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CCI imposes penalties upon Sugar Mills and their Associations for rigging the bids in respect of joint tender floated by Oil Marketing Companies for procurement of ethanol for blending with petrol

The Competition Commission of India (CCI) has imposed penalties upon 18 sugar mills and 2 Associations (Indian Sugar Mills Association and Ethanol Manufacturers Association of India) for rigging the bids in respect of a joint tender floated by Oil Marketing Companies (HPCL/ BPCL/ IOCL) on 02.01.2013 for procurement of ethanol for blending with petrol.

The final order was passed by CCI on 18.09.2018 on a batch of informations filed by India Glycols Limited and 5 other Informants.

Pursuant to a notification dated 02.01.2013 issued by Ministry of Petroleum & Natural Gas, Government of India, regarding mandatory 5% blending of ethanol with motor spirit/ gasoline, the government owned public sector oil marketing companies (OMCs) viz. IOCL/ HPCL/ BPCL invited quotations from alcohol manufacturers for supply of ethanol through a joint tender dated 02.01.2013 which was issued by BPCL on behalf of OMCs - as the coordinator of the tender process. Through the joint tender, OMCs invited sealed tenders under the two bid system *i.e.* technical bid and price bid from ethanol suppliers. The supply was to be made available to various depots/ terminals of OMCs across the country for a period of one year w.e.f. 01.03.2013.

The Informant (India Glycols Limited), however, alleged that Indian Sugar Mills Association (ISMA) and Ethanol Manufacturers Association of India (EMAI) persuaded the OMCs to come out with a joint tender for the purpose of procuring ethanol. The said joint tendering by OMCs was alleged to be an agreement amongst horizontal players to procure ethanol from various suppliers in contravention of the provisions of Section 3 of the Competition Act, 2002 ('the Act') which was likely to cause appreciable adverse effect on competition within India in supply and distribution of ethanol. It was also alleged that the sugar manufacturers



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who had participated in the joint tender of 2013 manipulated the bids by quoting similar rates and in some cases identical rates through an understanding and collective action in violation of the provisions of Section 3 of the Act.

The Commission in its order noted that the bidders through their impugned conduct have contravened the provisions of Section 3(3)(d) read with Section 3(1) of the Act by acting in a collusive and concerted manner which has eliminated and lessened the competition besides manipulating the bidding process in respect of the impugned tender floated by OMCs. The bidders who participated in respect of the depots located in UP, Gujarat and Andhra Pradesh in response to the joint tender floated by OMCs, were found to have acted in a concerted and collusive manner in submitting their bids. This was evidenced from the prices quoted, quantities offered and the explanations given by the parties. Such collusion was further strengthened from the fact that the bidders utilized the platform of ISMA and also acted on the signals emitted by EMAI which influenced the bidding behavior of the parties.

Accordingly, a total penalty of Rs. 38.05 crore was imposed upon 18 sugar mills and their trade associations (ISMA/ EMAI). Besides, a cease and desist order was also issued against them. While imposing penalties, the Commission applied the principle of relevant turnover and based the penalties on the revenue generated by the sugar mills from sale of ethanol only. The penalty was imposed by the Commission @ 7 % of the average relevant turnover of the sugar mills. However, penalty @ 10% of the average receipts was imposed upon the Trade Associations *viz.* ISMA and EMAI keeping in view the key role they played in facilitating bid rigging.

The order of the Commission was passed in Case Nos. 21, 29, 36, 47, 48 & 49 of 2013 and a copy thereof has been uploaded on the website of CCI at www.cci.gov.in.
