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Cooperation to Cartelisation: Anti-Competitive Behaviour in Cement Industry in India

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ABSTRACT: *Enterprises enter into numerous agreements for the expansion, growth, and innovative technological assistance with other firms and companies. However, in this process some them collude together and frame a hidden agreement to exchange sensitive information for profit maximisation, and thereby curb competition in the market. This results into severe negative impact on consumer as well as economy. The process is known as Cartelisation. It is a form of anti-competitive agreement opted by modern enterprises to expedite financial benefits. The process is gradual and performed during the regular business activities. Being part of gradual and regular business process, the carteling reflects the thin line between 'collective bargaining' and 'anti-competitive behaviour'. Only an in-depth analysis of financial and other indicators could reveal the pattern, process and impact of cartelisation.*
The present research paper examines the 'plus factor' approach which could be an indicative tool for identifying carteling. The paper, through case study method tests the proved cartelisation through 'plus factor' approach.
***KEY WORD**: Anti-competitive Agreement; Cartel; Collusion; Plus-factor; Competition Law; Cement;*

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I. INTRODUCTION

The history of cement industry is very suspicious in nature due to inequality within industry. Being an oligopolistic character, cement have inelastic demand. The real estate or infrastructure is the major driver of cement. Though, the consumption of demand is increasing trend but unequal growth of cement companies, keeps remarkable doubt about its activities indicating somewhere suspicious in nature. Undoubtedly, the growth of cement industry highly increased but it is also true that the whole market is dominated by few sellers only. leading companies exercise their dominance power to sustain their monopoly power so that they can earn huge profit. In order to do so, they form conspiracy, involve other companies to curb the competition. Some companies are ready to get indulge in that collusion, and if some companies are denying then in such case, leading companies adopt cheap tactics against that company to plan exit door from the market. The leading companies deliberately keeps their product price low, because of the fact that small company cannot survive longer duration as a rival firm, lastly, they don't have choice, either such company get indulge in cartelisation or take exit from such market. If some companies are not able to tackle against such tactics then in such cases, they take some compensation or ancillary contract, for not to enter into the market.

Anti-Competitive Agreement: Any arrangements or agreements which have appreciable adverse effect on competition (AAEC) are called as an anti-competitive agreement which is void under section 3 sub-section 2 of Competition Act, 2002. All such arrangement or mutual understanding at any stage whether such agreement is made on considering the price of the product or agreement made for production of goods or distribution or agreement made on supply or it can be on provision of services, the same shall be void under competition law. There two different kind of anti-competitive agreement viz., horizontal agreement and vertical agreement. Horizontal agreements are those agreement which have appreciable adverse effect on competition by mutual understanding between competitors in a same stage including agreement between one firm with another firm in a same level either at production level, supply or distribution level. Whereas, vertical agreement is those agreement which have appreciable adverse effect on competition having mutual understanding between different stage for instance one particular company have agreement with another company supply for not to enter into the market.

Cartelisation: Cartel is another form of horizontal agreement wherein either two firm or more than two firm concerts together to curb competition for the purpose to earn joint profit maximisation. Section 2(c) of Competition act provides definition of 'cartel 'as follow:

"cartel" includes an association of producers, sellers, distributors, trader or service providers, who by agreement amongst themselves limit, control or attempt to control the production, distribution, sale or price or price of or trade in goods or provision of services.

The cartel is said to be framed with an aim in the direction of either to fixing the price of goods or any form of provision of services. The definition of cartel can be read together with section 3 of competition act for better understanding of sever impact of cartelisation and same shall be void. Even cartel is said to be 'cancer on the open market economy'.

Market share: Market sharing are those agreements that can be framed either to share market geographically or division of market according to consumers or market division as per specific categories of consumers or sharing market by considering various types of goods or services or divide market in any other way. For instance, an agreement of market sharing is amongst two firm, first one is seller 'X' and seller 'Y', and goods 'G' are common between both of the firm. In such case, seller 'X' will sell goods 'G' in specified geographical area, whereas seller 'Y' will sell its goods 'G' in another allotted area, based on condition that 'X' will not sell its goods 'G' in the area allotted to 'Y' and in similar way 'Y' will not sell a goods 'G' in the allotted territory to 'X'.

The division of market geographically in form of agreements are every now and then demonstrate to be more fruitful in curbing competition as compared to price fixing for the reason of the cost and complications in fixing the same and stabilising common prices in longer duration are mostly higher than that involved in case of agreement under market sharing. Though market sharing is a very effective way to sustain longer period of time as they diminish the preference available to the customers in the market but the same is considered as anti-competitive agreement and consequently void under competition law.

Bid-rigging: Bid rigging mostly hint at collusion amongst the bidders to keep the bid money at the predetermined levels. It is a business practice wherein firms agree amongst themselves to collude over their response to invitation to tenders. The bid rigging is non-competitive behaviour of firms whereby they decide bid price at pre-determined level. Bid rigging is a kind of conspiracy and its outcomes always be the detrimental towards economy and to the public procurement agency, which is looking for the bids, and towards the public, who ultimately bear the burden of costs as taxpayers or lastly consumers.

Collusive bidding almost constantly outcomes in higher prices and is fruitful to the contractors. Bid rigging has many forms, and the conspiracy between firm can be regulated by using any kind of these categories, firstly bid suppression, wherein competitors who are actually bidders are asked to refrain from bidding, or if any bidder already submitted a bid, they are asked to withdraw the same hence the designated competitors (pre-determined winner) bid is accepted. Secondly, complementary bidding wherein competitors have decided to submit that particular amount as bids that seems either are too high that cannot be acceptable or it contain special condition that will not be sustainable towards the buyer. Such bids are not intended merely submitted for the sake of attendance of unaffected competitive bidding. The bidding has a tendency to cheat procuring entities by generating a smokescreen of honest competitive to hide the magnified bid prices. Thirdly, in case of bid rotation, conspirators submit their bids but take turn being the lower bidder as a winner by rotation. For instance, Firm 'A' Firm 'B' and Firm 'C' enter in a particular bidding process, under which they collude and decide first year lower bid will be of firm 'B', next contract for firm 'A' then next of firm C, accordingly they collude rotation wise and keeps colluding continuous. Fourthly, sub-contracting is another form of bid rigging where competitors agree together for either not to submit a bid or losing bid regularly in exchange of this collusion, they receive subcontracts or ancillary contracts or in another way of compensation in exchange from the successful low bidder. Such kind of bid rigging are regulated in case of invitation of bidder under public procurement system. But there is another form of bid rigging also have an existence which is more popular named price fixing.

In price bid rigging, bidders are colluding together and decide the price at pre-determined stage. Such kind of pre-determination is through intentional manipulation by colluded member of the bidding groups. The moment decided winner get win, this creates a new motivation for a subsequent tender towards collusion, thereby having a ripple consequence in the longer duration only if the same bidding process keeps on repeating in procurement system.

Price Fixing: Price fixing is those agreements either expressly or impliedly regulated where business competitors agreed among themselves on some specified condition like to sell the same product or service at the same price including any agreement to fix price, peg, cash discount or discount in kind or to maintain price for longer period. The only motive behind such colluding is to keep the price of a goods or provision of services as high as probable so that huge profits can be booked in future also. Price fixing have severe detrimental impact on customers because of the fact that directly or indirectly customers are forced to pay higher prices in absence of variety of choices.

According to section 3 (3)(a), "any agreement, which directly or indirectly determines purchase prices, shall be presumed to have an appreciable adverse effect on competition".

Price Parallelism: Price fixing is unlawful based on a condition that if it is executed intentionally and resulting through communication, or arrangements, or understanding or agreement between firms or individuals. But price fixing is not unlawful for a firm who use to copy the price movements of those firm who has de facto market leader called price leadership which is one of the characters of oligopolistic competition. Such following of price movement of leading firm is called as conscious parallelism. Parallel pricing happens if the firms keeps modifying their product prices instantaneously, in a similar direction and consistently.

Plus factor approach: Though the parallel behaviour is one of the character of oligopolist competition but Parallel behaviour of firms together can become first and foremost hint for suspecting the presence of collusion. Despite this, after the circumstantial evidence plus factor approach can become an instrument for identification of cartel in a particular market. Even the US and European courts have accepted the approach of 'plus factor' to face the challenge of price fixing. The only condition is existence of 'plus factor' other than parallel behaviour which is sufficient to prove appreciable adverse effect on competition. There are many cases relating to anti-competitive agreement that have come across Competition Commission of India relating to price fixing and cement industry is one of such case where the dispute arose.

Literature Review:

Cuts International & NLU Jodhpur (2008)submitted report to Competition Commission of India by analysing that 'Plus factor' approach may be adopted as a tool in many cases of different jurisdiction of developing countries.Belgrade (2011) explored instruction for detecting bid rigging under public procurement procedure including its methods, pattern, how they take place, what are the preventive measures can be taken place to tackle the issue of bid rigging.

Singh, Vijay Kumar (2014) discusses under scrutiny the abuse of dominance position of firm, restrictive trade in market which aims to boost monopolisation.

Harvard Law School (2018) examines price fixing policy wherein outlines a direct approach to price-fixing policy. The social issue with successful coordinated price elevation has both static and dynamic elements with few of concluding remarks, including specific reservations regarding policy execution in light of limits to existing empirical knowledge and institutional features of different competition law regimes.

These works are based on financial performance, profitability, their growth and expansion under the umbrella of cartelisation. But neither of studies were done on considering financial indicators as an instrument to identify anti-competitive agreement in cement industry. Anti-competitive agreement of cement industry resulting detrimental impact towards consumer as well as economy.

The work assumes that anti-competitive practices such as cartel etc., affects those companies who actually believe in doing fair competition but get affected by such carteling and somewhere it distorts public economy at larger scale.

1.2 Research Objectives

The main aim of this research paper is to find out whether selected economic cum financial indicator are able to find out the effect of carteling on non-cartel member. The present work has examined the level of detrimental impact on non-cartelised member as an affected zone by conspiracy done by cartelised companies.

1.3 Research Methodology and Data Analysis

For the purpose of exploratory analysis which is based on case study approach wherein researcher has taken Ambuja Cement Ltd. as cartel member and Anjani Portland Cement Ltd as non-cartelised member to find out the impact of such cartel in form of economic cum financial indicators through performance of Ambuja

Cement Ltd. (cartel member) during presence of cartel (2007-11) and Anjani Portland Cement Ltd. (non-cartel member) during presence of cartel (2007-2011).

H0: Anti-competitive practices of cartelised companies inevitably influence the economic cum financial indicators of a non-cartelised companies.

1.3.1 Data Collection and Analysis:

This work is a mixed method wherein data is collected through case-study, and is based on secondary data. The secondary data is collected from annual report of Ambuja Cement Co. Ltd., and Anjani Portland Cement Ltd. with an aim to analyse effects of Anti-competitive Agreements over other companies who actually not indulge in carteling. The data collected above is comparatively analysed amongst Ambuja Cement Company Ltd.and Anjani Portland Cement Ltd, during cartel time frames i.e. between time frame 2007-11

To see the impact of anti-competitive agreement over cement industry, the Ambuja Cement Ltd has been selected deliberately, since the CCI has imposed penal sanction over this company for its carteling behaviour in the year 2012. Further, Anjani Portaland Cement has been selected randomly to evaluate the intensity of cartel on such company.

The criteria for comparison are based on **five economic indicators** i.e. Sale, Net profit, Earning per share (EPS), Total Asset and Inventories. The data is collected from all available sources including office of relevant cement company, other government records, and cases decided by Competition Commission of India (CCI).

Data are analysed by applying sample pair test as a statistical tools through SPSS-20 for coding, analysing, and interpreting data.

1.3.2 Data Presentation:

To find out the performance trend of Ambuja Cement Ltd (Cartel member) and Anjani Portland Cement Ltd. (Non-Cartel member) during cartel time frame (i.e. 2007 to 2011). For the purpose to accomplish the objective researcher has compared the performance indicator of both the companies to know whether there is any inter relationship or any difference in performance of such selected indicators specially during cartel time frame (2007-2011)

Table: 1 Paired Samples Statistics

		Mean	N	Std. Deviation	Std. Error Mean
Pair 1	Sale_P_Cartel	6962.51	5	1099.441	491.685
	Sale_A_Cartel	119.48	5	39.180	17.522
Pair 2	NP_P_Cartel	1376.4420	5	231.48739	103.52431
	NP_A_Cartel	11.5500	5	6.52179	2.91663
Pair 3	EPS_P_Cartel	9.0220	5	1.53412	.68608
	EPS_A_Cartel	6.2820	5	3.55000	1.58761
Pair 4	TA_P_Cartel	9046.4100	5	1977.14818	884.20755
	TA_A_Cartel	197.7400	5	121.84130	54.48908
Pair 5	INV_P_Cartel	806.2840	5	163.29195	73.02638
	INV_A_Cartel	15.1840	5	10.49406	4.69309

The table 1 represents descriptive statistics of both the companies by considering their performance trend of selected economic cum financial indicator. The data reveals mean of 5 years performance between 2007 to 2011.

Operational Definition:

Pair 1:
Sale_P_Cartel: Average Sale of Ambuja Cement Ltd (Cartel member)
Sale_A_Cartel: Average Sale of Anjani Portland Cement Ltd (Non-cartel member)

Pair 2:
NP_P_Cartel: Average Net Profit of Ambuja Cement Ltd (Cartel Member)
NP_A_Cartel: Average Net Profit of Anjani Portland Cement Ltd. (Non-cartel member)

Pair 3:
EPS_P_Cartel: Average Earnings Per Share of Ambuja Cement Ltd. (Cartel Member)
EPS_A_Cartel: Average Earnings Per Share of Anjani Portland Cement Ltd. (Non-cartel member)

Pair 4:
TA_P_Cartel: Average Total Assets of Ambuja Cement Ltd. (Cartel member)
TA_A_Cartel: Average Total Assets of Anjani Portland Cement Ltd. (Non-cartel member)

Pair 5:
INV_P_Cartel: Average Inventories of Ambuja Cement Ltd. (Cartel member)
INV_A_Cartel: Average Inventories of Anjani Portland Cement Ltd. (Non-cartel member)

The table 1 reveals the truth of monopolisation of cement industry wherein entire cement sector are in the hands of few large companies only. Likewise, there is huge difference in performance of both the companies during the same time frame. Ambuja Cement Co Ltd has excessively increased its Sale, Net Profit, EPS, Total Asset and Inventories by creating carteling network, whereas Anjani Portland Cement Ltd has lower performance in terms of Sale, Net Profit, EPS, Total Assets and Inventories which is without carteling network.

Hypotheses and Inferences

Table:2 Paired Samples Correlations

		N	Correlation	Sig.
Pair 1	Sale_P_Cartel&Sale_A_Cartel	5	.974	.005
Pair 2	NP_P_Cartel&NP_A_Cartel	5	.214	.730
Pair 3	EPS_P_Cartel&EPS_A_Cartel	5	.225	.716
Pair 4	TA_P_Cartel&TA_A_Cartel	5	.959	.010
Pair 5	INV_P_Cartel&INV_A_Cartel	5	.480	.413

The table 2 reflects the Correlation between performance of Ambuja Cement Ltd and performance of Anjani Portland Cement Ltd. It is noticed that there is significant correlation between performance of sale and performance of total asset, having significant value 0.005 and 0.010 respectively. As the significance value is less than 0.05 assumed level of significance hence it is found that there is significant correlation between Ambuja Cement Ltd. (cartel member) and Anjani Portlant Cement Ltd (Non-cartel member) in terms of performance of sale and performance of total asset during cartel time frame. It's not because of the reason that there is no demand of cement in market but it is because of carteling network, leading companies create cartel, share sensitive information with other companies for the purpose to earn joint profit maximisation and to become leading company ever in future they always try to boos monopolisation.

Table:3 Paired Samples Test

		Paired Differences					t	df	Sig. (2-tailed)
		Mean	Std. Deviation	Std. Error Mean	95% Confidence Interval of the Difference				
					Lower	Upper			
Pair 1	Sale_P_Cartel - Sale_A_Cartel	6843.024	1061.330	474.641	5525.208	8160.840	14.417	4	.000
Pair 2	NP_P_Cartel - NP_A_Cartel	1364.89200	230.18262	102.94080	1079.08253	1650.70147	13.259	4	.000
Pair 3	EPS_P_Cartel - EPS_A_Cartel	2.74000	3.53585	1.58128	-1.65034	7.13034	1.733	4	.158
Pair 4	TA_P_Cartel - TA_A_Cartel	8848.67000	1860.56315	832.06914	6538.47572	11158.86428	10.635	4	.000
Pair 5	INV_P_Cartel - INV_A_Cartel	791.10000	158.52320	70.89373	594.26745	987.93255	11.159	4	.000

The table 3 reflects the difference in performance of Ambuja Cement Ltd and Anjani Portland Cement Ltd during cartel time frame. There is significant difference found in case of Sale, Net Profit, Total Asset, and Inventory as P value is less than 0.05 assumed level of significance. Hence it is found that because of carteling network Ambuja cement Ltd developed extra-ordinarily which is not possible without carteling network. Due to this, Anjani Portland Cement Ltd. has lost their opportunity to growth and expansion which is directly shifted as reward towards Ambuja Cement Ltd.

1.4 Findings and Conclusion

Being an oligopolistic character cement industry has faced competition issues and challenges due to conspiracy amongst companies. The companies under the umbrella of cartelisation are familiar to create carteling and put every possible effort to break thin line between business co-operative behaviours and cartelisation. Despite this, cartel members are trying to hide secret agenda behind their meeting hence it is very difficult to identify occurrence of cartel. But the researcher has explored the same and provides economic cum financial indicator to competition authorities so that they can identify or detect the occurrence of cartel much before it converts hazardous impact on market. Even by using this method competition authorities can take preventive measures and plays a decisive role by declaring specific industry under suspect. Thus, every activity of such sector can be evaluated by competition authorities to detect whether such action of firms coming under the horizon of business co-operative behaviour or it is carteling activities by them.

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