

**IN RE: CHIEF MATERIALS MANAGER/SALES (INFORMANT) AND M/S LAXVEN SYSTEMS
(OPPOSITE PARTY NO. 1), M/S MEDHA SERVO DRIVES PVT. LTD. (OPPOSITE PARTY NO. 2)**

Reference Case No. 06 of 2018

Date of Decision: 02-01-2019

Keywords: tender, cartel

Rule: Section 3(1), Section 3(3)(d)

The Informant in the present case floated a tender for procurement of Microprocessor Control and Fault Diagnostics System. The procurement of the System was restricted only to vendors approved by Chittranjan Locomotive Works ('CLW'). OP-1 and OP-2 were amongst the vendors approved by CLW. The list of approved vendors underwent a change by an amendment. Consequently, on the date of opening of the impugned tender, only OP-1 and OP-2 remained in the list. Due to the alleged non-participation of OP-1 in the impugned tender, OP-2, being the only remaining approved vendor, enjoyed a monopoly status, and quoted high rate. The Informant has alleged that even after two rounds of negotiation, OP-2 did not bring down the rate to acceptable level due to being aware of the fact that it was the only approved vendor. As a result, the Informant was left with no option but to accept the high rate quoted by OP-2. The Informant had alleged that non-participation of OP-1 in the tender suggested a cartel between the OPs in contravention of Section 3(3)(d) read with Section 3(1) of the Competition Act.

Analysis of the Commission

OP-1 had, before the floating of the tender, clarified that they did not possess the required Prototype for Version-3 and were therefore, not approved for Version-3 of the System/ Item as approved by RDSO, thus, unable participating in tender. Further, CLW had also clarified that OP-1 had not completed Development and Prototype Clearance of MPCS Version-3. In view of the same the Commission noted that the non-participation of OP-1 in the tendering process appeared to be due to its inability to produce the said item. Moreover, increase in price by OP-2 was found to be due to technical reasons. Therefore, no case of contravention of the provisions of Sections 3 of the Act was made out against the Opposite Parties.