(2025) 04 CCI CK 0370

In the Competition Commission Of India

Case No : Reference Case No. 02 of 2023

CMM/ Loco BLW Varanasi APPELLANT

Vs

Kharagpur Metal Reforming Industries Private Limited RESPONDENT

Date of Decision : 30-04-2025

Acts Referred:
Competition Act, 2002 — Section 3, 3(1), 3(3)(d), 19(1)(b), 26(2)

Citation : (2025) 04 CCI CK 0370

Hon'ble Judges : Ravneet Kaur, Chairperson;Anil Agrawal, Member;Sweta Kakkad, Member;Deepak Anurag, Member

Bench : Full Bench

Judgement

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

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

2. It is stated by the Informant that earlier, on receipt of a complaint sent by the Railway Board regarding alleged cartel formation by the OPs in CLW, DLW, DMW & Zonal Railway for electric WAG7 and WAG9 locomotive casting/Mach components, MSU, Gear Case, 6FRA Motor components and many more items for electric/diesel locomotive, the office of the Chief Vigilance Officer ('CVO')/BLW had conducted a detailed investigation and submitted its report to the Railway

Board vide letter dated 14.01.2021. The vigilance departments of DMW and CLW also submitted their investigation reports on the said matter vide DMW’s letter No. DMW/Vigilance/Dy.CVO/Comp.07/2021 dated 23.08.2021 and CLW's letter No, 20/VO/CLW/CON/33 dated 11.10.2021 respectively.

3. The Informant further stated that the abovesaid reports were examined by the Railway Board Vigilance. After considering the aforesaid reports, Railway Board Vigilance was of the view that there appeared cartelization in the procurement of the item — Motor Suspension Unit i.e. MSU as analysed by BLW. Hence, Railway Board vide letter no. 2020/V5/DLW/ST/56 dated 13.07.2022 asked BLW Vigilance, CLW Vigilance and DMW Vigilance, to consider referring the matter of cartelization to the Commission. Vigilance department, BLW forwarded the said direction to the Office of the Principal Chief Materials Manager, BLW for necessary action vide letter No. GM/Vig/Stores/09-20/30 Comp. dated 26.07.2022. Accordingly, the present Reference Case has been filed before the Commission for consideration.

4. As per the Information, MSU, a Mild Steel (‘MS’) casting item, is required in the manufacturing of WAG-9 and WAP-7 locomotives which are manufactured at DLW, CLW and DMW. Earlier, vendor development authority for MSU was vested with Research Designs and Standards Organisation (‘RDSO’) and the item was reserved for procurement from RDSO approved sources. However, during year 2017, vendor development authority of MSU was transferred to CLW. The Informant also provided the list of approved vendors and their production capacity, which is as per the table below:

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

Sl. No.	MSU’s Approved Vendors (2017)	Annual Production Capacity in 2018	
		Loco Set Per Year (A)	In Sets(Ax6)
1.	Kay Pee Equipment Pvt. Ltd., Howrah	600	3600
2.	Kharagpur Metal, Kharagpur	240	

1440

3.

Simplex Engineering, Bhilai (Simplex)

150

900

4.

Kalyani Engineering, Ghaziabad (Kalyani)

-

-

Total

990

5940

5. The Informant further stated that the pattern of consumption of MSU in production units shows that overall consumption of item has increased from 1710 sets in 2017-18 to 3687 sets and 5179 sets in 2018-19 and 2019-20, respectively, whereas the number of approved firms to meet the requirement has not increased correspondingly.

6. It was further stated by the Informant that unapproved firms may be considered for only a small quantity up to 20% of the net requirement as developmental order subject to successful capacity cum capability assessment if found technically suitable subject to completion of formalities as per the bid conditions. Also, tenderer must enclose required past credentials of supply of same /similar tendered item to show that they are capable of supplying the tendered item and to substantiate their capacity to develop the tendered item.

7. It was further submitted by the Informant that M/s Simplex, an approved vendor, has supplied total 332 Sets of MSUs in different purchase orders ('POs') at DMW, out of which 22 Sets have witnessed warranty failure. In case of Developmental sources, M/s Indore Nitride's, Indore, has supplied total 96 Sets of MSUs in different POs at DMW, out of which 06 Sets have been rejected. Hence, it can be noted that though quality reliability of both the approved vendor (6.63%) as well as the developmental vendor (6.25%) is almost same but implementation of quality and safety is not fairly applied at developmental sources. However, in terms of overall reliability of product, most of the vendors failed to execute the order within the contractual delivery period.

8. It has been submitted by the Informant that delay in granting approval led to fewer suppliers which resulted in procurement at higher rates and cartelization. At present, total value of all POs placed (during 2016-2020) by Railway PUs on

different developmental sources is INR 17.42 crores (approx.) for 1249 sets of MSUs. All these POs which are at substantially lower rate are pending against developmental sources. Arbitrariness in execution of the vendor approval process is prevalent.

9. In this regard, a table has also been submitted by the Informant which is being reproduced below. On the basis of this table, it is alleged by the Informant that there were sufficient interested vendors present in the market for supplying MSU and the item is lucrative for the suppliers as 21 tenderers have recently quoted and expressed their interest.

Table 2: Number of participants in various tenders

Sl. No.	Tender No.	Date	PU	No. approved vendors quotes	No. of other vendors quotes	Total No. of vendors quotes
1.	8130366	31.08.2015	CLW	3	4	7
2.	83170366	25.07.2016	CLW	3	5	8
3.						

83180366

13.07.2017

CLW

4

9

13

4.

04171102

17.07.2017

DLW

4

5

9

5.

041713681

23.01.2018

DLW

4

10

14

6.

83190366

17.07.2018

CLW

4

13

17

7.

041813800

16.01.2019

DLW

3

8

11

8.

21197414

22.07.2019

DMW

1

1

2

9.

83190366A

11.03.2020

CLW

3

7

10

10.

04201105

10.07.2020

DLW

3

18

21

10. It is further submitted by the Informant that in subsequent tenders, increase in quoted rate of OP-1 and OP-2 are similar in nature with a narrow difference of about 0.5% to 1.75%. This arrangement is alleged to be not coincidental as such arrangements continued for years. This indicates that there is some secret agreement between these firms for submitting identical/similar bids with marginal difference so that majority of quantity could be distributed between them.

11. It is also alleged by the Informant that in the case of CLW's tenders up to the year 2017, the rates of OP-1, OP-2 and Simplex were following different trends from each other. But after that the rate of OP-1 has always been lower than the rate of OP-2 and M/s Simplex in all subsequent tenders.

12. It is further submitted that as per Railway Board guidelines, if the difference between bid amounts is up to 3%, then order quantity will be distributed between firms in the ratio of 65:35. However, in 2020-21, both the OPs got the order for quantity 700 Sets each i.e. 50:50, though their quoted rates were different.

13. It is alleged by the Informant that there seems to be some understanding between OP-1 and OP-2 and the trend of increasing rate continued till 2020-21. When Wholesale Price Index' ('WPI') of MS Casting was having increasing trend (between 2015 to 2017), the PO rate was following decreasing trend. Again, between 2019 to 2020 WPI of MS Casting was decreasing, but rates of POs were increasing. Hence, as per the Information, firms had quoted rate without considering input cost & nominal profit, and contract rate had little relation with the WPI of MS Casting i.e. input cost of material and labor etc. had little relation with the PO rate.

14. It is stated by the Informant that RDSO received 4 applications prior to 2017 for vendor development and the same were transferred to CLW in 2017. Since 2017, CLW considered 3 applicants for development of vendor base, but from last 8 years no vendor could enter the market. It is also submitted by the Informant that about two years waiting time has been noticed to clear one intermediate stage of approval process. There are many anomalies in unnecessarily long vendor approval process due to which two potential vendors M/s Bhupendar Engineering and M/s Indore Nitriders are not getting vendor approval since last five to eight years. Thus, entry barriers exist in the system. It is also alleged by the Informant that the OPs are creating hurdles in enlargement of vendor base.

15. It is alleged that lower vendor base and abnormal delay in vendor approval provides suitable environment and sufficient time to approved vendors to increase the rate by cartelization resulting in economic loss to Railways.

16. The Commission considered the matter in its ordinary meeting held on 24.04.2024 and, inter alia, directed the Informant to provide further information/ data related to bid rigging. To establish a suspicious pattern of bid rigging, the Commission directed the Informant to provide details related to tenders such as date of tenders, tender numbers, production units, bid rates, IP addresses, date & time of submission of bids, award rates, total quantity awarded, etc. The Informant was also directed to provide evidence regarding meeting of minds of OPs.

17. After multiple extension of time by the Commission, the Informant submitted the response on 09.11.2024. Table-3 below provides the details of tenders

provided by the Informant:

18. Based on the table provided above by the Informant, the Commission has carefully reviewed a range of information submitted by the Informant regarding various tenders. The details provided include bid rates, IP addresses, bid submission dates and times, awarded tender rates, awarded quantities, and other relevant data regarding the bidders involved in the tender process. Upon conducting a thorough and detailed examination of the data submitted, the Commission found no indications or evidence of bid rigging between OPs, as alleged by the Informant. Despite the comprehensive nature of the data, no suspicious patterns or irregularities were identified that would suggest coordinated or anti-competitive behaviour. Therefore, the alleged bid rigging claims could not be substantiated.

19. Further, the Commission also observed from the subsequent response of the Informant that the Railway Board, vide letter no. 2020/V5/DLW/ST/56 dated 13.07.2022, had not advised any action to be taken against any of the officials of the railways.

20. The Informant, vide response dated 09.11.2024, further quoted para 7.6.4.1 of the vigilance investigation report and submitted that "analyzing the data of tabulation statement of financial bid available at IMMIS module of IREPS of different PUs (Table 7.6.3.1 to 7.6.3.3) indicate the difference in rates quoted by these firms at different PUs has marginal difference of about 0.5% to 1.5% and no other competitor is lying between these two firms in all the tenders. This indicates towards collusive bid behavior and it seems that at DMW Patiala, M/s KMRI is willfully not taking participation in tenders. As per para 7.7.1.1 of the vigilance investigation report, the Informant stated the increase and decrease in the quoted rates of the M/s KMRI and M/s Kaypee at DLW and CLW has similar trend and the margin of the difference in quoted rate also lies in between 0.50% to 1.75%. This arrangement is not coincidental as such arrangement continued for years. This indicates that, there appears to have a secret agreement in between these firms for submitting identical bids with marginal difference so that majority of the quantity could be distributed between them. This violates the instructions regarding cartel formation. It means M/s KMRI and M/s Kaypee have violated the declaration submitted by them at the time of bidding."

21. In connection with the above observation made by the vigilance investigation report, regarding submitting the bids between 0.50% to 1.75% and corelating trends of the OPs, the Commission notes that mere quoting bids in the range of 0.50% to 1.75% does not indicate any suspicion of bid rigging.

22. The Commission, after considering the Information and subsequent response of the Informant, observed that in the absence of any material having been brought on record by the Informant suggesting or indicating meeting of minds between the OPs, the Commission is of the opinion that prima facie, no case of contravention of provisions of Section 3 of the Act is made out in the present

matter against OPs. Accordingly, the instant reference case is directed to be closed forthwith in terms of the provisions of Section 26(2) of the Act.

23. The Secretary is directed to communicate to the Informant, accordingly.

