

**In re: Cartelization in Tender Nos. 21 and 28 of 2013 of Pune Municipal Corporation for Solid Waste Processing (SuoMotu Case No. 03 of 2016); In re: Cartelization in Tender No. 59 of 2014 of Pune Municipal Corporation for Solid Waste Processing (SuoMotu Case No. 04 of 2016)**

---

**Decision Date:** 11.07.2018

**Keywords:** *cartelization; collusion; lesser penalty regulations*

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

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

The CCI has passed final order in two cases involving anti-trust violations pertaining to collusion and bid-rigging in three tenders floated by Pune Municipal Corporation for Design, Supply, Installation, Commissioning, Operation and Maintenance of Municipal Organic and Inorganic Solid Waste Processing Plant(s). These cases were taken up by CCI *suomotu* under Section 19 of the Act based on the disclosure by firms under Section 46 of the Competition Act, 2002 ('the Act') read with the Competition Commission of India (Lesser Penalty) Regulations, 2009 ('Lesser Penalty Regulations'). All firms in these cases had approached CCI as lesser penalty applicants. CCI, based on its investigations, observed that there was bid rigging in the Tender Nos. 21 and 29 of 2013 and Tender No. 59 of 2014 floated by Pune Municipal Corporation for Solid Waste Processing Plant(s), in contravention of Section 3(3)(d) read with Section 3(1) of the Act by way of submitting proxy/ cover bids.

In case involving tender floated in Financial Year 2013-14 penalty was imposed on four firms in terms of Section 27(b) of the Act at the rate of 10 percent of their average turnover for the years 2011-12, 2012-13 and 2013-14 *i.e.* three years preceding the year in which collusion took place. The penalty was imposed on firms as well as their individual officials. Further, in view of penalty already levied in Case No. 50 of 2015 for infringement during the period 2014-15, no penalty was levied in case involving tender floated in financial year 2014-15.

CCI granted 50 percent reduction in penalty to Saara and its individuals than otherwise leviable. The lesser penalty application was considered in light of the proofs gathered by the DG independent of lesser penalty application and co-operation extended in conjunction with the value addition provided in establishing the existence of cartel, Pursuant to reduction, penalty imposed on Saara was INR 23.22 Lakh and INR 74,513 on its individual.<sup>1</sup>

## THE CENTRE FOR COMPETITION & REGULATION

NATIONAL LAW SCHOOL OF INDIA UNIVERSITY

---

<sup>1</sup>In re, Cartelization in Tender Nos. 21 and 28 of 2013 of Pune Municipal Corporation for Solid Waste Processing, SuoMotu Cases Nos. 03 and 04 of 2016, decided on 31.5.2018