



COMPETITION COMMISSION OF INDIA

Case No. 01 of 2021

In Re:

GAIL (India) Ltd.
GAIL Bhawan, #16 Bhikaji Cama Place
R.K. Puram, New Delhi – 110 066.

Informant

And

Eagle Burgmann India Private Limited
Registered Office at Plot No. 64
Ramtekadi Industrial Area
Hadapsar, Pune, Maharashtra – 411 013.

Opposite Party

CORAM:

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

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

1. The present Information has been filed by GAIL (India) Ltd. (**'Informant'**/ **'GAIL'**), a Maharatna Government of India undertaking incorporated in August 1984 as a Central Public Sector Undertaking (**'PSU'**) under the Ministry of Petroleum and Natural Gas, under Section 19 (1) (a) of the Competition Act, 2002 (the **'Act'**), against Eagle Burgmann India Private Limited (**'Opposite Party'**/ **'OP'**), a manufacturer of, *inter alia*, mechanical seals and sealing systems, alleging contravention of the provisions of Section 4 (1) read with Section 4 (2) (a) (ii) of the Act.



2. Facts, as stated in the Information, may be briefly noted.
3. The Informant is stated to be the largest state-owned natural gas processing and distribution company in India, engaged in the business of marketing, transmission and distribution of natural gas, liquified natural gas, petrochemicals, *etc.*
4. The Opposite Party is averred to be a significant player in the mechanical seal industry in India and it designs and manufactures mechanical seals and sealing systems for a wide array of equipment including pumps, compressors, mixers, kneaders, agitators, turbines, *etc.* It is stated to cater mainly to oil and gas industry, refineries and petrochemical plants, power plants and fertiliser industry.
5. The product involved in the present matter is the mechanical seal manufactured by the Opposite Party and procured by the Informant. A mechanical seal is a device which is often used to arrest leakage in rotary machines like pumps compressors and mixers. It must be compatible with the design of the pump to ensure proper sealing. Mechanical seals are used by various industries for their chemical processes including oil and gas industry, chemical industry, water and wastewater industry, power industry, pharmaceutical industry, mining and minerals industry and food and beverages industry.
6. The Information in the present matter pertains to a gas based petrochemical plant owned and operated by the Informant located in Pata, District - Auraiya, Uttar Pradesh which was commissioned in March 1999 at a cost of ₹2404 crore. It had the design capacity of 300 Kilo Ton per annum ('**KTA**') (200 KTA for Linear Low-Density Polyethylene ('**LLDPE**') and 100 KTA for High Density Polyethylene ('**HOPE**')) to cater to the market in north India. In 2005, a new HOPE II was erected therein with a capacity of an additional 100 KTA which brought the total capacity of the plant to 400 KTA (hereinafter referred to as '**PC I**'). In 2010, a decision was taken to again expand the capacity of the plant to nearly double *i.e.* 800 KTA of polymer production. This Petrochemical II Expansion Project ('**PC II Project**') was to be completed in two places *i.e.* Pata in Uttar Pradesh and Vijaipur in Madhya Pradesh. The PC II project for



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Pata included setting up of a LLDPE II unit, a new Butene I plant, GCU II unit and modifications to the existing GPU ('PC II'). Construction activities for the same commenced from October 2011 and commissioning was achieved in March 2015 (PC I and PC II are collectively referred to as '**Pata Plant**').

7. The Informant had appointed Engineers India Ltd. ('**EIL**'), another PSU under the Ministry of Petroleum and Natural Gas, as the Project Management Consultant ('**PMC**') to execute the Engineering Procurement Construction for PC II Project. EIL had procured all the products including rotary equipment (such as pumps, compressors *etc.*), vessels, heat exchangers, specialty goods, *etc.* required for execution of the PC II project. For procurement of pumps and steam turbine generators, EIL had issued several Requests for Quotation ('**RFQ**') to pump vendors/ manufacturers wherein the manufacturers were required to provide pricing for the complete pump package and mandatory spares. In case of pumps, the mandatory spares included a compulsory mechanical seal set. In some cases, the mandatory spares included mechanical seals as well as some other electrical and instrument spares. However, the inclusion of mechanical seal as a mandatory spare was compulsory.
8. Pursuant to selection of vendors for supply of steam turbine generator packages and different types of pumps on the basis of lowest price techno commercially acceptable method, purchase orders ('**POs**') were issued by the Informant. According to the POs, the supply of steam turbine generator packages and pumps were to be strictly in accordance with the terms and conditions set out in the PO and the technical specifications and other documents provided in the purchase requisition.
9. A vast majority of pumps that were supplied for the Pata Plant by the pump manufacturers were fitted with the mechanical seals manufactured by the Opposite Party and two other manufacturers *viz.* Flowserve and John Crane. It is stated that entities like Opposite Party who design and manufacture mechanical seals are considered as Original Equipment Manufacturers ('**OEM**'). The Opposite Party is the OEM of approximately 276 mechanical seals in PC I and approximately 124 mechanical seals in PC II which form the bulk of seals of Pata Plant. Also, during



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execution of PC II, only big pumps with cartridge type mechanical seals were considered for LLDPE II plant and approximately 45% of the mechanical seals used in the same were manufactured by the Opposite Party. Similarly, in GCU II, GPU II and Butene I, the mechanical seals procured from the Opposite Party were approximately 30%, 32% and 45%, respectively.

10. The Informant has stated that after commissioning of the Pata Plant, it approached the pump manufacturers for supply of spare mechanical seals manufactured by the Opposite Party for operation and maintenance ('O&M'). However, the pump manufacturers expressed their inability to supply the mechanical seals separately as spares. They conveyed that the mechanical seals have to be procured directly from the Opposite Party. Resultantly, the Informant was forced to approach the Opposite Party for procurement of mechanical seals having the same specifications as were supplied during the stage of execution of the Pata Plant, during O&M. However, for such mechanical seal spares, the Opposite Party quoted to the Informant, highly exorbitant prices.
11. Coming to the allegations made in the Information, the Informant has alleged that at the time of purchase of the pumps, an end user like the Informant is totally oblivious of the price of the mechanical seal. The only way to extrapolate the prices of the mechanical seal at the project stage is through the POs issued by the Informant to the pump vendors/ manufacturers at that stage which also indicate the price charged for mandatory spares, including mechanical seal. It is stated that during execution of Pata Plant also, the pump vendors/ manufacturers had quoted prices for complete pump package and mandatory spares, which included mechanical seals.
12. Further, the Informant has submitted that as the mechanical seals used in Pata Plant were not standard components, therefore, they are not interchangeable with spares of other seal manufacturers. The design and engineering of the mechanical seals supplied by Opposite Party were customised based on various factors such as fluid handled, process conditions, plant design and site constraints. Thus, except for the mechanical



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- seal manufactured by the OEM for a particular pump, no other mechanical seal can be installed in that pump.
13. As per the Informant, since it had purchased the primary product *i.e.* pump which included the mechanical seal of the Opposite Party, it was 'locked in' to purchase the spare mechanical seals during O&M from the Opposite Party only (which is the OEM for the mechanical seal included in the pump purchased initially). As such, the Informant is heavily dependent on the Opposite Party for procuring mechanical seals spares.
 14. The Informant has alleged that knowing the above, the Opposite Party has been quoting very high prices for mechanical seal spares to the Informant. The Informant alleged that in fact, in certain instances, the price of mechanical seals quoted by the Opposite Party is even higher than the price of the complete pump package (which included mechanical seal as a component) which was paid by the Informant at the time of execution of the Pata Plant.
 15. Thus, as per the Informant, the Opposite Party is unfairly using its monopolistic and dominant position *qua* the Informant to charge exorbitantly high prices for supply of spare mechanical seals and thus, is economically exploiting the Informant at the stage of O&M.
 16. As per the Informant, though the Opposite Party may not have been in a dominant position at the stage of supply of the primary product (*i.e.* pump), the moment the Informant purchased a pump including the mechanical seal manufactured by the Opposite Party, the Informant became dependent on the Opposite Party for obtaining spare parts/ mechanical seals for replacement during O&M. At this stage, the Opposite Party acquired a dominant position with respect to the mechanical seals manufactured and supplied by it *qua* the Informant due to lack of interchangeability, substitutability, compatibility with the pump and non-standard sophisticated nature of the mechanical seals.



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17. The Informant has cited diverse reasons for its inability to discontinue buying mechanical seals from the Opposite Party such as lack of inter-brand interchangeability of mechanical seals/ safety consideration besides reluctance on the part of the pump manufacturers to supply mechanical seals and insistence on getting the same procured directly from the Opposite Party/ no obligation on the part of pump manufacturer to supply spares *etc.*
18. The Informant has hence, alleged that the Opposite Party, after gaining a foothold in Pata plant, is now intending to unfairly exploit the dependence of the Informant on the mechanical seals manufactured by it. In this regard, the Informant has gathered and collated the price of pumps supplied during execution of PC II of Pata Plant and the prices quoted by the Opposite Party for mechanical seals procured during the period 2016-2020 which, as per the Informant, reflect arbitrarily inflated cost ranging from 33% to 36000%.
19. Based on the above averments and allegations, the Informant has stated that the relevant product market in the present matter is 'mechanical seals' and the relevant geographic market is 'Pata Petrochemical Plant'. As per the Informant, the Opposite Party's imposition of unfair pricing at its sole discretion tantamount to taking undue advantage of the Informant's dependence on itself for the present and future supply of customised mechanical seals during O&M. The Opposite Party's dominance is also evident from the fact that it has refused to supply mechanical seals to pump manufacturers, whom the Informant had approached initially for supply of spare pump assemblies (including mechanical seal) for O&M. Thus, as per the Informant, the conduct of the Opposite Party of quoting exorbitant prices for the supply of mechanical seals post project stage and hiking the prices of the same by almost 4000% in some instances, amounts to abuse of dominance by it *qua* the Informant in the relevant market of customised mechanical seals for Pata Petrochemical Plant, thereby violating the provisions of Section 4 (1) and Section 4 (2) (a) (ii) of the Act.
20. The Commission has perused the Information and the documents filed therewith.



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21. GAIL has filed the instant Information against the Opposite Party alleging exorbitant increase, ranging from 33% to 36000% from commissioning of the plant in 2011-12 to 2020, in the price of mechanical seals being manufactured by it, to be used by GAIL in rotary equipment (pumps) for its petrochemical plant at Pata in Uttar Pradesh. For execution of this project, GAIL had appointed EIL as PMC.
22. From the Information itself, it is apparent that GAIL has defined the relevant product market as 'mechanical seals'. While it has pointed out that there are only a few companies which design and manufacture mechanical seals, it has itself mentioned names of 19 such manufacturers illustratively. In fact, in respect of Pata Plant itself, GAIL has averred that a vast majority of pumps that were supplied were fitted with mechanical seals manufactured by the Opposite Party besides other 'major manufacturers' namely Flowserve and John Crane.
23. Further, on a careful perusal of the averments made in the Information, prices are stated to have increased steeply during 2011-12 to 2016 and thereafter, from 2016 to 2020, the prices appear to have broadly stabilised. They increased in the range of 7% to 28% only with instances of decrease of -39% and -33% during 2018 and 2020. No reason or explanation has been mentioned for filing Information in 2021 alleging price increase at this point of time.
24. Furthermore, GAIL on the one-hand has stated in the Information that as the pumps and seals used in Pata project have been technically certified by PMC EIL, it is "*difficult for GAIL to take the risk of opting for different make by developing alternate sources, as the same could compromise safety of the pumps*", and on the other hand, stated that it does not have the detailed drawings of the mechanical seals to get them developed by any other manufacturer. It is indeed surprising that such vital document is not available with GAIL and no reasons for non-availability thereof have been explained in the Information.



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25. Be that as it may, from the product market proposed by GAIL and the number of competitors mentioned, the market structure and construct does not appear to indicate any significant market power possessed by any of the players including the Opposite Party. In the absence of any dominant position enjoyed by the Opposite Party, it is unnecessary to delve into the issue of increase in prices of mechanical seals.
26. In view of the above, the Commission is of the view that no case is made out against the Opposite Party for contravention of the provisions of Section 4 of the Act and the Information is hence, ordered to be closed forthwith in terms of the provisions contained in Section 26 (2) of the Act.
27. The Secretary is directed to communicate the order to the Informant GAIL by Speed Post, accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

New Delhi
Date: 10.03.2021

Sd/-
(Bhagwant Singh Bishnoi)
Member