

## **Suntec energy v. National Dairy Development Board & ors. (Case No. 69 of 2016)**

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**Decision Date:** 10.11.2016

**Keywords:** *Technical Specification; Tender Document; Bid Rigging; Collusive Bidding*

**Issue:** Whether stipulation of certain specification or the brand name in the tender be deemed anti-competitive?

**Rule:** Sec. 3(3)(d) of the Competition Act, 2002 concerning Anti-Competitive Agreements & Collusive Bidding

Under the aegis of OP 1, OP 2 floated a tender dated 12.5.2016 inviting offer for 'design, manufacturing, supply, erection, testing, and commissioning of 28.5 TPH @ F & A 100 degree Centigrade FO/NG Fired Boiler PLC operated with duel fuel economiser'. It is averred that in response to the said tender notice the Informant was interested in supplying the burners being manufactured by it. However, the offer document provided a 'List of Preferred make of bought out items' in Section V of Technical Specification in the tender document. Under the product name 'Burner' only one manufacturer was specified namely 'Weishaupt only'. It is alleged that there are other manufactures of burners with the same technical specifications available in India, including the burner manufactured by the Informant.

It is alleged that this condition shows that there is an arrangement/ understanding between the parties to disqualify all other manufacturers/ distributors of burners which amounts to bid rigging and collusive bidding in contravention of Section 3(3)(d) of the Act.

The Commission observed that a procurer, as a consumer, can stipulate certain technical specifications/ conditions/ clauses in the tender document as per its requirements which by themselves cannot be deemed anti-competitive. It was noted that the party floating the tender is a consumer and it has the right to decide on the appropriate eligibility conditions based on its requirements. The Commission also observed that in a market economy, consumers' choice is considered as sacrosanct and in such an economy, a consumer must be allowed to exercise its choice freely while purchasing goods and services in the market. It is expected that a

consumer can decide what is the best for it and will exercise its choice in a manner which would maximise its utility that is derived from the consumption of a good/ service.

The Commission found that no case of contravention of the provisions of the Act is made out against the Ops. The matter was closed under the provisions of Section 26(2) of the Act.

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