BARRIERS FACED BY MRTPC AND CCI IN BID RIGGING CASES IN INDIA

Written by ***Dr Souvik Chatterji*, Indrajit Acharya** & Samrat Samaddar******

** HOD, Law, JIS University and Associate Professor, JIS University, Agarpara, West Bengal, India*

*** PhD Scholar, JIS University, Agarpara, West Bengal, India*

**** BBALLB Honors student JIS University, Agarpara, West Bengal, India*

If you're caught with an ounce of cocaine, the chances are good you're going to jail... But evidently, if you launder nearly a billion dollars for drug cartels and violate international sanctions, your company pays a fine and you go home and sleep in your own bed at night... I think that's fundamentally wrong."[i]

- Elizabeth Warren

INTRODUCTION

Following independence, India created and implemented policies that included "Command and Control" laws, rules, regulations, and executive directives. In order to tackle the increasing complexity of the production and distribution system, greater levels of sophistication in selling and marketing, advertising and promotional practices, and increased mobility of consumers and sellers. The main issue occurs when the impacts of such rivalry become intangible and difficult to quantify.

To tackle these problems the enactment of competition law is the best suitable recourse. Taking into consideration the consumer needs and imbalances faced by them in economic terms, education levels, and bargaining power there are various guidelines that have been made in furtherance of consumer protection. Such guidelines were formulated and expanded to include 'sustainable consumption' as an important subject matter. These guidelines have been helpful in setting up an internationally accepted set of objectives particularly for developing countries

in order to help them identify priorities and hence structure their consumer protection policies and legislation. The first competition law of India, the Monopolies and Restrictive Trade Practice Act (MRTP Act), was introduced in 1969 following the recommendations of the Monopolies Inquiry Committee (MIC) and sought to provide structural solutions in its effort to eliminate monopolies conduct, as it suspected that size above a threshold would adversely affect competition. This was reflected in the law. A High Power Expert Committee (Sachar Committee) was formed in 1984 to investigate and report on the required improvements to the MRTP Act, of 1969, in order to make it more effective. The Raghavan committee Report, 2000 has rightly stated the interrelationship between consumers and the MRTP Act vis-a-vis Indian Competition laws.

The Sachar Commission noted the small number of references to monopolies and Restrictive Trade Practices Commission (MRTPC) under the Manipulation Regulations monopolistic business practices and recommended that certain types of cases be forcibly returned to the MRTPC, which could issue final orders in such cases. However, the administration refused to accept this. The Sachar Committee attempted to include unfair trade Practices such as misleading and disparaging advertising are enshrined in applicable law convinced that consumers would not be protected against such practices. The committee proposed the introduction of the concept of presumed illegality in various specific commercial practices.

The United Nations had passed a resolution indicating certain guidelines under which the government could make laws for better protection of the interest of consumers. Such laws were more necessary in the developing countries to protect the consumers from hazards to their health and safety and make them available speedier and cheaper redress. Consumerism has been a movement in which traders and consumers find each other as adversaries. Till the last two decades in many develop and developing countries powerful consumer organizations have come into existence and such organizations have been instrumental in dealing with consumer protection laws and in expansion of the horizon of such laws. In our country, the legislation is of recent origin and its efficacy has not been critically evaluated which has to be done on the basis of experience.

Until the late 1970s, there was no structured effort in place to safeguard the interests of consumers. In today's consumer-friendly climate, it is widely considered that a country's degree

of consumer awareness and protection on its territory is a real reflection of its growth and progressiveness. The elements that have contributed to a rise in the demand for consumer protection are several. The MRTP Act was one such case where not only such a command and control economy was based but also one of the terms of reference for the committee n competition policy to examine the jurisdiction of the MRTP Commission under the MRTP Act, 1969 and Consumer Courts under the Consumer Protection Act, 1986 and recommend majors for ensuring clear demarcation between them and for avoiding any overlap. However, there were widespread economic reforms undertaken and consequently, the journey from a 'Command and Control' economy to an economy based more on free market principles commenced its stride has been seen in the amendment made in the MRTP Act in 1991.

OBJECTIVES OF MRTP ACT

After much debate over the Bill, the MRTP Act was enacted in December 1969. It came into force in June 1970 and the MRTP commission was set up in August of same year. Prior to Competition Act 2002, MRTP Act 1969 incorporated the competition law in a substantial manner. The Act deals with the concept of monopolistic and restrictive trade practices and subsequently with unfair trade practices.

It owes its inspiration to Articles 38 and 39 of the Constitution which enjoins that the State should strive to promote the public welfare by securing and protecting a social order in which socio-economic justice shall inform all institutions of national life, and ensure that the ownership and control of material resources are so distributed as to subserve the common good and that the operation of the economic system is based in such a manner which does not result in the concentration of wealth and means of production to the common detriment. Broadly, the Act was based on four principles:

(1) Social justice with economic growth;
(2) Welfare state;
(3) Regulation concentration of economic power to the common detriment;
(4) Regulation of monopolistic, unjust, and restrictive commercial practices.

It was designed to avoid the economic concentration of power in the Indian economy by exercising surveillance and adopting proper measures in case the economic concentration proves to the common detriment of the general public. The promotion of economic growth is the ultimate object of the Act, intended to achieve. The operation of the economic system should not lead to the concentration of wealth and means of production to the detriment of the other general good.

The main principles on which the MRTP Act is based include the unfettered interplay of competitive forces, maximum material advancement through the sensible allocation of economic resources, availability of high-quality goods and services at reasonable costs, and finally a just deal for consumers. The act has a unique aspect in that it encompasses the production and distribution of both products and services.

As stated earlier, MRTP Act regulates three types of trade practices, monopolistic trade practices, restrictive trade practices, and unfair trade practices that hamper competition in India or are prejudicial to the public interest. A monopolistic trade practice is one that has or is likely to have the effect of maintaining unreasonable prices for goods or services, limiting technical development or capital investment to the detriment of the general public, or allowing the quality of any goods or services in India to deteriorate. It includes unreasonably increasing the cost of production of goods or maintenance of services or he sale or resale prices of goods or the charges of the services; or the profits earned or that may be derived from the manufacture, sale, or distribution of any goods or the provision or maintenance of any services via the use of unfair or deceptive practices.

DEVELOPMENT UNDER MRTP ACT

With the passage of time, it became clear that the objectives of the MRTP Act could not be met to the anticipated degree. In June 1977, the Government appointed the Hi8gh-Powered Expert (Sachar) Committee to consider and report the required changes. The Committee's report, inter alia, recommended:

(1) Withdrawal of exemption to public enterprises, to be able to check monopolistic, restrictive, and unfair trade practices in the sector;

(2) Widening the scope of the MRTP Act to include unfair trade practices (UTPs) like hoarding the supply of hazardous products and misleading and deceptive advertising; and

(3) Enhancement of MRTP Commission's powers and enlargement of its role.

Prior to 1984, there were no provisions in the MRTP Act to protect consumers from false or misleading ads or other comparable unfair commercial practices, and there was a need to safeguard them from practices used by the trade and industry to mislead or fool them. "Advertisement and sales promotion have become well-established modes or modern business techniques," according to the Sachar Committee. That marketing and consumer representation should not become false has long been one of the issues of contention between company and consumer." The Sachar Committee therefore recommended that a separate Chapter should be added to the MRTP Act defining various Unfair Trade Practices so that the consumer, the manufacturer, the supplier, the trader and other persons in the market can conveniently identify the practices, which are prohibited.

***Amendment in MRTP Act in 1991 and shift in the emphasis*:**

The MRTP Act was amended in 1984, except for the non-inclusion of hazardous goods wherein hoarding was also not included. Other amendments followed from time to time to suit the status quo. Following the adoption of reforms, the most far-reaching of the amendments was introduced in 1991, which removed the need for Government approval to establish new undertakings or the expansion of existing undertakings, and also diluted the provisions of the mergers & acquisitions clauses. Furthermore, it deleted the exemption granted to Government undertaking and cooperative sector: Exemption to agriculture was not touched, because it is an issue under the legislative control of states. Thus, the Act was amended in 1991 and the Government realized that pre-entry restrictions under the MRTP Act on the investment decision of the corporate sector outlived its utility, and become a hindrance to the speedy implementation of industrial projects. The Act was rewritten with the goal of reducing monopolistic, restrictive, and unfair commercial practices. The principal objectives sought to be achieved through the MRTP Act, prior to the amendment in 1991were:

(1) Preventing the concentration of economic power to the disadvantage of everyone;

(2) Control of monopolies;

(3) Prohibition of monopolistic trade practices ("MRTP");

(4) Prohibition of Restrictive Trade Practices ("RTP")

(5) Prohibition of Unfair Trade Practices ("UTP").

The MRTP Act of 1969 was revised in 1991 as part of the new economic reforms initiated by the government at the time. The modifications re-established the goals expressed in the original 1969 Act. The first two of the five declared goals have been de-emphasized following the 1991 changes to the MRTP Act.

MRTP ACT AND CONSTITUTIONAL PROVISION

Articles 38 and 39 of the Indian Constitution established competition law.[ii] These articles are part of the Directive Principles of State Policy. In the backdrop of Directive Principles of State Policy, India's first competition law was enacted in 1969 and named the MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT 1969 (MRTP Act). Articles 38 and 39 of the Indian Constitution state, among other things, that the state shall endeavor to promote people's well-being by ensuring and protecting, as effectively as possible, a social order in which justice - social, economic, and political - must inform all institutions of national life, and the State orients its policy in particular towards security-

1. That ownership and management of the community's material resources be allocated in a way that best serves the common good; and

2. That the functioning of the economic system does not determine the concentration of wealth and means of production to the detriment of the common interest.

The unbridled interplay of competitive forces, the greatest material progress through the rational allocation of economic resources, the availability of quality goods and services at reasonable prices, and ultimately a fair and equitable deal for consumers are the very foundations on which the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act) lied. An interesting feature of its statute is to include in its field of application the fields of production and distribution of both goods and services.

Monopolies and Restricted Trade Practice Commission:

The Monopolies and Restrictive Trade Practices Commission (MRTP Commission), a quasi-judicial entity, is an important body of the Department of Company Affairs. The MRTP Commission, formed under Section 5 of the Monopolies and Restrictive Trade Practices Act of 1969, performs responsibilities and functions in accordance with the legislation. The main function of the MRTP Commission was to investigate unfair trading and take appropriate action against restrictive trade practices. With regard to monopolistic commercial practices, the Commission was empowered under section 10(b) to investigate such practices (i) on a reference to it made by the national government or (ii) in its sole discretion or information and submit its findings to the Union Government for further action.

Under the MRTP Act, a committee is constituted[iii] and the chairman is a person who is or was or is qualified to be a High Court or High Court Judge. The members of the Committee shall be both bona fide and capable persons with sufficient knowledge or experience in finance, law, commerce, accountancy, industry, public affairs or administration or able to deal with related matters. The Committee, assisted by the Director General of Investigation and Registration, conducts investigations, maintains a register of contracts and conducts proceedings under the MRTPC investigation.

Powers of MRTPC

The Commission's powers[iv] include those conferred on civil courts and will continue to do so strength:-

I. Order the errant companies to stop the trading practices and not to repeat them identical;
II. Issue a cease and desist order;
III. Grant an interim injunction restraining the continuation of the illegal promise so-called trade practices;
IV. Compensation for loss or damage resulting from Restrictive Trade Practice (RTP)or Unfair Trade Practice (UTP)
V. Order the parties to an agreement containing a restrictive clause to amend it;
VI. Require the parties to publish targeted advertisements;
VII. Proposals to the Central Government for the division or liquidation of companies, disconnecting interconnection between companies when their work harms society's interest has caused or causes MTP or RTP.

Inquiry and Investigation by MRTPC

Section 10 of the MRTP Act of 1969 authorizes the MRTP Committee to examine monopolistic or restrictive trade practices on the instruction of the Central Government or on the basis of its own knowledge or information.

The law contains provisions on the investigation procedure. The MRTPC may inquire regarding RTP based on compliance or a referral from the Central or State Government, or at the request or on its own initiative of the Director General (Investigations and Registration)[v]. The MRTPC has limited civil court powers to compel attendance, record oath statements, and request documents. The Director General has the right to conduct a preliminary investigation on his own initiative or following complaints submitted to him[vi]. The MRTPC has limited civil rights to compel attendance, record evidence, and request documents. However, the Director General has no such authority and has to rely on the MRTPC to provide members' attendance and call records.

Power of Commission to grant Temporary Injunction[vii]

The 1984 amendment included the power to grant interim injunctions. It is in 1991 it was further extended to allow orders to be issued without notice to the parties concerned. These revisions were made to enable the MRTPC to deal more effectively with anti-competitive practices. Without the power to issue an injunction, it is believed that anti-competitive conduct will continue until the harm is done, by which time it may be too late to intervene.

Power of Commission to Award Compensation[viii]

Since 1984, the MRTPC has been empowered to provide compensation for loss or damage caused by anti-competitive conduct, but only on the demand of the Central Government, State Government or the aggrieved party, depending on the nature and extent of the violation, loss or damage Loss or damage is detected during inspection.

Amendments to the Act in 1984 allowed the MRTPC to enforce its orders of interim injunction and restitution through the courts. The MRTPC may, through the Director General or any other officer, call for reports on compliance with its orders. An amendment passed in 1991 made it a contempt of court, further strengthening its compliance powers.

Extra Territorial Jurisdiction

The MRTPC has an extraterritorial effect and can issue orders against parties whose anti-competitive conduct outside India is carried out in India. Even the Supreme Court recognized this.[ix]

JUDICIAL ATTITUDES TOWARDS THE MRTP ACT: AN EXAMINATION OF SIGNIFICANT MRTP CASES

1. ***Director General of Investigation and Registration [DG (IR)] vs. Modi Alkali and Chemicals Ltd***[x]

Fact:

The committee received anonymous accusations that some firms had established a cartel, producing virtual shortages of commodities and that chlorine gas and hydrochloric acid prices had risen by 200% in the previous four months. After an investigation, the DG announced that there was no cartel and no action should be taken. The MRTPC then conducted further investigations.

Held:

Although the term "cartel" is not defined in the MRTP Act, it was perceived that "a cartel is an association of producers which attempts to control the production, sale, and price of products by mutual agreement for the benefit of monopoly" on any market, industry or specific product". There wasn't enough evidence to prosecute anyone in the case, but the case was dismissed. However, this case opens up an important category of anti-competitive contracts hitherto undefined in India.

The Judges also concluded: "It is an indisputable fact that the prices of both chlorine gas and hydrochloric acid have risen abnormally, and such rapid price increases cannot be economically justified". According to the information provided to the DG by the respondents, the rate of price increase was not equal to the sales volume, which increased slightly or remained stable during 1992-1993. The significant increase in the price of both products in shipped materials cannot be attributed to increases in raw materials (sodium and electricity in this case). A statement to mention that the product must be transited within a short period of time.

Weakness

Cartels are not defined in the MRTP Act, 1969 but cartel is understood only by Section 2(o) of the Act i.e. Restrictive Trade Practices.

2. ***American Natural Soda Ash Corporation (ANSAC) vs. Alkali Manufacturers Association of India (AMAI) and others***[xi]

Fact:

ANSAC tried to export soda ash to India. To prevent these cartel shipments from entering Indian Territory, AMAI filed a complaint with MRTPC. In this case, the Supreme Court ruled that the MRTP Commission has no jurisdiction to hear the cases outside India. AMAI filed both a complaint and a request for precautionary measures court order for the MRTPC which claims that the ANSAC, composed of six natural producers soda ash, have teamed up to form an export cartel through a membership agreement mutually contracted in the United States. The six producers according to the agreed agreement that all export sales by them or one of their subsidiaries would go through ANSAC, which was born as an association.

The MRTPC opened an investigation and issued an injunction against ANSAC, discourage its cartelized exports to India. In June 1997, the Commission refused ANSAC's request to lift the injunction. ANSAC members' quotes Although the ANSAC agreement was founded outside of India, it seemed to be a cartel conducting part of its Act Practises in India, granting the Commission authority under Section 14 of the MRTP Act. The Commission maintained its previous injunction, claiming that ANSAC was a cartel. ANSAC then filed an appeal with India's Supreme Court on the following grounds:

- The MRTP Act gives no authority to halt imports.
- The MRTPC could take action if there is a restrictive business practice in India regarding imported goods. In this case, the goods had not been imported into India and therefore the matter was outside the jurisdiction of the MRTPC.
- The MRTP law did not confer extraterritorial jurisdiction on the MRTPC.

Held:

The Supreme Court dismissed the claim of organizing a cartel, stating that the MRTP Act's language did not provide it any extraterritorial authority. As a result, the MRTPC cannot take action against foreign cartels or price exports to India, nor can it limit imports. The Supreme Court set aside the MRTPC order. The SC ruled that the MRTPC cannot exercise extraterritorial powers and therefore cannot take action against foreign cartels unless the non-compete agreement involve an Indian party. Because the statute does not provide for extraterritorial application, the court's hands are tied.

Thus, this case revealed another loophole in the MRTP Act. Therefore, it can be very well concluded from these cases that the deficiencies of the MRTP Act cannot be avoided even before the Indian judiciary. This eventually led to the creation of the current competition laws.

Weakness: The MRTP Act does not confer extraterritorial jurisdiction on the MRTPC. It can only deal with matters arising in the Indian market and not matters arising outside India but affecting the Indian market.

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3. ***Tata Engineering and Locomotive Co. Ltd v. Registrar of Restrictive Trade Practices Agreement***[xii]

Fact

TELCO is a public limited company and a leading manufacturer of heavy and medium commercial vehicles. The capital venture required for a new factory on this exchange is high. Currently, there are only four major commercial vehicle manufacturers. They are Hindustan Motors Ltd., Premier Automobiles Ltd., Ashok Leyland Ltd. and Telco. Delivery of a business vehicle will be under the tariff. The insufficient supply is due to TELCO vehicles, which are in high demand, especially at home and abroad. In 1974-75, TELCO exports accounted for more than 80% of all commercial vehicle exports.

Buyer preference for TELCO vehicle market has been maintained due to high inventory and detailed and comprehensive lines of after sales services offered by TELCO dealers. TELCO has advised dealers of the maximum payment per vehicle model they will receive from their

customers. In May 1972, TELCO introduced a method of monitoring salesmen's order reservations and affected the transportation of vehicles for these orders in order to distribute vehicles to dealers in the chronological order in which the orders were booked.

TELCO is obliged to provide facilities for the maintenance of the vehicles it advertises while selling them. Given the legitimate concerns of buyers, it is important that such facilities are distributed throughout the country. Even in remote areas where interest in new vehicles is low, it is important to provide after-sales facilities so that vehicle owners can continue to use them. TELCO provides these services through a pan-India network of 68 dealers, 69 sub-dealer service centers and 13 regional TELCO workstations. Every dealer must have a showroom, service station and storage space for special tools and TELCO spare parts.

Issue:

Pursuant to section 10(a)(iii) of the MRTP Act, the Registrar of Trade Restraint Agreements requested the Commission to investigate under section 37 of the Act of restrictive trade practices.

1) Subsections (1) and (3) of these Terms and Conditions stipulate the limitation or division of territories or markets between TELCO and its agents.

2) The regulations regarding the maintenance of the resale price and maintenance are set out in (6) and (13).

3) Clause (14) also contains provisions for exclusive dealer activities.

4) Paragraphs 1, 3, 6 and 14 specify that the company has restrictive business practices in terms of territorial distribution and exclusive transactions between agents and the TELCO may waive the prohibited business practices stipulated by the registrant.

Held:

The commission said that the exclusive nature of dealers limited to TELCO vehicles is not detrimental to public interest. The Supreme Court of India considered and heard all the facts and arguments and held that the contract in this case does not constitute a restrictive trade practice and cannot be registered and in fact restricts the sale of goods. Territorial restrictions that prevent dealers from selling vehicles outside their territories are not trade-restrictive practices, given the details, facts, and circumstances of the exclusive dealer agreement between TELCO and the dealers.

Weakness

The MRTPC lacks the necessary tools and authority to launch an inquiry to uncover tangible proof of cartel activity.

BID RIGGING UNDER COMPETITION LAW

The Competition Act ("Act") of 2002 was formulated to address the economic realities of the nation, aiming on the one hand to promote competition and on the other hand to protect Indian markets from the clutches of companies complying with anti-competitive law practices in India. The law mainly prohibits 3 (three) main segments, viz. abuse of dominant position by companies, anti-competitive agreements, and regulation combination e.g. Mergers and acquisitions to ensure that market competition is not affected in India. Bid rigging or collusive bidding is one of the anti-competitive agreements that are thought to harm competition in India. It is a form of unfair competition. It can be illegal in India if it has an adverse impact on competition. Bid-rigging is an agreement between companies that sell similar or identical products or services in the same market and at the same level and that directly or indirectly results in bid-rigging. The law prohibits such an agreement because it would be unfair.

Cartels from when companies work with their competitors to raise or maintain prices, divide geographies, clients, or projects between them, agree on boundaries, and production, and participate in bid-rigging. Bid rigging is a form of cartel behavior. It is when bidders accept eliminating competition in the procurement process and depriving the public of a fair price. Bidders can eliminate competition when awarding government contracts in several simple ways, for example:

- A competitor agrees to make an uncompetitive bid that is too high and accepts or contains terms that are unacceptable to the buyer.
- A competitor agrees not to bid or bid withdraw an offer of consideration.
- A competitor agrees not to bid in certain geographical areas or only for certain public bodies.

While the schemes used by companies to manipulate bids vary, they all have one thing in common: the bidders agree to eliminate competition so that prices are higher and the government pays more Cartels can be made up of one or more anti-competitive agreements that govern how the parties involved will behave (for example, a minimum price for a product or service, or no discount), or not act (for example, not to bid on a tender). It could be an anti-competitive agreement very informal (a "nod and a wink") but remains illegal. Although there are several types of cartels, the goal of each is the same: to maximize the profits of the members of the cartel while preserving the illusion of competition. When competitors engage in bidding fraud (or other cartel behavior), a customer runs the risk of being overloaded with purchases. Cartel behavior can harm the well-being of citizens usually through price increases and also through negative impacts on other factors such as choice, innovation, quality, and investment

Bid-rigging refers to the behavior by which competitors who would otherwise independently bid and compete for a bid enter into a non-competition agreement and manipulate the bidding process for the purpose of sharing the resulting profits, result. The tender/bidding system is based on the notion of competitive rate quotation, however, cartel formation undermines this fundamental premise. When bidders band together and control the rates, competition is lost. Cartels may operate with the connivance of public servants, as in the case of this project.

Collusion in bid-setting can take the form of a pre-determined and agreed-upon bid price, an agreement not to bid against another cartel member, or even a complete withdrawal from the bidding process, call for tenders. The members of a cartel do not bid independently of each other but with a view to the common objective of the cartel. Its modus operandi concerns the elimination of competition in the bidding process, which results in mutual benefit for the parties to the agreement and disadvantage for customers, competitors and the market.

Bid rigging happens in a variety of sectors and situations. Public procurement is an important part of a country's economy. It can cause serious harm to taxpayers if manipulated in a way that affects public procurement in a serious way and can be costly to the taxpayer.

SUPREME COURT'S TAKES ON BID RIGGING

The Supreme Court in Paragraphs 40, 41, and 42 of Excel Crop Care Limited v. Competition Commission of India,[xiii] case precisely explained the concept and scope of bid rigging or collusive bidding as follows:

Para No. 40: The above statement is completely wrong. Mr. Kaul's (Advocate on Record for Petitioner) succinct answer is that the parallel argument does not apply to the tender case. This corresponds to the field of market economy. For this reason, the whole story of the same price being quoted before the commencement of Section 3 of the Act and continuing long after the commencement of Section 3 of the Act is highlighted. It cannot be a coincidence that the prices quoted by the three appellants were in almost all cases the same or even within a few praise of each other. This also applies to the cost structure, i.e. the costs. The production of the product was very different between the three appellants. In this regard, the following factors should be highlighted: (a) the same offer has a 10-year history; b) there are only four suppliers of the product in the market, three of which are the appellants; (c)) through production costs are different, they have offered the same price d) even if the geographical location of the three suppliers is different, odd matches of the same price and repeat it too much; (e) the margins would be different but still the same; (f) different prices offered by different parties for different offers. It remains the same regardless of the price of the particular offer. It's too random to believe. So, in terms of Section 3 of the Act, the complainant has an obligation and it is too heavy to justify the above trends, but they have not been able to remove the burden. Therefore, we find that the elements of Article 3 are met and the CCI is justified in finding that the appellant has violated Article 3(3) (a), Article 3(3) (b), and Article 3(3) (d).

Para No. 41: It is important to emphasize that bid-rigging is the practice of companies agreeing to cooperate in response to an invitation to bid. The main purpose of such cooperation is the need to coordinate their bargaining power, but such cooperation has other advantages besides higher prices. The motivation may be that fewer contractors actually burden the price of a particular arrangement, and costs lower. It is also possible that a contractor may submit a bid that it knows will not be accepted (because it has been agreed that another company will offer a lower price), but this shows that the contractor is still interested in doing business and is

keeping it. It can also mean that contractors can continue the business of their regular, favorite clients without worry.

Para 42: Collusive tendering takes many forms. The simplest form is to agree to offer identical prices, hoping that everyone receives their fair share of 49 orders. This is exactly what happened in this instance. However, since such behavior becomes suspicious and would easily attract the attention of competition authorities, more subtle collusion, in various forms, also takes place between the colluding parties. A system noted by certain competition authorities in other countries consists of notifying each other of the offers envisaged among themselves or, more likely, to a central secretariat, which then quantifies the market and eliminates the offers which, in its opinion, would result in a loss for some or all cartel members. Another system that has come to light is order rotation. In that case, the company whose turn it is to receive an order will cause its quote to be lower than that of the others.

CONCLUSION

Bid rigging is detrimental to the country's competitive environment since it may result in misleading price hikes. The bulk of bids in India are requested from the general public, and bid rigging can result in the loss of public monies. Bid manipulation can also lead to large projects being allocated to inexperienced parties, which can have severe consequences. The above case laws illustrate that the Commission has actively pursued bid-rigging cartels. In these digital times, it is vital that the Commission's investigation powers be increased, as well as the Commission's authority to investigate bid-rigging in numerous sectors of the economy. As MRTPC and CCI have only 2 types jurisdictions one is from complaint and the other is from suo motu jurisdiction of DG investigation, only those cases are highlighted which are brought before them. Many bid rigging cases are not reported at all. It is tough challenge. But India is still growing in strength in respect of addressing the menace.

ENDNOTES

[i] https://www.reuters.com/article/us-banks-moneylaundering/regulators-look-to-punish-bankers-for-money-laundering-idUSBRE9260SQ20130307

[ii] Article 38 and 39 of the Constitution of India is part IV of the Constitution, referred to as Directive Principles of State Policy (DPSP). DPSP is guidelines to the central and state governments of India, to be kept in mind while framing laws and policies. DPSP is not enforceable by courts, however the principles laid DPSP are considered fundamental in the governance of the country, making it a duty of the State to apply these principles in making laws to establish a just society in the country

[iii] Section 5 of MRTP Act, 1969

[iv] Section 12 of the MRTP Act, 1969

[v] It could also be made on the basis of application by DG (I&R) with effect from 1991.

[vi] This power led to allegation of emergence of a parallel power Centre

[vii] Section 12A of the MRTP Act, 1969

[viii] Section 12B of the MRTP Act, 1969

[ix] Haridas Exports, AIR 2002 SC 2728

[x] 2002, CTJ 459 (MRTP)

[xi] (1998) 3 Comp. LJ 152 MRTPC

[xii] 1977 SCR (2) 685

[xiii] AIR 2017 SC 2734.