

Delhi Jal Board v. Grasim Industries Ltd. & others (Ref. Case Nos. 03 & 04/2013)

Decision Date: 05.10.2017

Keywords: *Bid rigging in Public Procurement Process; collusion; single economic entity*

Issue: Whether there was collusive bidding in the public procurement process?

Rule: Sec. 3(3)(d) and Sec. 3(1) of the Competition Act, 2002 concerning Anti-Competitive Agreements and collusive bidding

Delhi Jal Board (DJB), a statutory body, issued tenders for procuring Poly Aluminium Chloride (PAL) and Liquid Chlorine (LC), utilized for purification of water. DJB alleged bid rigging for several years by bidders. The allegations were against Grasim Industries Ltd. (GIL), Aditya Birla Chemicals (India) Ltd. (ABCIL) and Gujarat Alkalis and Chemicals Limited (GACL) among other companies. The investigation by the Director General (DG) found the above named companies to be guilty of collusive bidding.

In the matter regarding PAL, ABCIL and GIL made an interesting contention on the basis 'single economic entity' principle. They argued that both the entities constituted a single economic entity as they belonged to the same group company, Aditya Birla Group with same management personnel. Consequently, it was argued that the agreements between these entities to be *internal agreements* and emphasized the impossibility of collusion within the single economic entity.¹ However, the Commission rejected this argument and pointed out the inapplicability of concept of 'group' to Sec. 3 of the Competition Act, 2002.² The Commission noted that both ABCIL and GIL were acting as two separate entities throughout the bidding process. This is supported by the fact that the entities bid separately and acted as competitors in the process.³

The Commission scrutinized the report by the DG and analysed economic evidence before concluding on the issue. Based on the investigation by the DG, price parallelism was observed

¹ Para 114-116.

² Paras 126, 129.

³ Paras 124, 125.

in the bids despite differences in location of the entities. The bids were simultaneously increasing and converging in a narrow range.⁴ The freight rates per kilometer, which should decrease with increase in distance, was in fact highest for the bidder with farthest location and thereby contrary to normal market conditions.⁵ Apart from all these factors which affected the cost of production substantially, the bidders charged DJB differently and higher than other customers.⁶

Cumulatively, these factors indicated collusion and the actions of the bidders to be in concerted manner. Commission held all the three entities guilty under Sec. 3(3)(d) read with Sec. 3(1) of the Act and imposed penalties in the form of fine in the matter of PAL.⁷ With respect to the case on LC bidding, the Commission did not hold the bidders guilty due to lack of analysis to prove the liability from the available evidence.⁸ This case clarifies the Indian jurisprudence on single economic entity in the context of anti-competitive agreements.

One of the members dissented in his opinion with respect to the alleged violations by GACL.⁹ The dissent note mentions the lack of evidence to prove meeting of minds for collusion between GACL and other entities. *“However in the absence of direct evidence, which would be the case in most cartel matters, an agreement can still be inferred from parallel pricing, in conjunction with a number of other plus factors, but only in the absence of any plausible justification”*.¹⁰ PAC being a homogenous commodity tends to display similarity in prices among the bidders.¹¹ The dissent note also challenges the adverse inferences to GACL, based on transportation cost and various other factors influencing the cost of production.

⁴ Para 147.

⁵ Paras 147-152.

⁶ Para 154.

⁷ Para 164.

⁸ Para 204.

⁹ Pg 91.

¹⁰ Pg 92.

¹¹ Pg 94-95.