

REPROGRAPHICS INDIA VS. HITACHI SYSTEMS MICRO CLINIC PVT. LTD. & ANR.

Case No. 41/2018

Decision date: 09/11/2018

Keywords: tender, collusive bidding, meeting of the minds

Issue: Whether number of bidders, moving of officials, supportive bids and the quiting of majority items would amount to a meeting of the minds, and subsequently cause bid rigging.

Rule: Sec. 3(3)(d) read with Sec. 3 (1) of the Competition Act, 2002.

The case arose out of allegations of bid rigging against Hitachi Systems Micro Clinic Private Limited (“Hitachi”) and IL and FS Technologies Limited (“IL&FS”). The allegations were made under Section 3(3)(d) of the Act via the information filed by Reprographics India (“Reprographics”), through an authorised representative. Reprographics is a distributor of Information Technology (“IT”) products directly as well as through System Integrators of Original Equipment Manufacturers (“SIs”), and is an ancillary unit of Bharat Heavy Electricals Limited (“BHEL”). Reprographics submitted that Hitachi and IL&FS had rigged the bid in the tender floated by BHEL in April 2017 for the supply, installation and maintenance of personal computers, servers, printers and other computer peripherals across India, in more than 20 locations. BHEL’s tender categorised the items into two groups – Group A and Group B. While Hitachi worked in collaboration with original equipment manufacturers, IL&FS provided IT solutions for efficient service delivery through smart governance and infrastructure.

There were five broad allegations addressed by the CCI, and the same have been discussed below. *First*, it was submitted that there were only two bidders for the items listed in Group A, and both bidders were partners of, and therefore connected to, Hewlett Packard (“HP”). Consequently, it was alleged that this was an indicator of the fact that there existed a meeting of the minds between Hitachi and IL&FS during the bidding for tenders. The CCI, however was not *prima facie* convinced by this allegation since the tender was open, and there was no restriction placed on the participation of any SI. Further, four bidders had participated in the tender for items listed under Group B, and the CCI therefore held that low participation is not necessarily indicative of or an outcome of any concerted action.

Second, it was submitted that IL&FS submitted a ‘supportive bid’ in favour of Hitachi, as a result of sharing common business linkages. The CCI, upon consideration of this fact, held that the mere existence of common linkages between Hitachi and IL&FS cannot be indicative of collusion in the bidding process, since there is no other evidence to show malpractice like bid rotation. *Third*, documentary proof indicating that some of the officials of one party worked with another party earlier was submitted to prove meeting of the minds between the two companies. The CCI rejected this argument and held that the moving of a person working at one IT firm to another IT firm would not amount to a meeting of the minds between the bidders,

Fourth, it was alleged by Reprographics that another indicator of meeting of the minds was the fact that Hitachi quoted majority items of HP for the tender. The CCI rejected this submission and held that this was a unilateral action on behalf of Hitachi. *Finally*, it was submitted that the quantum of discount given to BHEL by Hitachi upon successfully procuring the tender is suggestive of the fact that the bid was not independent. The same was rejected by the CCI upon consideration of BHEL’s submissions that the process for arriving at the final price did not deviate from statutory guidelines, and the reduction occurred during negotiations between Hitachi and BHEL.

The CCI therefore found no contravention of Section 3(3)(d) read with Section 3(1) of the Act, and thereby dismissed allegations.