CHAPTER XV: DEPARTMENT OF SCIENTIFIC AND INDUSTRIAL RESEARCH

Central Electronics Limited

15.1 Violation of CVC guidelines and extra expenditure for the purchase of silicon wafers

CEL placed purchase order for silicon wafers on nomination basis instead of competitive bidding, in violation of guidelines laid down by CVC based on the judgement of Hon'ble Supreme Court of India and made changes in the sales contract as finally entered into which were in variance with the approval of the Board.

Central Vigilance Commission (CVC) issued orders (July 2007) advising all Chief Vigilance Officers to apprise their respective Boards/managements about the observations contained in the judgement[1] of the Hon'ble Supreme Court on transparency in works, contracts and consultancy contracts awarded on nomination basis. The Hon'ble Supreme Court of India had held that contracts by the State, its corporations, instrumentalities and agencies should normally be granted through public auction/public tender by inviting tenders from eligible persons. In rare and exceptional cases, for instance during natural calamities and emergencies declared by the Government; where the procurement is possible from a single source only; where the supplier or contractor has exclusive rights in respect of the goods or services etc., this normal rule may be departed from and such contracts may be awarded through private negotiations. Accordingly, the CVC in its order re-emphasised that tendering process or public auction was a basic requirement for award of contract by any Government agency as any other method, especially award of contract on nomination basis, would amount to a breach of Article 14 of the Constitution guaranteeing the right to equality, which implies right to equality to all interested parties.

Central Electronics Limited (Company) floated (April 2010) a global tender for procurement of 20 lakh mono crystalline silicon wafers[2] in response to which six bids were received. After technical evaluation five firms were found to be eligible. The L1 bidder[3] was awarded the contract but after supplying one lakh silicon wafers @ USD 1.98, it expressed inability to make further supply. Subsequently, the Company awarded (December 2010) a contract on nomination basis to M/s Jiangxi LDK Solar Hi-tech Co. Ltd. (supplier) for the supply of one lakh silicon wafers per month for USD 27,15,000 (₹13.21 crore) for one year from January 2011 to December 2011.

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[1] *Arising out of SLP (Civil) no 10174 of 2006*
[2] *125 mm x 125 mm*
[3] *M/s Chemplast Sanmar Limited.*

In this connection, audit observed the following:

- The Company awarded the contract on nomination basis without inviting competitive bids though several firms were available in the field. This was in contravention of the CVC instructions of July 2007 based on the judgement of the Hon'ble Supreme Court of India.

- The Company took an in-principle approval from the Board of Directors and the CMD for undertaking the procurement of silicon wafers. Later, while awarding the contract on nomination basis, the Company changed the terms and conditions of the contract without obtaining the final approval of the BOD/CMD.

- Further, it was observed that the price variation clause as stipulated in the sales contract was deleted by the Company even though it was specifically provided for in the model sales contract. It was also observed that the price of silicon wafers ranged between USD 2.20 to USD 1.95 from 2009-10 to 2010-11 (ie before the contract was executed) and the prices started declining drastically in the international market to USD 0.55 but due to deletion of the price variation clause, the Company had to purchase the silicon wafers at an exorbitant fixed rate from the supplier. Later, during June 2011, the supplier offered an additional quantity of 30,000 silicon wafers at a price of USD 1 which was accepted by the Company. During the same month, the supplier again offered an additional quantity of 30,000 silicon wafers at a price of USD 0.55 but the deal could not be finalised due to financial constraints in the Company.

- Undue benefit was extended to the supplier as the requirement of Performance Bank Guarantee which was stipulated in the model tender form was waived off and instead in an unusual departure the buyer viz CEL itself provided the bank guarantee to the supplier for USD 4,52,000 (₹ 2.03 crore[α])

- The procurement was made without proper assessment of the requirement based on past consumption pattern. It was observed that the average wafer utilisation from 2009-10 to 2012-13 ranged between 29,400 wafers to 49,620 wafers per month. However, the Company procured 12.30 lakh wafers in 2011 which led to accumulation of stock.

- In September 2011, the General Manager (PV) opined that due to drastic reduction in the global prices of wafers, the procurement and processing of the wafers was highly unviable even after foregoing the bank guarantee of ₹ 2.03 crore as the production cost for the remaining quantity worked out to be more than the market price and hence it was proposed to foreclose the contract. Inspite of this, the Company continued with the aforesaid contract to avoid the consequences arising out of non compliance of contract, despite having financial constraints.

Thus, the imprudent decision of purchasing one lakh wafers per month at an exorbitant fixed price (ranging from USD 2.35 to 2.20) led to accumulation of raw material resulting in blocking of funds to the tune of ₹ 2.65 crore (March 2013). Due to the

[α] ***USD1=₹ 45***

aforesaid accumulation of inventory, the Company did not place any purchase order for procurement of silicon wafers till October 2013. Further, the improper assessment of inventory and awarding the contract on nomination basis after deleting the price variation clause had also led to an extra expenditure of ₹ 5.14 crore.

The Management stated (January 2014) the following:

- Almost all wafer manufacturers globally at that time had switched over to the production of less than 200 micron wafers. In this situation it was very difficult to get quotations/availability of 220+-20 micron wafers.

- The Company had procured 1 lakh wafers for which there was sufficient capacity to process and the same was based on orders booked and expected orders. However, the Company could not process the wafers procured due to automation issues, lack of training to labourers and mishandling of the wafers which resulted in increased breakage. Due to these reasons, utilisation of wafers for processing was stopped and the requirement of the Company was met by outsourcing the modules and cells.

- Performance Bank Guarantee (PBG) was given to ensure that CEL would meet its commitment to buy the material. Obtaining a PBG from the supplier was not considered necessary and hence was not stressed upon.

The Ministry in its reply (January 2014) endorsed the view of the management.

The reply of the Ministry/Management is not acceptable as:

- The award of the contract to the supplier was undertaken on the nomination basis in violation of the instructions of the CVC of July 2007 which is based on the judgement of the Hon'ble Supreme Court.

- The reply of the Ministry/Management fails to explain why the price variation clause was deleted at the time of entering into the contract even though it was specifically provided for in the model sales contract. This deletion of price variation clause also did not have the approval of the competent authority.

- Though the Board of Directors in their minutes has authorized entering into an agreement with a down payment of 10 *per cent* of the value of the contract, while entering into the contract an unusual departure was made whereby the buyer viz. CEL remitted a Bank Guarantee to the supplier.

- The reason for procuring wafers during 2011, far in excess of the actual utilisation during the preceding years, thereby leading to large stock accumulation and pay outs has also not been explained.