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Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA

Ref. Case No. 05 of 2014

In Re:

**Shri D.K Srivastava
Chief Material Manager,
Rail Coach Factory (Kapurthala),
Tilak Bridge, New Delhi-110002**

Informant

And

**1. M/s Faiveley Transport India Ltd.
P.B. No. 39, Harita, Hosur
Tamil Nadu– 635109**

Opposite Party No. 1

**2. M/s Knorr Bremse India Pvt. Ltd.
51/4 KM Stone, Baghola
Delhi Mathura Road, Palwal
Haryana – 121102**

Opposite Party No. 2

CORAM

**Mr. Ashok Chawla
Chairperson**

**Mr. M. L. Tayal
Member**

**Mr. S. L. Bunker
Member**



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Mr. Sudhir Mital

Member

Mr. Augustine Peter

Member

Mr. U.C. Nahta

Member

Appearances: Shri D. K Kingra, Deputy Chief Materials Manager, Rail Coach Factory (Kapurthala) for the Informant.

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

1. The present reference has been filed by Shri D. K. Srivastava (**‘the Informant’/RCF**) under section 19(1) (b) of the Competition Act, 2002 (**‘the Act’**) against M/s Faiveley Transport India Ltd. (**‘the Opposite Party No. 1’**) and M/s Knorr Bremse India Pvt. Ltd. (**‘the Opposite Party No. 2’**) alleging *inter alia* contravention of the provisions of section 3 of the Act.
2. Factual matrix, as culled out from the reference and the documents filed therewith, may be briefly noted.
3. As per the reference, a global tender for purchase of Brake Disc for Wheel Set for LHB Design Coaches was opened on 10.12.2013 by RCF. Certain criteria were laid down in the said tender in order to qualify to bid for the same. It is stated that M/s IBRE SARL, France was the only company from outside India that had bid for the said tender. From India, offers were received from M/s Stone India Ltd., M/s Escorts Ltd., M/s Knorr Bremse India Pvt. Ltd. (the Opposite Party No. 2) and M/ Faiveley Transport India (the Opposite Party



- No. 1). It is stated that Brake Disc is required for LHB Design AC/Non-AC Coaches and Power Cars. Since it is a safety and critical item required for production of coaches, the quantity to be procured is normally split between two firms to ensure regular supply of material.
4. It is stated that on technical scrutiny of the bids, the offers of the Opposite Party No. 1 & the Opposite Party No. 2 were found to be eligible for bulk regular orders against the tender. The offer of the Opposite Party No. 2 was the lowest acceptable offer in the case. It had quoted Rs. 78,800/- for localised Brake Disc and Rs. 80,272.50/- for imported Brake Disc.
 5. The Informant states that in order to clarify whether the localised Brake Disc offered by the Opposite Party No. 2 was fully or partially localised, a letter dated 07.01.2014 was sent to the Opposite Party No. 2 asking it to indicate the localised and imported portion of the cost. In addition to this, the Opposite Party No. 2 was also asked to submit the Proforma Invoice from their principals in support of their offer for the imported Brake Disc as per clause 3.9 of the Bid document Part II.
 6. Information was also sought from the Opposite Party No. 1 to furnish the name of their German Associate from whom they were sourcing the product and also asked to submit the Proforma Invoice from their principals in support of their offer for the imported Brake Disc as per clause 3.9 of the bid document.
 7. It is stated that the Opposite Party No. 2, in its response *vide* letter dated 21.01.2014 informed that their product is fully localised except for certain critical hardware necessary for the assembly of the Disc and that the value of the import portion is not significant. With regard to imported Brake Disc, the Opposite Party No. 2 stated that they were importing the same from their plant in Berlin, Germany. It was submitted that if their offer for imported Brake



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Disc is found suitable, the same may be considered. However, no Proforma Invoice as desired was submitted.

8. The Opposite Party No. 1 *vide* letter dated 11.01.2014 enclosed a letter from its sister company *i.e.* M/s Faiveley Transport, Witten, Germany, authorising them to market and sell Axle Mounted Brake Disc for both Indian Railways and metro markets. Proforma Invoice in support to their offer to RCF was also submitted. However, the same did not include the price in Euro which was apparently the basic purpose of getting the Proforma Invoice. The Informant submits that the Opposite Party No. 1 has not submitted the cost of the product in foreign currency for which Proforma Invoice was requested.
9. The Informant has also stated that though the Opposite Party No. 2 was the lowest bidder, the rate quoted for the localised Brake Disc was 10.81% higher than its last purchase price. That after repeated discussions and deliberations, the Opposite Party No. 2 agreed to reduce the basic rate and accordingly the revised all inclusive rate came to Rs. 71,109.08 from Rs. 78,800/-. It is stated in the information that the basic rate quoted by the Opposite Party No. 2 *i.e.*, Rs.60,130.00 for the localised Brake Disc after negotiation is almost the same as the landed cost of Rs. 60,131.67 for the imported Brake Disc without custom duty and sales tax based on the last contract.
10. The Informant submits that it doubts the reasonableness of the price quoted for the imported Brake Disc by the Opposite Party No. 1 & the Opposite Party No. 2 in the absence of Proforma Invoices. It also doubts the reasonableness of the rates quoted by the Opposite Party No. 2 for the localised Brake Disc even after negotiation as the revised basic amount works out to be almost same as basic landed rate excluding customs duty and sales tax against last contract for the imported Brake Disc.



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11. It is stated that Brake Disc is required for production of LHB Coaches and without the same, serious problems would be caused in the production and blockage of huge inventory in RCF. It was stated that due to these reasons the tender had to be finalised at the negotiated rates of this item with the Opposite Party No. 1 and the Opposite Party No. 2. It also mentions that both the Opposite Parties are the only established suppliers for Axle Mounted Disc Brake system for AC and Non-AC Coaches of LHB design.
12. In view of the above, the Informant alleged that the Opposite Party No. 1 and the Opposite Party No. 2 are engaged in collusive bidding which is in violation of section 3 of the Act. That they are operating in a cartel like behaviour to share the quantities by taking benefit of limited competition in the market and also by taking advantage of the policy of Ministry of Railways regarding splitting of quantity between the firms to ensure regular supply. It is further alleged that the Opposite Parties are taking advantage of RCF's dependence on the said items since the coaches cannot be manufactured without them.
13. Based on these averments and allegations, the Informant has filed the instant reference before the Commission.
14. The Commission has perused the material available on record besides hearing the representative of the Informant who appeared before the Commission on 16.09.2014.
15. From the facts narrated above, it appears that the Informant is aggrieved of Opposite Parties' refusal to disclose information as sought from them as per the tender requirement *i.e.*, Proforma Invoice from their principals in support of their offers for the imported Brake Disc. It is also aggrieved of the fact that the lowest bidder's quote for the localized Brake Disc was 10.81% higher than the last purchased price.



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16. It is noted that the RCF had floated a global tender to procure Brake Disc for Wheel Set for LHB design coaches. After having scrutinized the tender offers, RCF found Opposite Parties are eligible for the regular bulk orders for the said items. However, the rate of localized brake disc offered by the Opposite Party No. 2 (lowest bidder) was considered to be on higher side. That even though the rate was lowered after several negotiations, basic rate was still 10.81% higher than the last purchase price.
17. The Commission notes that allegation of collusive bidding on the ground that the Opposite Parties refused to provide the Proforma Invoices from their principals is misconceived. Firstly, it may be noted that it is not the case that both of them have refused to submit the required Proforma Invoices. The Opposite Party No. 1 did submit the Proforma Invoice, however, the same was not in foreign currency as desired by the Informant. In such scenario, the Informant could have instructed the Opposite Party No. 1 to further furnish in foreign currency. Further, no collusion can be deduced by such infringement of tender conditions *per se*.
18. Collusive tendering can be in many forms, for instance, quoting identical rates, price fixing, allocation of projects, market sharing, exchange of information, *etc.* It limits the price competition between the parties and amounts to an attempt by bidders to share the market amongst themselves. In the instant case, the Informant has raised neither of such issues that would be covered within the mischief of section 3 of the Act. Its grievance is only with respect to refusal of the Opposite Parties to divulge information which is not a competition concern. Besides, the Informant is aggrieved of the fact that even though the quoted rate was lowered by the Opposite Party No. 2 after several negotiations, basic rate was still 10.81% higher than the last purchase price.
19. On a careful perusal of the reference and the material available on record, the Commission is of opinion that the Informant has failed to adduce any material



which can be suggestive of any collusive or concerted action on the part of the Opposite Parties wherefrom even a *prima facie* satisfaction of contravention of the provisions of section 3 of the Act may be recorded.

20. In view of the above, no case of contravention of the provisions of section 3 of the Act is made out against the Opposite Parties and the information is ordered to be closed forthwith in terms of the provisions contained in section 26(2) of the Act.

21. It is ordered accordingly.

22. The Secretary is directed to inform the parties accordingly.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(M. L. Tayal)
Member

Sd/-
(S. L. Bunker)
Member



Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U.C. Nahta)
Member

New Delhi

Date: 23.09.2014