

KELVION INDIA PRIVATE LIMITED VS. APOLLO INDUSTRIAL CORPORATION & OTHERS

Case NO. 33/2018

Decision date: 09/11/2018

Keywords: tender, collusive bidding, approved and unapproved vendors

Issue: Whether a similarity in bids between two players in a tender would amount to cartelisation.

Rule: Sec. 19 (1)(a), 33 and Sec. 3 read with Sec. 3 (1) of the Competition Act, 2002.

The case arose out of an allegation that Apollo Industrial Corporation (“Apollo”) and LEEL Electricals Limited (“LEEL”) were engaged in cartelisation in relation to tenders floated by Chittaranjan Locomotive Works (“CLW”), Diesel Locomotive Works, Varanasi (“DLWV”) and Diesel Locomotive Works, Patiala (“DLWP”) for the procurement of oil cooler radiators (“OCRs”) for transformers.

Kelvion India Pvt. Ltd. (“Kelvion”) had submitted its bids for a total of three tenders floated by CLW, DLWV and DLWP in 2018. Apollo and LEEL had also participated in all of these tenders. Kelvion alleged that the bid prices quoted by the Apollo and LEEL were similar as a result of their having previously agreed on such prices. To support this, Kelvion contended that there had been an increase in the price of aluminium, but the effect of this increase was not reflected in the bid price submitted by Apollo and LEEL.

In its analysis, the CCI stated that while the prices of Apollo and LEEL were similar, it was pertinent to also examine the bids submitted by the third approved provider, M/s. Tesio Cooling (“Tesio”), which were similar to the bids of Apollo and LEEL. Consequently, the CCI held that this bidding by Tesio posed competitive constraints on the Apollo and LEEL. The CCI also noted that for DLWV and CLW’s tenders, Tesio was awarded the highest quantity.

On the issue of failure to account for the increased price of aluminium in the bids, the CCI found that the companies were able to take advantage of economies of scale as the requirement of OCRs had increased over the past few years. Further, the number of approved vendors of OCRs had increased from two to three, thus making the market more competitive.

On the contention that there was a vast difference between the bids of unapproved vendors from those of approved vendors, and that this was indicative of collusive behaviour, the CCI noted that an unapproved source could only be considered for a development order if the price it quoted was lower than that of the approved vendor. The CCI accepted DLWV's submission that the rate quoted by unapproved vendors may not be indicative of the real cost, since such vendors have not yet been assessed for capacity, capability and technical know-how in the manufacturing of the product(s). In this regard, the CCI held that the metric of high profit by itself does not elicit the competition authority's action unless such profit is achieved through a violation of specific provisions of the Act.

Therefore, the allegation of collusion was held to be untenable, and the matter was ordered to be closed as per the provisions of Section 26 (2) of the Act.