nk@gmail.com](mailto:bhattacharya.nk@gmail.com)) and ([snaveen20@yahoo.com](mailto:snaveen20@yahoo.com)), OP-4 ([lrmurali@yahoo.com](mailto:lrmurali@yahoo.com)) OP-7 ([ank.tayal@gmail.com](mailto:ank.tayal@gmail.com)), OP-5 ([pratik\\_ptc@hotmail.com](mailto:pratik_ptc@hotmail.com)), OP-1 ([vinaysarin@yahoo.com](mailto:vinaysarin@yahoo.com)) and ([msrajasekar@gmail.com](mailto:msrajasekar@gmail.com)), OP-8 ([pboosesbl@rediff.com](mailto:pboosesbl@rediff.com)) OP-9 ([marketing77@bonypolymers.com](mailto:marketing77@bonypolymers.com)) and OP-6 ([avs\\_1964@yahoo.co.in](mailto:avs_1964@yahoo.co.in)) wherein two attachments including (i) agenda for meeting with OP-6 at 18.00 Hrs on 24.04.2013 in Delhi, and (ii) excel sheet showing share of Tender quantities for K and L type CBB till 12.04.2013 has been annexed. The Commission observes that there are so many incriminating emails which clearly establishes that OP-1 to OP-10 were deciding the modalities of cartel for rigging the bids of Indian railway tenders.*

35. The Commission is of the view that such e-mails are direct evidence of involvement of the Opposite Parties and nothing can be more incriminating than these. OP-1 to OP-10 and their respective individuals had discussed every detail of the tenders and the process to rig the bid at every step. They had even discussed how they would be compensated if they did not win the previous or earlier tenders. Further, the Commission has also examined the statements given by the officials of OP-1 to OP-10. In the opinion of the Commission, such admissions are sufficient to hold the Opposite Parties liable for contravention of the provisions of the Act.
36. Further, it is noted that some of the OPs raised the issue that they have not quoted the same price/ agreed price in the alleged tenders. In this regard, the Commission observes that in the investigation report, DG had relied on many evidences or instance in which OPs had quoted the same/ agreed prices based on their agreement through whatsapp communications/ e-mail communications. Therefore, the above said argument of OPs is misconceived.
37. Arguing further, the Opposite Parties have raised certain contentions like (a) even though they had cartelised, there was no AAEC in the market for CBBs in India; and (b) the Indian Railways being a monopolistic buyer controls the price and quantity to be



supplied to it; thus, the Opposite Parties do not have any control over the price or quantity.

38. A bare reading of the provisions of Section 3 (1) of the Act shows that these provisions not only proscribe the agreements which cause AAEC but the same also forbid the agreements which are likely to cause AAEC. Hence, the plea that there is no contravention of the provisions of the Act in the present matter because allegedly no AAEC has been caused as a result of the alleged cartel between the parties, is misdirected and untenable in the face of clear legislative intent whereby even the conduct which can potentially cause AAEC, is prohibited. Furthermore, once an agreement of the types specified under Section 3(3) of the Act is established, the same is presumed to have an AAEC within India. Therefore, in the opinion of the Commission, it can well be presumed in the present matter that the impugned conduct of the parties has caused AAEC within India. No doubt, as per the ratio of the decision given by the Hon'ble Supreme Court in the matter of *Rajasthan Cylinders and Containers Ltd. v. Union of India and Others*, 2018 (13) SCALE 493, the presumption of AAEC in a case involving contravention of the provisions of Section 3 (3) of the Act can be rebutted by the parties by placing evidence to the contrary on record. The relevant excerpts of the Hon'ble Supreme court decision in *Rajasthan Cylinders (supra)*, are as follows:

*“73. 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*





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*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.”*

39. Thus, the parties can rebut such statutory presumption in light of the factors provided under Section 19 (3) of the Act. However, save and except contending that the impugned conduct caused no AAEC, the parties have not been able to rebut the said presumption by leading adequate evidence, as held by the Hon’ble Supreme Court of India in *Rajasthan Cylinders (supra)*. In fact, there is no whisper in the replies filed by the parties *qua* some of the factors, such as, as to how their impugned conduct resulted into any accrual of benefits to consumers; improvements in production or distribution of goods or provision of services; or promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services, in terms of Section 19(3) of the Act. Be that as it may, on a holistic evaluation of the replies filed by the parties in light of the factors enumerated in Section 19(3) of the Act, the Commission is satisfied that the parties have not been able to dislodge the statutory presumption by adducing cogent evidence, as required.
40. With regard to Indian Railways being a monopolistic player with power to determine prices/ quantity, the Commission notes that the said contention of Opposite Parties 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 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 is concerned. This has to be also considered in view of direct accrual of benefits to the



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consumer *i.e.*, the Government of India and the passengers using railway services. Negotiating terms and conditions with the Opposite Parties to procure CBB 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 Opposite Parties 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.

41. In view of the above, taking into account all the aforesaid evidences collected by the DG, the Commission concludes that OP-1 to OP-10 and their respective individuals had indulged in cartelisation in the Composite Brake Blocks (CBB) market in India, at least from 2009 till 2017, by means of directly or indirectly determining prices, allocating markets, co-ordinating bid response and manipulating the bidding process, which had an AAEC within India. The Commission therefore, holds OP-1 to OP-10 guilty of contravention of the provisions of Section 3 (3) (a), 3 (3) (c) and 3 (3) (d) read with Section 3 (1) of the Act.
42. Lastly, the Commission notes that the DG has not found contravention of the provisions of Section 3 of the Act by OP-11 and OP-12. The Commission, in this regard, agrees with the findings of the DG as no evidence against OP-11 and OP-12 was brought before the Commission to assail the findings of the DG.

### **Issue No. 2**

43. Once contravention by Opposite Parties which are companies *i.e.*, OP-1 to OP-10 is established, the Commission now proceeds to analyse the conduct of the Opposite Parties' directors, officers and employees, who would be liable for such anti-competitive acts of the Opposite Parties, in terms of Section 48 of the Act.
44. As per the investigation report, the following persons of OP-1 to OP-9 have been found to be liable under Section 48 of the Act by the DG:





S. No.	Opposite Party	Persons identified by the DG
1.	OP-1	Mr. Jagdish Gadikar, General Manager (2009-2017)
2.		Mr. M S Raja Sekar, Sr. Vice President (Sales) (2009-2017)
3.		Mr. Vinay Sarin, Director, Group Business Development (2009-2017)
4.		Mr. P.K. Chaudhary, Managing Director (2009-2017)
5.	OP-2	Mr. Virender Singh Negi, Employee (2009-2017)
6.		Mr. Saleh Najmuddin Mithiborwala, Director (2009-2017)
7.	OP-3	Mr. N.K. Bhattacharya, Vice President (Marketing) (2009-2017)
8.		Mr. Subhneet Singh Kohli, Director, (2009-2017)
9.		Mr. Manmeet Singh Kohli, Managing Director (2009-2017)
10.	OP-4	Mr. Anderson Thomas, Chief GM, Railway Equipment Division (2009-2017)
11.		Mr. L.R. Murali, Ex. Marketing Head, (2009-2014)
12.		Mr. Dipankar Ghosh, CEO, Railway Equipment Division (October 2012-2017)
13.	OP-5	Mr. S.R. Venkat Raj, General Manager (Marketing) (May 2014-2017)
14.		Mr. D. Bheemsingh, Senior Vice President (Operations) (2013-2017)
15.		Mr. C.V. Ananthnarayanan, Ex-employee (2009-2017)
16.		Mr. K. Balasubramaniam, Ex Senior Manager (2009-2011)
17.		Mr. P.S. Rao, Ex-President (2009-2015)
18.		Mr. A.S. Chugh, Sales Representative (2009-2011)
19.		Mr. Vinay Laxman, Managing Director (2015-2017)
20.		Mr. Umesh Shah, Liaisoning Agent (2009-2017)
21.		OP-6
22.	Mr. Madhusudan Tantia, Director, (2009-2017)	
23.	OP-7	Mr. Ankit Tayal, Director, (2009-2017)
24.		Mr. Ghanshyam Das Tayal, Director (2009-2017)
25.	OP-8	Mr. Priyankar Bose, Manager (2009-2017)
26.		Mr. S. Balaji, Vice President (Marketing) (2009-2017)
27.	OP-9	Mr. S.K. Sharma, Divisional Manager (Marketing) (2009-2017)
28.		Mr. Rajkumar Bhatia, Managing Director (2009-2017)

45. In view of the instances cited above regarding the aforesaid persons and evidences against them, the Commission agrees with the DG in terms of liability to be fixed under Section 48. The Commission holds 11 persons of OP-1 to OP-10 liable in terms of provisions of Section 48 (1) of the Act and 26 persons liable under Section 48 (2) of the Act.

46. The Commission holds the following persons of OP-1 to OP-10 liable in terms of the provisions of Section 48 (1) of the Act, as they were, at the relevant time, in-charge of and responsible to their respective companies, for the conduct of their respective



businesses. Such persons have been unable to adduce any evidence to establish that the anti-competitive decisions in their companies were made without their knowledge or that they had exercised all due diligence to prevent such acts. Those found liable only under Section 48(1) are as follows:

<b>S. No.</b>	<b>Name of the person</b>	<b>Role of the person</b>
1.	Mr. Dipankar Ghosh of OP-4	He is the head of Railway Equipment Division of OP-4 and looking after the day to day affairs of the company. He admitted that his company through Mr. Anderson Thomas, Mr. L.R Murli and some other ex-employees were involved in bid rigging/cartelisation in different railway tenders of CBB.
2.	Mr. Rajkumar Bhatia of OP-9	He is the Managing Director of OP-9. He was looking after the day to day affairs of the company. The anti-competitive activities were in his knowledge as he gave vague and evasive answers to the confessional statements of the witnesses. He failed to produce any Board resolution regarding the duties assigned to different directors. He is one of the signatories in the bank account of OP-9 and he admitted that many banking transactions under his signatures are carried out every day. He holds the digital signature for e-bids for OP-9 on IREPS portal. He admitted that for the conduct of OP-9, he can be held liable for violation of the provisions of the Act.

47. Further, the Commission, holds the following persons of OP-1 to OP-10 liable only in terms of the provisions of Section 48 (2) of the Act for their specific anti-competitive acts, committed on behalf of the respective companies:

<b>S. No.</b>	<b>Name of the person</b>	<b>Role of the person</b>
1.	Mr. Jagdish Gadikar of OP-1	He used to handle the railways related business of OP-1 including quoting in railway tenders, keeping records of all tenders and other related issues. He co-ordinated with other Opposite Parties by way of exchanging e-mails, SMSes, WhatsApp messages and telephone conversations.
2.	Mr. M.S. Raja Sekar of OP-1	He was co-ordinating with the other Opposite Parties in rigging the bids in railway tenders of CBB even before the notification of the provisions of the Competition Act. From his confessional statement it has come to light that he was involved in discussing the price bids with the competitors of OP-1. He was involved in



S. No.	Name of the person	Role of the person
		exchanging of bid prices through e-mails. He was also the co-ordinator of the cartel. He was in contact with the other Opposite Parties through phone also.
3.	Mr. Vinay Sarin of OP-1	He has admitted to his liability before the DG. He has also given certain other details of the cartel including the common e-mail ID used by the bidders. Investigation revealed that even after 2013, he was in loop with the other officials of OP-1 and was aware about the anti-competitive activities of OP-1.
4.	Mr. Virender Singh Negi of OP-2	He was involved in exchanging price bids and other tender related information with the other Opposite Parties. He admitted that he did so on the directions of Mr. Saleh Najmuddin Mithiborwala, Director of OP-2.
5.	Mr. N.K. Bhattacharya of OP-3	He was involved in exchange of price bids, allocation of quantities, meeting with the Opposite Parties, exchanging SMSes, WhatsApp messages and e-mails <i>etc.</i> He also confessed that OP-3 rigged the bids of almost all the tenders floated by Indian Railway till 2017.
6.	Mr. Subhneet Singh Kohli of OP-3	As per the statement of Mr. N.K. Bhattacharya, he had informed Mr. Subhneet Singh that it was a practice even before decentralisation of railway tenders to quote identical prices so that quantities could be shared. Mr. Manmeet Singh Kohli also admitted in his statement that Mr. Bhattacharya had informed about the same to him and Mr. Shubneet Singh Kohli.
7.	Mr. Anderson Thomas of OP-4	He was involved in exchange of price bids and allocation of quantities of railway tenders relating to CBB. He exchanged a number of e-mails, SMSs and WhatsApp communications with the other Opposite Parties. He was also the last co-ordinator of the cartel and administrator of the WhatsApp group named 'Kwality Blocks' where he suggested the prices to be quoted by different Opposite Parties in the forthcoming tenders of CBB of Indian Railways. In his confessional statement, he admitted to the aforesaid facts.
8.	Mr. L.R. Murali of OP-4	During his tenure in OP-4, he used to exchange e-mails relating to price bids and allocation of quantities with the other Opposite Parties. The e-mails have been admitted by him. In his confessional statement, he gave details of the bid-rigging by OP-4 during his tenure and also details of the meetings with the other Opposite Parties attended by him. He also admitted that for his conduct and role, he is individually responsible for bid rigging/



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S. No.	Name of the person	Role of the person
		cartelisation by OP-4 during his tenure.
9.	Mr. S.R. Venkat Raj of OP-5	A number of incriminating e-mails evidencing bid rigging by OP-5 in railway tenders relating to CBB have been retrieved from his e-mail account when he was requested to open the same during recording of his deposition. There are also many other e-mails which were admitted by him in his subsequent statement. He confessed that when he joined the company in 2014, he understood from the record that it had been a practice since the last few years to discuss the price bids and allocate the quantities of CBB before any upcoming tender.
10.	Mr. D. Bheemsingh of OP-5	He admitted that he attended the meeting with the competitors of OP-5 at India Habitat Centre, Delhi in 2014. He confessed that OP-5 was involved in bid-rigging of railway tenders for CBB during his tenure. The e-mails exchanged by Mr. Bheemsingh with the employees of OP-5 also establish his involvement in bid-rigging of railway tenders of CBB.
11.	Mr. C.V. Ananthnarayanan of OP-5	He was actively involved in exchange of e-mails relating to price bids, allocation of tender quantities <i>etc.</i> with the other Opposite Parties. These e-mails have been admitted by him during recording of his statement. He also gave minute details about the cartel/ bid-rigging by OP-5.
12.	Mr. K. Balasubramaniam of OP-5	He confessed that during his tenure, OP-5 was involved in bid-rigging of railway tenders. He confessed that he used to meet the officials of the other Opposite Parties and discuss what prices are to be quoted in the forthcoming tenders. He also admitted to having attended certain meetings with the other Opposite Parties. Investigation has also revealed that there were many e-mails exchanged by Mr. Balasubramaniam relating to price bids and allocation/ distribution of quantities with the other Opposite Parties.
13.	Mr. A.S. Chugh of OP-5	He exchanged a number of e-mails with the competitors regarding price bids and allocation of quantities. He admitted having received the e-mails from the other Opposite Parties. He had also attended a meeting with the other Opposite Parties at Hotel Piccadily, Lucknow on 22.03.2017. He provided the details of cartelised tenders of 2007-08 to 2011-12 to OP-5 <i>vide</i> e-mail dated 17.10.2017. Further, incriminating e-mails regarding exchange of price bids and allocation of quantities were retrieved from his e-mail account during recording of his deposition.



S. No.	Name of the person	Role of the person
14.	Mr. Umesh Shah of OP-5	Mr. Umesh Shah was a Liaisoning agent of OP-5 till March 2017. However, it has been shown that while attending different railway meetings, Mr. Shah presented himself as Marketing Head of OP-5. This fact has been admitted by him in his statement dated 14.09.2017. He was authorized by OP-5 to attend negotiation meetings with the Indian Railways and he was even assigned cars by OP-5. He was involved in exchange of e-mails, SMSes and WhatsApps etc. He was one of the key persons involved in the bid-rigging of railway tenders of CBB by OP-5 by way of forming a cartel. He admitted that he was involved in such conduct though he stated that it was done on the directions of OP-5.
15.	Mr. Aditya Vikram Sharma of OP-6	He exchanged a number of e-mails, SMSs and WhatsApp communications with the other Opposite Parties regarding price bids, allocation of quantities and meetings with competitors.
16.	Mr. Priyankar Bose of OP-8	As per his own confessional statement, he used to exchange e-mails with Mr. Jagdish Gadikar of OP-1 regarding price bids and allocation of quantities. There were many incriminating e-mails retrieved from his e-mail account during the course of recording of his deposition. He confessed that the e-mails received by him were forwarded by him to his seniors. He had also attended a meeting with the other Opposite Parties in March 2017 at Hotel Piccadilly, Lucknow.
17.	Mr. S. K. Sharma of OP-9	He had exchanged a number of e-mails and WhatsApp communications with the other Opposite Parties relating to price bids and allocation of quantities. He was involved in exchange of SMSes and phone calls with Mr. Umesh Shah of OP-5.

48. Furthermore, the Commission, in agreement with the DG, holds the following persons of OP-1 to OP-10 liable in terms of both Section 48 (1) and Section 48 (2) of the Act, as being in-charge of and responsible to their respective companies, for the conduct of their respective businesses, as well as for their specific anti-competitive acts, committed on behalf of their respective companies:

S. No.	Name of the person	Role of the person
1.	Mr. P.K.	He was the Managing Director of OP-1. He admitted to have



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S. No.	Name of the person	Role of the person
	Chaudhary of OP-1	attended a meeting with the other Opposite Parties in 2014 in Delhi. He stated that the meeting was attended by the representatives of OP-2, OP-3, OP-4, OP-5, OP-6 and OP-7. He also stated that in the meeting, it was discussed that the Opposite Parties were not keeping their promise to quote pre-decided prices in the railway tenders and there were certain instances of under quoting. He confessed that his company had formed a cartel with the other manufacturers of CBB and thereby rigged the bids of railway tenders for CBB.
2.	Mr. Saleh Najmuddin Mithiborwala of OP-2	He was the Director of OP-2. He looks after day to day affairs of OP-2. He was the final authority for deciding the bid prices to be quoted by OP-2 in railway tenders. He was involved in the exchange of bid prices, tender related information such as distribution of quantities, attending meetings, exchanging SMSes, MMSs and WhatsApp communications with the other Opposite Parties relating to the bid prices <i>etc.</i> He admitted that such information helped him in receiving more orders from the Indian railways.
3.	Mr. Manmeet Singh Kohli of OP-3	He was the Managing Director of OP-3. He corroborated the confessional statement given by Mr. N.K. Bhattacharya and admitted that Mr. Bhattacharya informed him that it was a practice even before the decentralisation of railway tenders to quote identical prices so that quantities could be shared. He admitted that he allowed Mr. Bhattacharya to continue the said practice. He also admitted having attended a meeting around 2008-09 with the CBB manufacturers. He also admitted that for his role in the cartel, he is individually liable.
4.	Mr. P.S. Rao of OP-5	He was the President of OP-5. He admitted that he was aware that OP-5 and other manufacturers of CBB were meeting together for discussion of tenders. He also disclosed the names of his subordinates who used to meet with the other Opposite Parties. He gave minute details of involvement of OP-5 in the cartel arrangement during his tenure and also corroborated the confessional statements of Mr. Balasubramaniam, Mr. D. Bheemsingh, Mr. S.R. Venkat Raj and Mr. A.S. Chugh of OP-5. Also, being the President of OP-5, he was also responsible for the conduct of business of OP-5 and he was also aware that the officials of OP-5 were involved in rigging of bids of railway tenders relating to CBB by way of forming a cartel. The said anti-competitive conduct was going on with his consent during his





S. No.	Name of the person	Role of the person
		tenure from 2009 to 2015.
5.	Mr. Vinay Laxman of OP-5	He was the Managing Director of OP-5. He confessed that he takes complete responsibility for all actions regarding cartel arrangement by his company and Mr. Umesh Shah till 01.07.2016. He admitted that he can be personally held liable and he takes full responsibility of whatever has been done by the company and is ready to face the consequences. He, being the Managing Director of OP-5, was responsible for the conduct of its business and he was also aware that the officials of OP-5 were involved in rigging of bids of railway tenders relating to CBB. The said anti-competitive conduct was going on with his consent during his tenure from 2015 to 2017.
6.	Mr. Madhusudan Tantia of OP-6	He was the Director of OP-6. When confronted with the statement of Mr. Aditya Vikram Sharma, he admitted that he was aware about the cartel formation by the Opposite Parties to rig the bids of railway tenders. He also admitted that Mr. Aditya Vikram Sharma informed him once or twice about the price related information being shared by OP-1 with him, however, he stated that he had told him to ignore such e-mails. He admitted that his staff was in contact with the other Opposite Parties for which he had no defence.
7.	Mr. Ankit Tayal of OP-7	He was the Director of OP-7. He exchanged numerous e-mails relating to price bids, meetings, allocation of quantities with the other Opposite Parties. He was also one of the members of the WhatsApp group named 'Kwality Blocks'. He admitted that OP-7 was involved in bid-rigging of railway tenders relating to CBB. He exchanged a number of SMSes and WhatsApp communications relating to price bids with Mr. Jagdish Gadikar of OP-1.
8.	Mr. Ghanshyam Das Tayal of OP-7	He was another Director of OP-7. Mr. A. S. Chugh of OP-5 in his confessional statement had stated Mr. Ghanshyam Das Tayal used to discuss the price bids on behalf of OP-7 till 2009-10. However, during his deposition, to avoid his personal liability, he gave vague statement before the DG.
9.	Mr. S. Balaji of OP-8	He was the Vice President (Marketing) of OP-8. He was looking after the railway related business of OP-8. As per his own statement, he had decided the bid prices and had informed Mr. Priyankar Bose of OP-7 about the same. He admitted that he took into consideration the inputs given by Mr. Bose while deciding the bid price. He admitted that till 2014, OP-8 used to receive the





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S. No.	Name of the person	Role of the person
		information through e-mails about the prices to be quoted in railway tenders relating to CBB. He gave his consent to rig the bids of railway tenders relating to CBB by OP-8 by way of forming a cartel with the other Opposite Parties.

### **Conclusion:**

49. In view of the above, the Commission holds OP-1 to OP-10 to have contravened the provisions of Section 3 (3) (a), 3 (3) (c) and 3 (3) (d) read with Section 3 (1) of the Act during the period 2009 to 2017, as detailed in this order.
50. The Commission, in terms of Section 27 (a) of the Act, directs the OP-1 to OP-10 and their respective officials who have been held liable in terms of the provisions of Section 48 of the Act, to cease and desist in future from indulging in practices which have 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 the present order.
51. So far as the issue of imposition of penalty is concerned, the Commission has carefully examined the matter. It is observed that in the present matter, initially 4 Reference Cases were received from different Railway Zones/ Divisions and the same were clubbed on different occasions. Accordingly, a common investigation was carried out by the DG in these cases and also a consolidated investigation report was submitted. During the final stage of investigation, the Commission received one more Reference Case from a Railway Zone with similar set of allegations and accordingly, the Commission kept this Reference Case in abeyance to await the investigation report in the clubbed cases. As such, after receipt of consolidated investigation report, the Commission clubbed this subsequent Reference Case with the initial batch of 4 Reference Cases and forwarded the investigation report to the parties in all the 5 Reference Cases. Further, apart from examination of various tenders covering a period starting from 2009 to 2017, the present matter also involved 12 OPs and their 28 individuals. In such a wide ranging and complex investigation carried by the DG spanning across various tenders floated by various Zones/ Divisions of Indian Railways



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over a long period of time, the concerned parties have not only cooperated but have even admitted their respective role/ conduct in the said tenders as brought out by the DG. It cannot be gainsaid that cooperation to such an extent by the parties concerned is one of the consideration which may be taken into account by the Commission in quantifying the penalties. Moreover, the Commission notes that some of the OPs are Micro Small and Medium Enterprises (MSMEs). In fact, the Commission has also looked at the relevant turnover arising out of Composite Brake Block (CBB) in the present matter and observes that most of the OPs are having small annual turnover in this segment. At the same time, the Commission is also cognizant of the prevailing economic situation arising due to the outbreak of global pandemic (COVID-19) and the various measures undertaken by the Government of India to support the liquidity and credit needs of viable MSMEs to help them withstand the impact of the current shock. In this backdrop, considering the matter holistically and cumulatively, the Commission, in the interest of justice, refrains from imposing any monetary penalty in the peculiar circumstances of the case, as noted above. As pointed out earlier, the Commission is also persuaded of the fact that the OPs have fully cooperated during investigation and inquiry before the DG and the Commission respectively by not denying the material confronted by the DG. Needless to add, such cooperative conduct optimizes the resources of the DG as also expedites the adjudicatory process besides lessening the regulatory burden. The ultimate object of the Act is to correct the market distortions and to discipline the behaviour of the market participants. In such backdrop, the Commission holds that the objectives of the Act would be met if the parties in the present matter cease such cartel behaviour and desist from indulging in similar behaviour in future, as directed earlier. The parties are however, cautioned to ensure that their future conduct is strictly in accord with the provisions of the Act, failing which any such future behaviour would be viewed seriously constituting recidivism with attendant consequences.

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



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53. The Secretary is directed to communicate to the parties, accordingly.

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

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

**New Delhi**  
**Date: 10.07.2020**

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