

In re: NagrikChetnaManch v. Fortified Security Solutions (Case No 50 of 2015)

Decision Date: 01.05.2018

Keywords: *cartelization; bid rigging; collusion; public interest; lesser penalty regulations*

Issue: Whether CCI's Lesser Penalty Regulations would be applicable in case of collusive bidding in public procurement?

Rule: Sec. 3 and Sec. 46 of the Competition Act, 2002

The CCI by way of an order dated May 1, 2018 has issued its third leniency order in the case of *NagrikChetnaManch v. Fortified Security Solutions* (Case 50 of 2015) in which it granted reduction in penalty to four out of the six leniency applicants. The allegations in the case pertains to rigging of five tenders floated by the Municipal Corporation of the City of Pune ('PMC') in 2014 for setting up of solid waste processing plants. The CCI found that they all the six opposite parties indulged in bid rigging/collusive bidding in contravention of the provisions of the Act. Incidentally, all the opposite parties had sought imposition of lesser penalty under the Leniency Regulations. Mahalaxmi, the first applicant was given a reduction in penalty of 50%, the second applicant 40% and Lahs Green, the third leniency applicant 50%. Ecoman, the fourth applicant was granted a 25% reduction in penal towing to the co-operation extended by it during investigation. As regards Raghunath and Fortified, the fifth and the sixth leniency applicant respectively, the CCI held that the disclosure by these entities did not lead to any value addition in the investigation and accordingly no reduction in penalties was granted to them.

The complaints were filed by NagrikChetnaManch and it pertained to the nexus between the municipal officials and contractors. It showed the contractors and officers had telephonic conversations on multiple occasions and tender documents were uploaded through a computer belonging to the municipal corporation. The investigative report said there is prima facie evidence that there was a meeting of minds among Fortified Security Solutions, EcomanEnviro Solutions Pvt. Ltd., Lahs Green India Pvt Ltd, Sanjay Agencies, Mahalaxmi Steels and Raghunath Industry Private Limited in response to tender numbers 34, 35, 44, 62 and 63 of 2014 floated by PMC during December, 2014 to March, 2015 "*for inviting the turnkey contract*

for 'Design, supply, installation, commissioning, operation and maintenance of municipal organic and inorganic solid waste processing plant(s)'. ”

The commission has fined contractors but because of limited mandate, it could not act against PMC officials. After perusing the information, the CCI was of the prima facie view that the case involved “big rigging” or “collusive bidding” in violation of section 3(3) read with section 3(1) of the Competition Act, 2002. The CCI in its report observed that there was understanding among the firms who participated in the bidding to ensure that the tender went to EcomanEnviro Solutions Pvt Limited. The same company, noted CCI, has borne the cost of demand draft for the other participants.

The CCI while hearing petition reduced the penalty on four firms under provisions of section 46 of the Competition Act (Lesser Penalty Regulation). Eventually, CCI imposed penalty of Rs 13,07,240 against Fortified Security Solutions, Rs 33,90,500 against EcomanEnviro Solutions Pvt. Ltd, Rs 21,00,258 against Lahs Green India Pvt Ltd, Rs 90,63,874 against Sanjay Agencies, Rs. 1,68,10166 against Mahalaxmi Steels and Rs 30,54,943 against Raghunath Industry Private Limited. The Commission has also imposed penalty of Rs 361368 against five individual holding key positions in the six firms. Ultimately, under lesser penalty regulations, the Commission reduced the penalty within the range of 25% to 50% bringing down the total fine from Rs 6,18,10,154 to Rs 3,57,26,981.¹

¹*‘Six Pune Municipal Corporation Contractors fines 3.57 Crore for Rigging bids’*, Hindustan Times, available at: <<https://www.hindustantimes.com/pune-news/six-pune-municipal-corporation-contractors-fined-3-57-crore-for-rigging-bids/story-eE1daYc1vlbcfcqtW5VPL.html>>