

## **Director, Supplies & Disposals, Haryana v. Shree Cement &Ors. (Ref Case No. 05 of 2013)**

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**Decision Date:** 19.01.2017

**Keywords:** *Cartel; bid rigging*

**Issue:** Whether the OPs had been involved in cartelisation and bid rigging?

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

Reference under 19(1)(b) by DS&D, Haryana (“Informant”) against Shree Cement Limited and others, alleging contravention of Sec 3 (anti-competitive agreements).

Informant is procurement agency for Haryana government supplies, and issued a tender notice for 4 lakh MT of cement. Allegation was that OPs have colluded with each other and attempted to rig the bid in the impugned tender for supply of cement to the government.

- (i) That OPs had formed a cartel and quoted considerably higher rates than existing contract rates.
- (ii) OPs, acting in concert, collectively and deliberately quoted bids for substantially lower quantities as compared to the quantities they had been quoting in the past.
- (iii) Furthermore, the total tendered quantity quoted by the OPs had eventually been divided amongst them, so that each bidder could get the rate contract for the quoted quantity.
- (iv) The OPs even quoted different basic prices for supply of cement at the same destination for different categories, with or without VAT C3 form. The OPs had also quoted the rates in such a manner that they all acquire the lowest bidder status (L1 status) for supply of cement in at least some of the destinations.

The last rate contract was negotiated/ finalised by HPPC in the meeting held in August, 2011. It was noted by HPPC that the increase in bid prices of cement was not justified in light of the Price Index for Cement as reported by the Office of Economic Adviser, Ministry of Commerce and Industry, Government of India which had risen from 151.7 to merely 169.3 since the

finalisation of the last rate contract. Thus, HPPC observed that there was no justification for the bidders to quote rates that were higher by 35-42% over the existing rate contract rates. On being asked by HPPC, the representatives of the bidders could not offer any justification for the increase in quoted rates with reference to the escalation in costs of inputs.

(i) *Whether the bid prices quoted by OPs in the 2012 tender were unusually higher than the bid prices quoted in the previous tenders? Whether such bid prices were arrived at independently by OPs based on business/ commercial consideration(s)?*

the DG concluded that in the years 2009 and 2012, there was a substantial increase in the average L1 price for the different categories of cement *vis-a-vis* the corresponding increase in the WPI values for grey cement, showing that this pattern was indicative of price parallelism and collusive bidding.

The CCI notes an unexplained consistency in price difference, and observes that cumulatively all the details portray behaviour of Ops not consistent with conduct of players in a free and competitive market.

(ii) *Whether the lower quantities quoted by OPs in the impugned tender than the bid quantities quoted in the previous tenders, was due to an arrangement to divide the total quantity amongst Ops to allocate markets? Whether the bid quantities were arrived at independently by OPs based on business/ commercial consideration(s)?*

In the absence of verifiable data provided by the parties, the CCI notices that the present reason given, i.e. uncertainty in allocation in previous years, stands negated for it was unequivocally demonstrated that uncertainty in the allocations in the previous tenders did not result in quoting of lower quantities by the bidders in the subsequent tenders in the past.

(iii) *Whether OPs have bid for the impugned tender so as to divide the market in order to secure L1 status inter se?*

The DG presented evidence of behaviour of Ops wherein they did not bid in accordance with competitive locational advantage in some districts. Ops gave only unsubstantiated statements for differences in prices, which the CCI held to be insufficient to explain divergences in tender prices in adjacent districts. Based on this, it is observed that this is indicative of the fact that

the OPs have tried to accommodate each other to emerge as L1 in these neighbouring destinations

*(iv) Whether Call Detail Records point towards prior arrangement amongst OPs in submitting their respective bids?*

The CCI negates a plea contending violation of principles of natural justice by the DG, decided that there was no substance in the plea raised by some that the call detail records relied upon by the DG are not supported by a certificate in accordance with the Evidence and IT Acts, by virtue of any lack of denial of the contents or raising the same at the time of investigation before the DG.

The Commission was of opinion that the impugned act/ conduct of the OPs is found to be in contravention of the provisions of Section 3(1) of the Act read with Section 3(3)(d) thereof due to the anti-competitive conduct of OPs, the impugned tender had to be cancelled forcing the State to start the process of procurement- a critical input for infrastructure, afresh, resulting in possible delay in timely supply for the execution of public infrastructure projects which may result in time and cost overrun

Though competition law frowns upon even the agreements which are 'likely' to cause appreciable adverse effect on competition, while quantifying penalties, a distinction has to be made between the agreements which actually cause appreciable adverse effect on competition and the agreements which are likely to cause such effects.

the Commission finds it appropriate to impose a penalty on OP-1 to OP-7 at the rate of 0.3 % of their average turnover of the last three financial years based on the financial statements filed by them. Accordingly, a penalty of Rs. 18.44 crore, Rs. 68.30 crore, Rs. 38.02 crore, Rs. 9.26 crore, Rs. 29.84 crore, Rs. 35.32 crore and Rs. 6.55 crore is imposed upon OP-1 to OP-7 respectively.