COMPETITION COMMISSION OF INDIA

***Suo Motu* Case No. 02 of 2017**

***In Re*: Anticompetitive conduct in the Dry-Cell Batteries Market in India**

Against:

1. **Panasonic Corporation, Japan**
2. **Panasonic Energy India Co. Limited**
3. **Geep Industries (India) Private Limited**

CORAM

Mr. Sudhir Mital
Chairperson

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Mr. Justice G.P. Mittal
Member

Present: For Panasonic Corporation, Japan: Mr. Karan Singh Chandhiok, Advocate

For Panasonic Energy India Co. Limited and Mr. Parimal Vazir: Mr. Karan Singh Chandhiok and Mr. Sarthak Pande, Advocates

For Mr. S.K. Khurana of Panasonic Energy India Co. Limited: Mr. Ashish Mohan, Advocate

For Geep Industries (India) Private Limited, Mr. Pushpa M., Mr. Joeb Thanawala and Mr. Jainuddin: None

ORDER UNDER SECTION 27 OF THE COMPETITION ACT, 2002

Facts:

1. The present case was initiated by the Commission *suo motu* under the provisions of Section 19 (1) of the Competition Act, 2002 (hereinafter, "**the Act**"), pursuant to receiving an application dated 07.09.2016 and subsequent submissions dated 22.09.2016 (hereinafter "**LP Application**") from Panasonic Corporation, Japan (hereinafter, "**OP-1**") filed by it on behalf of itself, the enterprises controlled by it

i.e. Panasonic Energy India Co. Limited (hereinafter "**OP-2**" or "**PECIN**") and their respective Directors, officers and employees (hereinafter "**the Applicants**"), under Section 46 of the Act read with Regulation 5 of the Competition Commission of India (Lesser Penalty) Regulations, 2009 (hereinafter, "**LP Regulations**").

2. In the LP Application, it was disclosed by the Applicants that there existed a bi-lateral ancillary cartel between OP-2 and Geep Industries (India) Private Limited (hereinafter "**OP-3**") in the institutional sales of dry cell batteries. This cartel existed from at least 2013 till late 2015 to early 2016. OP-2 was the supplier of batteries to OP-3, as part of its institutional sales. OP-2 had a primary cartel with Eveready Industries India Ltd. (hereinafter "**Eveready**") and Indo National Limited (hereinafter "**Nippo**") whereby the three of them co-ordinated the market prices of zinc-carbon dry-cell batteries. Hence, OP-2 had the fore-knowledge about the time of price increase to be affected by this primary cartel. This fore-knowledge was used by OP-2 as leverage to negotiate and increase the basic price of the batteries being sold by it to OP-3. OP-2 would lead OP-3 to believe that the Market Operating Price (hereinafter "**MOP**") and Maximum Retail Price (hereinafter "**MRP**") of all the major manufacturers would increase in the near future, and OP-3 would be in a position to pass on the increase in the basic price to the consumers by such increased MOP/ MRP.

3. Also, it was disclosed that OP-2 and OP-3 used to agree on the market price of the batteries being sold by them, so as to maintain price parity in the market. They used to monitor the MOP of each other and of other manufacturers, and inform each other in cases of any discrepancy noticed. Such price parity was in consonance with the prices determined by the primary cartel. E-mail communications between OP-2 and OP-3 with regard to such monitoring were provided by the Applicants with their submissions. Also, such an understanding between the two of them was recorded in Clause 4.3 of the agreement entered into between OP-2 and OP-3 on 01.10.2010, a copy of which was given.

4. Further, it was disclosed that as per Clause 2 of the afore-said agreement, OP-2 used to pack the batteries as per instructions of OP-3 and make supplies. Such

packaging had to be changed whenever the MRP increased. The dates on which the packaging was changed by OP-2 for OP-3 when compared with a corresponding list for OP-2's own products shows that price increase in OP-3's products were even within one month of price increase in OP-2's products. Such simultaneous price increase is also evident of a pre-meditated arrangement.

5. Based on the fore-going, the Applicants submitted that contravention of Section 3 (3) read with Section 3 (1) of the Act has been committed by OP-2 and OP-3.

6. Based on the information and evidence provided in the LP Application, the Commission formed an opinion that there existed a *prima facie* case of cartel amongst OP-2 and OP-3 in contravention of the provisions of Section 3 (3) (a) read with Section 3 (1) of the Act. Accordingly, *vide* order dated 08.02.2017 passed under Section 26 (1) of the Act, the Commission referred the matter to the Director General (hereinafter "**the DG**") and asked the DG to cause an investigation into the matter and submit a report thereupon.

Investigation by the DG:

7. The DG submitted the confidential version of the investigation report on 16.10.2017 and non-confidential version of the report on 08.02.2018.

8. In the report, the DG framed the following two issues and gave its findings thereupon as under:

(a) Whether OP-2 and OP-3 indulged in cartelisation in the dry-cell battery market in India in contravention of the provisions of Section 3 of the Act?

DG's conclusion: The DG, after collecting information and documents from OP-2 and OP-3 and recording the statements of their respective representatives, concluded that there is contravention of the provisions of Section 3 (3) (a) read with Section 3 (1) by OP-2 and OP-3. Clause 4.3 of the Product Supply Agreement (hereinafter, "**the PSA**") which imposed a mutual obligation on OP-2 and OP-3 not to take any step detrimental to each other's market interests with respect to the market prices of dry-cell batteries. Such prices were to be reviewed and maintained at agreed levels. This is clearly

anti-competitive. Implementation of this Clause is evident from the Revised Product Offers made by OP-2 to OP-3, which too contained a similar clause on 'market parity'. Moreover, certain e-mail communications exchanged between OP-2 and OP-3, when seen in light of the statements made by the representatives of OP-2 and OP-3, show that commercially sensitive information about prevailing and desired market prices of dry-cell batteries were exchanged between OP-2 and OP-3 and they had a price monitoring system in place. The period of cartel was concluded by the DG to be from 01.10.2010 when the PSA was signed till 30.04.2016 when OP-2 stopped making supplies of dry-cell batteries to OP-3.

(b) In case answer to Issue No. 1 is yes, who were the 'persons' of OP-2 and OP-3 involved in such contravention (directly or indirectly) at the relevant time and what were their respective roles?

DG's conclusion: As the DG answered Issue No. 1 in affirmative, it went on to decide Issue No. 2 and found the following 'persons' of OP-2 and OP-3 involved in the contravention (directly or indirectly) of the provisions of the Act at the relevant time, who would be liable for such contravention under the provisions of Section 48 of the Act:

(i) Mr. Parimal Vazir of OP-2 – General Manager, Institutional Sales of OP-2 and the contact person in OP-2 with whom OP-3 exchanged e-mails;

(ii) Mr. S. K. Khurana of OP-2 – Managing Director of OP-2 from 2006 to 2012 and Chairman and Managing Director of OP-2 from 2012 to 31.07.2016;

(iii) Mr. Pushpa M. of OP-3 – In-charge of accounts and finance of OP-3 and signatory to the PSA on behalf of OP-3;

(iv) Mr. Joeb Thanawala – Contact person in OP-3 with whom OP-2 exchanged e-mails; and

(v) Mr. Jainuddin Thanawala – Director of OP-3.

Consideration of DG Report:

9. After receiving the non-confidential version of the DG Report, the Commission, *vide* its order dated 11.04.2018, decided to obtain undertakings from the parties to the effect that the information or material supplied to them in the matter will only be used for the purposes of the Act and will not be disclosed or shared with any third party and thereafter forward to them, the DG Report. Pursuant to such order, undertakings were received from all the OPs as well as their officers/ employees.

10. On 12.06.2018, the Commission, considering the undertakings so filed, decided to forward an electronic copy of the non-confidential version of the DG Report to the OPs and their above-stated persons found liable by the DG under the provisions of Section 48 of the Act for filing their objections/ suggestions thereto and also directed them to file their financial statements/ income details from 2009-10 to 2016-17. Further, oral hearing in the matter took place on 01.08.2018 wherein submissions on behalf of OP-1 and OP-2 as well as individuals of OP-2 were made by their respective learned counsel. However, none appeared on behalf of OP-3 on 01.08.2018 despite due service of notice and no oral submissions were also made by OP-3.

Submissions of the OPs on the DG Report:

11. OP-1, in its written submissions, did not dispute the conclusions of the DG Report. It only stated that since it is not engaged in the manufacture and sale of dry-cell batteries in India directly and the DG has also found no involvement of OP-1 in the matter, its name should be struck off from the present case proceedings under Regulation 26 of the Competition Commission of India (General) Regulations, 2009 (hereinafter '**General Regulations**'). OP-1 submitted that the same approach was adopted by the Commission in the previous case also *i.e. In Re: Cartelisation in respect of zinc carbon dry cell batteries market in India Suo Motu*, Case No. 02 of 2016 decided on 19.04.2018. Further, it pleaded that if its name is not struck off as requested, since it is the Lesser Penalty Applicant in the present matter and has provided full, true and vital disclosures, it should be granted 100% reduction in penalty (including for its

Directors, officers and employees). Also, prayer was made for grant of confidentiality to the identity of Directors, officers and employees of OP-1 mentioned in the LP Application as well as for extension of confidential treatment granted by the Commission upon the documents of OP-2, to be extended to 3 years from the date of final decision of the Commission.

12. Similarly, OP-2 also, in its written submissions, did not contest the findings of the DG Report. It simply stated that since the present anti-competitive cartel was detected by the Commission only upon OP-1's LP Application, and the DG has relied extensively upon the information/ documents provided by OP-2, it ought to be granted benefit of 100% reduction in penalty. Also, OP-2 has made full, true and vital disclosures in respect of the alleged violation and provided full and complete co-operation to the Commission, as well as the DG, throughout the course of investigation and inquiry. In view thereof, OP-2 deserves 100 % reduction in penalty (including for its Directors, officers and employees). OP-2 further submitted that in *Suo Motu* Case No. 02 of 2016 (*supra*) also, 100% reduction of penalty has been granted to OP-2 on similar grounds. Also, prayer was made for grant of confidentiality to the identity of Directors, officers and employees of OP-2 mentioned in the LP Application as well as for extension of confidential treatment granted by the Commission upon the documents of OP-2, to be extended to 3 years from the date of final decision of the Commission.

13. No comments on the DG Report were received from OP-3. Also, no replies were received from any officers/ employees of either OP-2 or OP-3 to whom the DG Report was forwarded.

Analysis:

14. The Commission has perused the LP Application filed by OP-1 on behalf of itself and OP-2, the investigation report submitted by the DG, the written submissions filed by OP-1 and OP-2, the other material available on record and also heard the oral arguments of the respective learned counsel representing OP-1 and OP-2 and their individual officers/ employees.

15. The Commission notes that the present case emanated out of the LP application filed by OP-1. OP-1 had filed this application on behalf of itself, its Indian subsidiary OP-2, and the Directors, officers and employees of both OP-1 and OP-2. Hence, while referring the matter to the DG, both OP-1 and OP-2 were made Opposite Parties in the present case. Though OP-1 might not be engaged in the manufacture and sale of dry-cell batteries in India directly and the DG has also not made any investigation against OP-1 or found the involvement of OP-1 in the matter, yet, since OP-1 itself was the Lesser Penalty Applicant in the present matter, its contention that on these grounds its name should be struck off from the present case proceedings under Regulation 26 of the General Regulations is not liable to be accepted.

16. Further, to support its argument that its name ought to be struck off from the array of parties in the present matter, OP-1 draws parallel with *Suo Motu* Case No. 02 of 2016 (*supra*). OP-1 states that in that case also, the Commission had followed a similar approach. However, the Commission notes that in that case, OP-2 was only the Lesser Penalty Applicant who applied for marker status and not OP-1, as is the situation in the present case. Hence, in that case, from the very first instance, OP-1 was never made an Opposite Party in the matter. It was not the situation in that case that OP-1 was first made an Opposite Party in the proceedings and later its name was struck off under Regulation 26 of the General Regulations. Hence, the contention of OP-1 that a similar approach was adopted by the Commission in *Suo Motu* Case No. 02 of 2016 (*supra*) also, cannot be accepted. However, in view of the fact that no investigation or finding has been made by the DG against OP-1, the Commission does not deem it appropriate to make any analysis and/ or finding in respect of OP-1.

17. Clarifying such position, the Commission proceeds to examine the matter on merits. It is clear in the present case that neither OP-2 nor OP-3 has disputed any findings made by the DG in its investigation report. From the report, it is noted that OP-2 was a contract manufacturer of zinc carbon dry-cell batteries for OP-3. Initially, supply of the batteries by OP-2 to OP-3 started on a quotation basis based on the quantities demanded by OP-3 and the rates for the same were based on basic price plus duties and taxes. However, later on 01.10.2010, the PSA was

entered into between OP-2 and OP-3, Clause 4.3 of which (reproduced below) has been found to be anti-competitive by the DG:

> "*Since price to GBIPL is a very special price and that PECIN too is in the business of selling dry cell batteries of the same category in the same market, it is advised and agreed that GBIPL will not take any steps which are detrimental to PECIN's market interests particularly with respect to the market prices which shall be reviewed and maintained at agreed levels from time to time.*"

18. From a bare reading of the above Clause, it is evident that the same obliged OP-3 to maintain the market prices agreed to between OP-2 and OP-3. OP-3 was not supposed to take any steps detrimental to OP-2's market interests. Therefore, Clause 4.3 clearly exhibits the existence of concurrence of intention between OP-2 and OP-3 to protect each other's interests.

19. OP-2 tried to justify the above Clause before the DG by stating that such clause was required to ensure discipline in trade by OP-3. Also, OP-3 gave its justification by stating that it was compelled by OP-2 not to sell the batteries below OP-2's prices. However, the Commission agrees with the DG when it rejects such justifications given by the OPs by saying that as the PSA was an agreement in normal commercial trade on 'principal-to-principal' basis between two independent parties, who are otherwise competitors; such Clause inherently impedes competition and such explanations given by the OPs do not justify the same.

20. Viewed from another angle, the Commission notes that even if it is taken that OP-3 was merely a recipient of information on pricing of a 'larger cartel' from OP-2 which was not sought by it and such disclosure of commercially sensitive information by OP-2 was of unilateral nature, it cannot escape liability. Para 62 of Guidelines of European Union on applicability of Article 101 of TFEU to Horizontal Co-operation Agreements, 2010 states as under:

> "*[a] situation where only one undertaking discloses strategic information to its competitor (s) who accept (s), it can also constitute a concerted practice. Such disclosure could occur, for example, through contacts via mail, emails, phone calls, meetings etc. It is then irrelevant whether only one*

undertaking unilaterally informs its competitor of its' intended market behaviour or, whether all participating undertakings inform each other of the respective deliberation and intentions. When one undertaking alone reveals to its competitors strategic information concerning its future commercial policy that reduces strategic uncertainty as to the future operation of the market for all the competitors involved and increase the risk of limiting competition and collusive behaviour."

21. Hence, OP-3 could have refused to enter into any such agreement with such anti-competitive clause, but it rather went ahead with the agreement so as to further its larger business interests. Also, as observed by the DG, OP-3 was also fully aware of the existence of cartel between OP-2, Eveready and Nippo. It chose to maintain price co-ordination in line with the prices of the other two players Eveready and Nippo from 2010-11 to 2016-17, and therefore, it was an active participant of the cartel.

22. The Commission agrees with the observation of the DG that when two independent cooperating competitors agree for taking actions to protect each other's interests in the market, by no stretch of imagination can such agreement be considered pro-competitive. The very objective of this clause is to restrict or even eliminate fair competition in the market, and therefore, no justifications offered by the OPs in this respect are acceptable.

23. Further, the DG has also found that after entering into the PSA, revised product supply offers under the overall umbrella of the PSA were also made by OP-2 to OP-3 from time to time specifying the terms and conditions of battery supply. Implementation of Clause 4.3 of the PSA is evident from the Revised Product Offers dated 05.12.2011 and 22.08.2012 made by OP-2 to OP-3, which too contained a similar clause on 'market parity'. The Commission notes that this again goes on to prove the anti-competitive conduct of the OPs.

24. Also, apart from the PSA, other strong evidences collected by the DG against the OPs were the statements of the representatives of OP-2 and OP-3 and the e-mail communications exchanged between them. From a bare reading of such statements, it is clear that the MOP of OP-3's products was decided jointly by

OP-2 and OP-3 keeping in line the prices decided collectively by OP-2, Eveready and Nippo. Also, analysis of the e-mail communications dated 30-31.05.2011, 10.07.2012, 24.03.2014, 02.06.2014 and 23.09.2014 exchanged between Mr. Parimal Vazir of OP-2 and Mr. Joeb Thanawala of OP-3, when seen in the light of such statements, reveals that commercially sensitive information about prevailing and desired market prices of dry-cell batteries was exchanged between OP-2 and OP-3 and they had a price monitoring system in place.

25. Arguments of OP-2 and OP-3 that such e-mail communications were in the context of negotiations for basic price were rightly not accepted by the DG. Neither OP-2 nor OP-3 could adduce any evidence to the effect that exchange of such sensitive information between them on a regular basis did not influence their commercial behaviour in the dry-cell battery market.

26. Further, though in the cases of violation of Section 3 (3) of the Act, there is a presumption of appreciable adverse effect on competition in India (hereinafter, "**AAEC**") being caused and there is no requirement of proving any AAEC, yet the DG analysed the factors stated under Section 19 (3) of the Act. The DG found that such cartelisation by OP-2 and OP-3 led to an increase in the prices of zinc carbon dry-cell batteries to a very high level causing loss to consumers, created entry barriers in the market, foreclosed competition in the market as consumer choice was compromised and did not result in accrual of any benefits to the consumers or promotion of any technical, scientific or economic development. Therefore, based on the PSA and the afore-mentioned e-mails, the DG concluded contravention of the provisions of Section 3 (3) read with Section 3 (1) of the Act by OP-2 and OP-3.

27. In view of such evidences and the conclusion drawn by the DG which was not disputed or contradicted before the Commission by either of the parties, the Commission holds that there is contravention of the provisions of Section 3 (3) (a) read with Section 3 (1) by OP-2 and OP-3 and a cartel between them existed from 01.10.2010, when the PSA was entered into till 30.04.2016, when the last supplies were made by OP-2 to OP-3.

28. Once contravention by enterprises who are companies *i.e.* OP-2 and OP-3 is established, the Commission now proceeds to analyse the conduct of the Directors, officers and employees of these companies, who would be liable for such anti-competitive acts of the companies, in terms of Section 48 of the Act.

29. The DG has found the following 'persons' of OP-2 and OP-3 to be liable under Section 48 of the Act:

Table 1

S. No.	Opposite Party	Persons Identified by the DG
1.	OP-1	None
2.	OP-2	Mr. S. K. Khurana
		Mr. Parimal Vazir
3.	OP-3	Mr. Jainuddin Thanawala
		Mr. Joeb Thanawala
		Mr. Pushpa M.

30. None of these persons have submitted anything before the Commission to dispute their afore-said liability as concluded by the DG.

31. In view thereof, the Commission agrees with the DG, and holds the following persons of OP-2 and OP-3 liable under 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 the respective businesses:

Table 2

S. No.	Name of the Person	Role of the Person
1.	Mr. S. K. Khurana of OP-2	Managing Director of OP-2 from 2006 to 2012 and Chairman and Managing Director from 2012 to 31.07.2016, who played a pivotal role in communicating to Mr. Parimal Vazir, the cartel agreement between OP-2, Eveready and Nippo and asking him to arrive at a similar understanding with OP-3.
2.	Mr. Jainuddin Thanawala of OP-3	Director in OP-3 who was a signatory to the annual reports and IT returns of OP-3. In one IT return, he is also shown as the Chairman of OP-3. He was the person involved in commercial negotiations with OP-2.

32. Further, the Commission, agreeing with the DG, holds the following persons of OP-2 and OP-3 liable under Section 48 (2) of the Act for their specific anti-competitive acts, committed on behalf of the respective companies:

Table 3

S. No.	Name of the Person	Role of the Person
1.	Mr. Parimal Vazir of OP-2	E-mails containing commercially sensitive information were exchanged by him on behalf of OP-2 with OP-3. He was also a signatory to the PSA.
2.	Mr. Joeb Thanawala of OP-3	E-mails containing commercially sensitive information were exchanged by him on behalf of OP-3 with OP-2. He was also a signatory to the PSA.
3.	Mr. Pushpa M. of OP-3	He was in-charge of accounts and finance of OP-3 at the relevant time and was also a signatory to the PSA.

Conclusion:

33. In view of the foregoing, the Commission holds that OP-2 and OP-3 have contravened of the provisions of Section 3 (3) (a) read with Section 3 (1) of the Act by indulging in cartelisation and for such contravention, Mr. S. K. Khurana and Mr. Parimal Vazir of OP-2 and Mr. Jainuddin Thanawala, Mr. Joeb Thanawala and Mr. Pushpa M. of OP-3 are also liable under Section 48 of the Act.

34. Therefore, in terms of Section 27 (b) of the Act, the Commission is empowered to impose upon such companies as well as their persons, appropriate penalties. Under the *proviso* to Section 27 (b), the Commission may impose upon a cartelising company, penalty of upto three times of its profit for each year of the continuance of such agreement or ten percent of its turnover for each year of the continuance of such agreement, whichever is higher. In the present case, the duration of cartel was from 01.10.2010 to 30.04.2016. Thus, calculations of the amounts of turnover and profits are as under:

Table 4

(In Rupees)

S. No.	Party	Year	Turnover	Profit	10 % of turnover	3 times the profit
1.	PECIN	2010-11 (of half year)	85,54,61,500	2,89,34,000	8,55,46,150	8,68,02,000
		2011-12	1,77,84,62,000	2,96,4000	17,78,46,200	88,92,000
		2012-13	1,94,69,32,000	(8,10,000)	19,46,93,200	*nil*
		2013-14	2,09,02,35,000	7,77,24,000	20,90,23,500	23,31,72,000
		2014-15	2,22,28,30,000	19,94,71,000	22,22,83,000	59,84,13,000
		2015-16	2,22,67,67,000	18,29,49,000	22,26,76,700	54,88,47,000
		2016-17 (of one month)	16,19,19,750	8,41,750	1,61,91,975	25,25,250
	Total				**1,12,82,60,725**	**1,47,86,51,200**
2.	Geep industries India Private Limited	2010-11 (of half year)	26,47,05,893	(3,08,44,560)	2,64,70,589	*nil*
		2011-12	52,67,00,231	(3,07,39,679)	5,26,70,023	*nil*
		2012-13	40,07,39,109	(1,47,32,769)	4,00,73,911	*nil*
		2013-14	39,23,40,056	1,13,51,619	3,92,34,006	3,40,54,857
		2014-15	49,07,11,336	77,03,657	4,90,71,134	2,31,10,971
		2015-16	30,50,08,077	2,11,68,820	3,05,00,808	6,35,06,460
		2016-17 (of one month)	2,99,62,340	13,78,455	29,96,234	41,35,365
	Total				**24,10,16,705**	**12,48,07,653**

(Figures in brackets indicate loss)

35. In view of the above calculations in Table 4, it can be seen that in case of OP-2, as per the *proviso* to Section 27 (b), penalty of upto three times of its profit for each year of the continuance of the cartel may be imposed as the said figure is higher while in case of OP-3, penalty of upto ten percent of its turnover for each year of the continuance of the cartel may be imposed as the said figure is higher.

36. Thus, the Commission decides to impose upon OP-2, penalty @ 1.5 times the profit for each year of the continuance of the cartel which amounts to Rs.73,93,25,600/-.

37. On the other hand, with regard to OP-3, there is no gain saying that OP-3 was not entitled to breach the law even on the plea of compulsion as taken before the DG; however, keeping in mind that OP-2, being the manufacturer of dry-cell batteries and supplier of OP-3, was in the position to influence and dictate the terms of the anti-competitive PSA to OP-3 and OP-3, being a very small player having insignificant market share in the market for dry-cell batteries was not in a

bargaining/ negotiating position *vis-a-vis* OP-2, the Commission decides to impose upon OP-3, penalty @ 4% of the turnover for each year of the continuance of the cartel which amounts to Rs. 9,64,06,682/-.

38. As far as the persons held liable under Section 48 of the Act are concerned, under Section 27 (b), the Commission may impose upon them, a penalty of upto ten percent of the average of their income for the three preceding financial years. Keeping all the factors in mind, the Commission, in the present case, deems it appropriate to impose penalty @ 10 % of the average of their income for the three preceding financial years, upon such persons, which is calculated as under:

Table 5

(In Rupees)

S. No.	Person	Year	Income	Penalty
1.	Mr. Parimal Vazir of OP-2	2014-2015	14,11,753	1,52,383
		2015-2016	16,63,516	
		2016-2017	14,96,228	
		Total	45,71,497	
		Average	**15,23,832**	
2.	Mr. S. K. Khurana of OP-2	2014-2015	65,13,951	6,62,924
		2015-2016	87,52,231	
		2016-2017	46,21,528	
		Total	1,98,87,710	
		Average	**66,29,237**	
3.	Mr. Pushpa M. of OP-3	2014-2015	14,17,928	1,29,839
		2015-2016	12,48,676	
		2016-2017	12,28,555	
		Total	38,95,159	
		Average	**12,98,386**	
4.	Mr. Joeb Thanawala of OP-3	2014-2015	10,49,125	1,10,386
		2015-2016	11,14,884	
		2016-2017	11,47,560	
		Total	33,11,569	
		Average	**11,03,856**	
5.	Mr. Jainuddin Thanawala of OP-3	2014-2015	5,85,900	2,40,452
		2015-2016	6,79,083	
		2016-2017	59,48,565	
		Total	72,13,548	
		Average	**24,04,516**	

39. At this stage, the Commission takes into account the fact that OP-1, on behalf of itself, OP-2 and their Directors, officers and employees had filed an LP Application in the matter. The Commission observes that in the LP Application, vital disclosures had been made by submitting evidence of the alleged cartel which enabled the Commission to form a *prima facie* opinion regarding existence of the cartel. At the time the LP Application was filed, the Commission had no evidence to form such an opinion. Further, through the application, the Commission could get vital evidences which disclosed the *modus operandi* of the cartel such as the PSA and the e-mail communications exchanged between OP-2 and OP-3. These evidences were found crucial in establishing contravention of the provisions of Section 3 of the Act in the matter.

40. The Commission finds that OP-2 and its representatives had provided genuine, full, continuous and expeditious cooperation during the course of investigation. Thus, full and true disclosure of information and evidence and continuous co-operation so provided, not only enabled the Commission to order investigation into the matter, but also helped in establishing the contravention of Section 3 of the Act. On the basis of the foregoing, the Commission decides to grant 100% reduction in the penalty amount leviable under the Act, to OP-2 and its Directors, officers and employees identified above to be liable under the provisions of Section 48 of the Act.

41. Therefore, in terms of Section 27 of the Act, the Commission passes the following

Order

42. The OPs and their respective Directors, officers and employees identified in Table 5 are directed to cease and desist from indulging into any act of cartelisation henceforth, in the Dry Cell Batteries Market in India.

43. Further, under the provisions of Section 27 (b) of the Act, the Commission imposes the following amounts of penalty upon OP-3 and its Directors, officers and other employees identified above under the provisions of Section 48 of the Act:

Table 6

(In Rupees)

S. No.	Name of the Party	Penalty Imposed	Penalty Imposed in Words
1.	Geep Industries (India) Private Limited	9,64,06,682	Rupees Nine Crores Sixty Four Lacs Six Thousand Six Hundred and Eighty Two Only
2.	Mr. Pushpa M.	1,29,839	Rupees One Lac Twenty Nine Thousand Eight Hundred and Thirty Nine Only
3.	Mr. Joeb Thanawala	1,10,386	Rupees One Lac Ten Thousand Three Hundred and Eighty Six Only
4.	Mr. Jainuddin Thanawala	2,40,452	Rupees Two Lacs Forty Thousand Four Hundred and Fifty Two Only

44. With regard to confidentiality requests of OP-1 and OP-2, a separate order under Section 57 of the Act of even date is being passed.

45. The Commission directs OP-3 and the above-stated persons to deposit the respective penalty amount within 60 days of receipt of this order.

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

Sd/-
(Sudhir Mital)
Chairperson

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

Sd/-
(Justice G.P. Mittal)
Member

New Delhi
Date: 30.08.2018