

Delhi District Court

Central Bureau Of Investigation vs 9.2005 As Ex. Dw2/F; The Letter ... on 18 December, 2020

IN THE COURT OF SH. SANJAY GARG, SPECIAL JUDGE (PC ACT) (CBI)-18,
ROUSE AVENUE DISTRICT COURTS, NEW DELHI.

CBI Case No. : 05/2019.

RC No. : AC2/2006/A0005/CBI/SPE/ACU-11/New Delhi

In the matter of:-

Central Bureau of Investigation

Versus

1. R. C. Aggarwal,
S/o Late Sh. M.C. Aggarwal,
R/o 93, Qutub View Apartment, Katwaria Sarai,
New Delhi- 110016. ...Accused No. 1 (A1)

2. A. V. Kharkar,
S/o Sh. Vasant Shankar,
R/o 507, Anuradha Building,
Amrit Kumbh Co-operative Housing Society,
Chitale Patn, Dadar (West), Mumbai,
Maharashtra. ...Accused No. 2 (A2)

3. P. K. Malhotra,
S/o Sh. B.N. Malhotra,
R/o BB-19D, Janak Puri,
New Delhi. ...Accused No. 3 (A3)

4. D. H. S. Prasad,
S/o Late Sh. D. Hanumant Rao,
R/o Room No.107, House No. 36A,
Sri Ram House, Sarai Jullena, New Delhi.
Also at : Flat No. 101, Plot No. 7,
Swapnil, Shaiwalini, North Ambazari Road,
Shivaji Nagar, Nagpur, Maharashtra. ...Accused No. 4 (A4)

5. V. K. Malhotra,
S/o Late Sh. D. R. Malhotra,
R/o RU-212, Pitam Pura,
New Delhi. ...Accused No. 5 (A5)

6. Pohp Singh,
S/o Late Sh. Jhuthar Singh,
R/o House No. 369, Near Ice Factory,
Kapashera, New Delhi. ...Accused No. 6 (A6)

7. M/s. Deep Travels,
Having office at 369,
Near Ice Factory,
Kapashera, New Delhi. ...Accused No. 7 (A7)

8. Anil Kalia,
S/o Late Sh. J. Kalia,
R/o C-1/11, 1st Floor,
Vasant Vihar,
New Delhi. ...Accused No. 8 (A8)

Date of presentation of charge sheet : 29.12.2007
Date on which judgment was reserved : 09.11.2020
Date on which judgment was pronounced : 18.12.2020

JUDGMENT:

1. This case pertains to the alleged criminal conspiracy between the accused public servants and abuse of their official positions in granting extension of staff transport contract of Centaur Hotel, Delhi and Chefair Flight Catering, Delhi in favour of contractor M/s. Deep Travels and making payment to it at exorbitant rates during the period 2002 to 2005. Centaur Hotel, Delhi and Chefair Flight Catering, Delhi are the units of Hotel Corporation of India Limited (for short, HCI), which is a public C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 2 of 77 sector undertaking and subsidiary company of Air India Limited.

Details of the accused persons

2. At the relevant time, accused R. C. Aggarwal (A1) was Managing Director of HCI. Accused A. V. Kharkar (A2) was Advisor (Contract & Purchase), HCI. Accused P. K.

Malhotra (A3) was Manager Accounts (Corporate Purchase), Centaur Hotel, Delhi. Accused D. H. S. Prasad (A4) was Executive Manager (Accounts), Centaur Hotel, Delhi. Accused V. K. Malhotra (A5) was Deputy Manager Accounts (Corporate Purchase), Centaur Hotel, Delhi. Accused Anil Kalia (A8) was General Manager, Chefair Flight Catering, Delhi. Accused M/s. Deep Travels (A7) was the existing contractor/transporter and accused Pohp Singh (A6) was its partner.

Background of the case

3. In December, 1999, HCI had issued a public tender for staff transport service for its Delhi units i.e. Centaur Hotel and Chefair Flight Catering for the next two years but due to certain technical defects, the tender was re- floated for the period 01.04.2000 to 31.03.2002. On the basis of the lowest quoted rates, the said contract was awarded to M/s. Deep Travels (A7) for a adhoc period of four months subject to its satisfactory performance. The re- floating of tender was challenged by one M/s. Kapson Travels before the Hon'ble High Court of Delhi through Civil Writ Petition No. 1461/2000. Vide order dated 31.03.2000 passed in the above writ petition, it was directed that the award of tender by HCI shall be subject to the outcome of C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 3 of 77 the writ petition. The said writ petition was disposed of on 20.09.2001 on the undertaking given on behalf of HCI that it would permit M/s. Kapson Travels to bid for the next tender starting from April, 2002 and that M/s. Deep Travels would not be given weightage for providing service during the tender ending on 31.03.2002. Since the contract awarded to M/s. Deep Travels could not be regularized upon the expiry of said adhoc period due to the pendency of the above writ petition and the contractor continued to render its services upto 31.03.2002, the sanction for regularization of contract was granted by the competent authority retrospectively.

Case of the prosecution

4. Upon the expiry of the tender period from 01.04.2000 to 31.03.2002, M/s. Deep Travels (A7) discontinued the transportation facility as the Hon'ble Supreme Court had imposed restrictions on plying of diesel buses in Delhi with effect from 05.04.2002 and had directed that the commercial vehicles be plied on CNG fuel. In view of the same, the process of floating of tender for CNG based staff transport service was commenced with approval of accused R. C. Aggarwal (A1) on 10.06.2002. Accused Pohp Singh (A6), who was the partner of M/s. Deep Travels, came to know about the said process and submitted two letters dated 27.06.2002, wherein he offered the rate of Rs. 15/- per kilometer plus CNG hike from 01.07.2002 for 37 to 52 seater buses. On 03.07.2002, accused R. C. Aggarwal (A1) recalled his earlier decision of floating of tender and instructed the tender committee to put up a proposal for extension of contract in favour of M/s. Deep Travels for CNG buses. Pursuant thereto, the tender committee, which also included accused P. K. Malhotra (A3) and accused

Anil Kalia C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 4 of 77 (A8), prepared a note dated 04.07.2002 recommending extension of contract in favour of M/s. Deep Travels for plying 52 seater CNG buses at the rate of Rs. 17.40 per kilometer for a period of three months subject to the inspection of buses. It was further recommended that during the extended period, the performance of the transporter would be adjudged by the User department. While making such recommendation, the tender committee had referred to the letter dated 03.06.2002 written by accused A. V. Kharkar (A2) vide which he had informed that in view of the ongoing disinvestment process of Delhi units of HCI, the Department of Disinvestment had advised not to float fresh tender. The said recommendation was approved by accused R. C. Aggarwal (A1) on 08.07.2002. It was disclosed in the investigation that no such instruction was ever issued by the Department of Disinvestment since the process of disinvestment of Delhi units of HCI had been discontinued in May, 2002. Investigation also disclosed that on a complaint made by accused Pohp Singh (A6) regarding delay in issuance of letter of intent, accused R. C. Aggarwal (A1) asked accused P. K. Malhotra (A3) to issue work order without any further delay vide letter dated 16.07.2002 and accordingly, accused P. K. Malhotra issued letter of intent to M/s. Deep Travels on the same day without carrying out the inspection of the buses. Investigation further revealed that one M/s. Chetan Travels, on its own accord, had submitted its quotation for staff transport contract vide letter dated 05.10.2002 offering lower rate of Rs. 16.50 per kilometer for CNG buses but accused R. C. Aggarwal (A1) deliberately ignored the same. Investigation also disclosed that M/s. Deep Travels was plying mini buses C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 5 of 77 instead of 52 seater buses and lot of complaints had been received in that regard. Keeping in view the same, the tender committee recommended termination of contract of M/s. Deep Travels and floating of new public tender vide its note dated 07.11.2002 but instead of taking decision about termination of contract, accused R. C. Aggarwal (A1) kept the matter for discussion. Thereafter, the tender committee also changed its earlier recommendation and by referring to the disinvestment process, made a proposal for calling of selective enquiries from the parties serving Air India and Airport Authority of India vide its note dated 03.12.2002. It was also mentioned in the said note that the existing transporter could also be considered for the same if its performance was improved. Accused R. C. Aggarwal (A1) approved calling of selective enquiries. Investigation further revealed that the tender committee once again changed its recommendation and proposed for floating of public tender vide its note dated 29.01.2003. Accused R. C. Aggarwal (A1) approved the same on 30.01.2003. It is alleged that the approval for floating of public tender was given with a view to buy time for providing further extension to M/s. Deep Travels as the process was never intended to be taken to its logical conclusion. Investigation further revealed that though public tender was floated for staff transport service on 04.02.2003 and out of the technical bids received, four parties were found eligible for opening of their commercial bids but further process was put on hold in view of the letter dated 28.03.2003 written by accused R. C. Aggarwal (A1) to

accused A. V. Kharkar (A2), wherein he had instructed that since the voluntary retirement scheme of the employees, being the part of disinvestment process, was due C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 6 of 77 to be implemented shortly, the process should be kept pending till the outcome of the said scheme was known. Thereafter, extension after extension was given to M/s. Deep Travels on the same pretext of working out the impact of voluntary retirement scheme on the transport requirement. The motive behind the repeated extensions was that the validity period of the tender would expire and a recommendation for cancellation of the tender would eventually be made. Finally, the tender was cancelled in December, 2003 for the reason that the validity period thereof had expired. Investigation also disclosed that since M/s. Deep Travels was plying 42 seater buses in place of 52 seater buses on some routes in violation of the contract, a meeting was held in May, 2003 to settle the rates of said 42 seater buses. The said meeting was attended by accused Nos. 1, 4, 6 & 8 and it was decided that the payment would be made at the rate of Rs. 11/- per kilometer for all mini buses. Subsequently, a committee consisting of Sh. S. Barupal, OSD (Finance) and Sh. S. Banerjee, General Manager (Purchase & Contract) was also constituted by the accused R.C. Aggarwal (A1) to settle the dues of M/s. Deep Travels. Vide its note dated 05.04.2004, the said committee also recommended that the payment be made at the negotiated rate of Rs. 11/- per kilometer with effect from 23.07.2002, which was approved by the accused R. C. Aggarwal (A1). Despite the said approval, the payment of 42 seater buses was made at the rate of Rs. 14.05 per kilometer on the instructions of accused D. H. S. Prasad (A4) and accused V. K. Malhotra (A5) and resultantly, an excess payment of Rs. 12,94,822/- approximately was made to M/s. Deep Travels from 23.07.2002 to September, 2005. Upon completion of investigation, C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 7 of 77 the charge sheet was filed under [Sections 120B IPC](#) read with 13(2) read with 13(1)(d) [PC Act](#) against accused R. C. Aggarwal (A1), A. V. Kharkar (A2), P. K. Malhotra (A3), D. H. S. Prasad (A4), V. K. Malhotra (A5) and Pohp Singh (A6) and under [Section 109 IPC](#) read with 13(2) read with 13(1)(d) [PC Act](#) against accused Anil Kalia (A8).

Charge

5. While the charge for the offences under [Sections 120B IPC](#), 420 [IPC](#) read with 120B [IPC](#) and 13(2) read with 13(1) (d) [PC Act](#) read with 120B [IPC](#) was framed against accused R. C. Aggarwal (A1), A. V. Kharkar (A2), P. K. Malhotra (A3), D. H. S. Prasad (A4), V. K. Malhotra (A5) and Pohp Singh (A6), the charge for the offence under [Section 109 IPC](#) was framed against accused Anil Kalia (A8). The accused persons pleaded not guilty and claimed trial.

Prosecution evidence

6. The prosecution examined 37 witnesses in support of its case.

7. PW1 Sh. Shyam Singh is the witness to the search conducted by the CBI officials at the house of accused P. K. Malhotra on 13.03.2006. He proved the memo regarding the seizure of documents during the said search as Ex. PW1/A.

8. PW2 Sh. Surrainder Kant Bakshi, who was posted as Deputy General Manager (Administration), Centaur Hotel, Delhi at the relevant time, proved the file pertaining to the staff transport of the Centaur Hotel C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 8 of 77 as Ex. PW2/A; minutes of the meeting dated 28.03.2000 of the tender committee as Ex. PW2/A1; letter dated 27.03.2000 written by him to Purchase Manager (NR) as Ex. PW2/A2; letters dated 22.05.2002, 11.06.2002, 24.06.2002, 20/21.06.2002 written by him to accused P. K. Malhotra as Ex. PW2/A3 to Ex. PW2/A6; letter dated 14.06.2002 written by accused Anil Kalia to accused R. C. Aggarwal as Ex. PW2/A7; letter dated 11.06.2002 written by him to accused P. K. Malhotra as Ex. PW2/A8; letter dated 10.05.2002 written by him to General Manager (Finance) as Ex. PW2/A9; note of the tender committee on the contract of staff transport for the period 12.04.2000 to 11.04.2002 as Ex. PW2/A10; letter dated 11.06.2002 written by accused P. K. Malhotra to him as Ex. PW2/A11; letter dated 06.06.2002 written by accused Anil Kalia to him as Ex. PW2/A12; letter dated 29.05.2002 written by him to accused P. K. Malhotra as Ex. PW2/A13; note dated 10.06.2002 prepared by accused P. K. Malhotra in respect of meeting held with Senior Manager (Security & Vigilance) on 06.06.2002 as Ex. PW2/A14; letter dated 28.05.2002 written by accused P. K. Malhotra to him as Ex. PW2/A15; letter dated 27.05.2002 written by accused Anil Kalia to him as Ex. PW2/A16; letter dated 24.05.2002 written by him to accused P. K. Malhotra as Ex. PW2/A17; letter dated 23.05.2002 written by accused P. K. Malhotra to him as Ex. PW2/A18; letter dated 22.05.2002 written by accused P. K. Malhotra to him as Ex. PW2/A19; letter dated 21.05.2002 written by accused Anil Kalia to him as Ex. PW2/A20; letter dated 20.05.2002 written by accused P. K. Malhotra to him as Ex. PW2/A21; letters dated 20.05.2002, 02/03.05.2002 & 25/26.04.2002 written by him to accused P. K. Malhotra C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 9 of 77 as Ex. PW2/A22 to Ex. PW2/A24; letter dated 11.04.2002 written by accused P. K. Malhotra to tender committee as Ex. PW2/A25; letter dated 11.04.2002 written by him to accused P. K. Malhotra as Ex. PW2/A26; letter dated 10.04.2002 written by accused P. K. Malhotra to him as Ex. PW2/A27; letters dated 01.04.2001 & 11.03.2002 written by accused P. K. Malhotra to Senior Manager (Security & Vigilance) as Ex. PW2/A28 & Ex. PW2/A29 respectively; record note dated 27.02.2002 of the tender committee as Ex. PW2/A30; letter dated 10.01.2002 written by accused P. K. Malhotra to the tender committee as Ex. PW2/A31; letter dated 09.01.2002 written by accused D. H. S. Prasad to him as Ex. PW2/A32; letter dated 09.01.2002 written by him to Corporate Manager as Ex. PW2/A33; letter dated 28.12.2001 written by accused P. K. Malhotra to Senior Manager (Security & Vigilance) as Ex. PW2/A34; note dated 28.12.2001 prepared by accused P. K. Malhotra regarding the

status of tender file as Ex. PW2/A35; letters dated 27.12.2001, 20.12.2001 & 14.12.2001 written by accused P. K. Malhotra to Senior Manager (Security & Vigilance) as Ex. PW2/A36 to Ex. PW2/A38; letter dated 29.11.2001 written by accused P. K. Malhotra to Senior Manager Accounts as Ex. PW2/A39; letter dated 27.11.2001 written by accused D. H. S. Prasad to accused P. K. Malhotra as Ex. PW2/A40; letter dated 28.09.2001 written by accused P. K. Malhotra to Law Firm M/s. Suri & Company as Ex. PW2/A41; tender committee report dated 22.10.2001 as Ex. PW2/A42; letter dated 28.03.2001 written by accused D. H. S. Prasad to Senior Manager Purchase as Ex. PW2/A43; observation note prepared by him on the staff transport tender file for the period 01.04.2000 to 31.03.2002 as C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 10 of 77 Ex. PW2/A44; vehicle inspection reports dated 06.03.2000 and 25.02.2000 prepared by the tender committee as Ex. PW2/A45 & Ex. PW2/A46 respectively; letter dated 10.06.2002 written by him to Deputy General Manager (P & IR) as Ex. PW2/A47; letter dated 12.06.2002 written by accused P. K. Malhotra to him as Ex. PW2/A48; letter dated 09.07.2002 written by accused P. K. Malhotra to M/s. Deep Travels as Ex. PW2/A49; letter dated 17.07.2002 written by him to accused P. K. Malhotra as Ex. PW2/A50; letter dated 30.09.2002 written by accused P. K. Malhotra to M/s. Deep Travels as Ex. PW2/A51; note dated 22.05.2003 of the tender committee as Ex. PW2/A52; note dated 11.06.2004 of the tender committee as Ex. PW2/A53; letter dated 31.12.2004 written by accused R. C. Aggarwal to General Manager (Finance) as Ex. PW2/A54; record note dated 27.02.2002 of the tender committee as Ex. PW2/A55; letter dated 19/20.09.2002 written by him to General Manager (Operations) as Ex. PW2/A56; minutes of the tender committee meeting dated 07.11.2002 as Ex. PW2/A57 and minutes of the tender committee meeting dated 03.12.2002 as Ex. PW2/A58.

9. PW3 Sh. Manoj Aggarwal is the witness to the search conducted by the CBI officials at the house of accused Pohp Singh on 13.03.2006. He proved the memo in respect of seizure of documents during the said search as Ex. PW3/A.

10. PW4 Sh. Rajiv Kumar Sharma deposed that in August, 2007, he was posted as Accounts Assistant in Centaur Hotel, New Delhi and had C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 11 of 77 furnished certain documents to the IO, which were seized vide memo dated 23.08.2007. He proved the said memo as Ex. PW4/A.

11. PW5 Sh. K. V. Surendranathan deposed that he had joined Centaur Hotel, Delhi in June, 1983 as Secretary in Personnel Department and had worked as Secretary with accused Anil Kalia and R.C. Aggarwal in the years 2000 and 2002 respectively. He identified the handwriting and signature of accused R.C. Aggarwal as well as the signatures of accused Anil Kalia and P. K. Malhotra on the note dated 04.07.2002 of the tender committee regarding the proposal for extension of contract of the staff transport for Delhi units of HCI

and proved the said note as Ex. PW5/A. He further identified the handwritings and signatures of accused R. C. Aggarwal and Sh. Rajesh Kashyap, the then Deputy General Manager (Operations), Centaur Hotel, Delhi, on the letter received from M/s. Chetan Travels and proved the said letter as Ex. PW5/B. He also identified the signatures of Sh. S. K. Bakshi, the then Deputy General Manager (Administration), Centaur Hotel, Delhi, Sh. P.K. Arora, the then Assistant Manager (Purchase), Centaur Hotel, Delhi and accused D. H. S. Prasad on the letter dated 16.09.2002 received from M/s. Deep Travels and proved the said letter as Ex. PW5/C. He further identified the signature of accused R.C. Aggarwal on the letter dated 16.07.2002 written by him to the accused P. K. Malhotra and proved the said letter as Ex. PW5/D. He also identified the signature of accused P. K. Malhotra on the letter dated 16.07.2002 written by him to the accused R. C. Aggarwal and proved the said letter as Ex. PW5/E.

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12. PW6 Sh. M. M. Gawarikar deposed that in November, 2006, he was working as Deputy General Manager with Air India Ltd. and had furnished copies of three agreements entered into by Air India Ltd. in respect of transportation of its staff to the CBI official, which were seized vide memo dated 08.11.2006. He proved the said memo as Ex. PW6/A and the copies of the said agreements as Ex. PW6/B to Ex. PW6/D.

13. PW7 Sh. Rakesh Kumar, who was running a transport company under the name and style of 'Yadav Travels' in the year 1998, deposed that he had submitted quotations with the Centaur Hotel for transportation of its staff through CNG buses vide his letter dated 20.08.2002. He proved the said letter as Ex. PW7/A.

14. PW8 Sh. Sunil Kumar Chopra, who was posted as Sr. Assistant Manager (Accounts) in Centaur Hotel, Delhi in 2006, deposed that he had furnished certain record of the Centaur Hotel to the CBI official, which was seized vide memo dated 22.08.2006. He proved the said seizure memo as Ex. PW8/A. He further proved the said seized record i.e. cash vouchers bearing Nos. 568 dated 05.06.2006, 603 dated 08.06.2006, 622 dated 12.06.2006 and 1012 dated 21.07.2006 as Ex. PW8/B to Ex. PW8/E and the comparative statement of rates and details of payment made to M/s. Deep Travels as Ex. PW8/F (Colly.).

15. PW9 Ms. Nisha Mehta, who was posted as Executive Secretary to C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 13 of 77 the Managing Director, Centaur Hotel, Delhi in 2003, identified the signatures of accused P. K. Malhotra and Mr. Kashyap, Deputy General Manager (Operations) on the letter dated 28.01.2003 written by the accused P. K. Malhotra to Mr. Kashyap and proved the same as Ex. PW9/A. She deposed that the said letter was received in her office and that on the instructions of the Managing Director i.e. accused R. C.

Aggarwal, she had written a message for Mr. Kharkar and Mrs. Dalal on a yellow slip and affixed the same on the corner of the said letter. She proved the said yellow slip as Ex. PW9/B.

16. PW10 Sh. V. J. Cherian, who was posted as Executive Secretary in DGM Office, Centaur Hotel, Delhi in 2006, deposed that he had handed over certain documents to the CBI, which were seized vide memo dated 29.08.2006. He proved the said memo as Ex. PW10/A. He further identified the notings and signatures of accused A. V. Kharkar, Sh. Rajesh Kashyap and accused R. C. Aggarwal on the minutes of the transport committee meeting held on 07.11.2002 and proved the said notings as Ex. PW10/B, Ex. PW10/C and Ex. PW10/D respectively. He further identified the signature of accused P. K. Malhotra on the letter dated 21.11.2002 written by accused P. K. Malhotra to Deputy General Manager, Accounts as well as the notings and signatures of accused R. C. Aggarwal and Sh. Rajesh Kashyap on the said letter and proved the same as Ex. PW10/E. He also identified the signature of accused P. K. Malhotra on the letter dated 11.11.2002 written by accused P. K. Malhotra to Deputy General Manager, Accounts as well as the notings and signatures of accused R. C. Aggarwal C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 14 of 77 and Sh. Rajesh Kashyap on the said letter and proved the same as Ex. PW10/F.

17. PW11 Ms. Shyamal P. Kunder, who was posted as Deputy Manager in Air India Ltd. and Company Secretary in HCI, Bombay in 2006, proved the memo dated 28.07.2006 as Ex. PW11/A vide which the copy of letter No. HO/972 dated 07.04.2000 was seized by the CBI from her. She further proved the copy of the said letter dated 07.04.2000 as Ex. PW11/B. She further proved the extracts of 164th Board Meeting of HCI pertaining to the delegation of amended financial powers as Ex. PW11/C to Ex. PW11/E. She further proved the extract of the minutes of 180 th Board Meeting of HCI qua the appointment of the accused A. V. Kharkar on contract basis as Ex. PW11/F. She also proved the copy of letter dated 13.02.2003 written by Sh. P. S. D'Souza, DGM (P & IR) to Managing Director, HCI recommending the re-appointment of accused A. V. Kharkar on contractual basis as Ex. PW11/G.

18. PW12 Sh. Ashok Vashisth, who was posted as Manager-Personnel in Centaur Hotel, Delhi in 2006, deposed that he was made to sign the seizure memo dated 07.04.2006 (Ex. PW12/A) by the CBI officials and the documents mentioned therein were not seized from him. He identified the notings and signatures of Sh. Rajesh Kashyap on the letter dated 05.04.2004 written by S. Barupal, the then Officer on Special Duty- Finance and Sh. S. Banerjee, the then General Manager, Purchase & Contracts to the Managing Director, HCI in respect of the settlement of C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 15 of 77 dues of M/s. Deep Travels and proved the same as Ex. PW12/D. He further proved the

letter dated 20.07.2006 written by him to General Manager (Operations), whereby he had furnished information regarding the buses plied by M/s. Deep Travels, as Ex. PW12/E. He also identified his signatures, the signatures of the other members of the Tender Committee and the notings and signatures of accused R. C. Aggarwal and Sh. S. Barupal on the letter dated 28.05.2004 written by the Tender Committee to the Managing Director, HCI and proved the same as Ex. PW12/F.

19. PW13 Sh. Baljeet Singh deposed that he had worked as Fire-cum- Security Guard in Centaur Hotel till 2006 and used to avail the transportation service provided by M/s. Deep Travels. He further deposed that most of the time, M/s. Deep Travels used to ply a mini bus on his route. He identified his signature on the complaint dated 14.07.2003 made by him and other co-passengers against the driver of the bus and proved the same as Ex. PW13/A. He also deposed that no action used to be taken against the transporter on their complaint and the accused Pohp Singh and his brother Zile Singh used to threaten them that they could get them dismissed from the service.

20. PW14 Smt. T.C. Dalal, who had worked as Executive Manager (Accounts) in HCI from 1998 to 2000, proved the certified copy of Revised Purchase/Receiving/ Stores Manual of HCI as Ex. PW14/A; the letter dated 23.05.2002 written by the accused A. V. Kharkar to the Managing Director, HCI regarding the instructions received from Sh. K. K. Gupta, the then General Secretary, Ministry of Disinvestment for extension C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 16 of 77 of the present contracts upto 31.07.2002 as Ex. PW14/B; the letter dated 29.01.2003 written by the Tender Committee to the Managing Director, HCI recommending floating of tender in respect of the staff and guest transportation contract for Delhi units and the handwriting and signature of the accused R. C. Aggarwal and A. V. Kharkar thereon as Ex. PW14/C and the memo dated 26.07.2006 vide which certain record of HCI was seized by the CBI from him as Ex. PW14/D.

21. PW15 Sh. Suresh Barupal, who was posted as Assistant General Manager in Air India Ltd. in the year 2003, identified the signatures of Sh. Rajesh Kashya, the then Deputy General Manager (Operations), accused A.V. Kharkar and D. H. S. Prasad on the letter dated 22.01.2004 written by the Tender Committee to the Managing Director, HCI in respect of the settlement of dues of M/s. Deep Travels after regularization of contract and proved the said letter as Ex. PW15/A. He further identified the signature of accused D. H. S. Prasad on the letter dated 13.04.2004 written by accused D. H. S. Prasad to the OSD (Finance), HCI pertaining to the settlement of dues towards the staff and guest transport services at Delhi and proved the said letter as Ex. PW15/B. He also identified the signature of accused A. V. Kharkar on the letter dated 03.09.2002 written by the accused A. V. Kharkar to the General Manager, Chefair Flight Catering and proved the same as Ex. PW15/C.

22. PW16 Sh. D.S. Vinayak deposed that he was posted as System Manager (Accounts) in Centaur Hotel, Delhi in the year 2002 and used to pass the bills on the direction of accused D. H. S. Prasad. He proved the C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 17 of 77 bills of M/s. Deep Travels bearing Nos. 491 dated 10.12.2002, 492 dated 10.12.2002, 493 dated 10.12.2002, 494 dated 10.12.2002, 498 dated 31.12.2002, 508 dated 31.01.2003, 516 dated 28.02.2003, 528 dated 31.03.2003, 535 dated 01.05.2003 and 543 dated 01.06.2003 passed by him as Ex. PW16/A to Ex. PW16/J.

23. PW17 Sh. J. Raja Kumar deposed that he was posted as Assistant General Manager in Centaur Hotel, Delhi in the year 2002. He identified the signatures of Sh. Rajesh Kashyap and accused R. C. Aggarwal on the letter dated 05.04.2004 Ex. PW12/D and the signatures of the members of the Tender Committee including himself on the letter dated 28.05.2004 Ex. PW12/F.

24. PW18 Sh. Raj Pal Yadav deposed that during the year 2002, he was posted as Captain in Centaur Hotel, Delhi and was also the President of the Centaur Hotel Employees Union. He further deposed that M/s. Deep Travels was not plying 52 seater buses but was charging on the basis of the buses of such seating capacity. He also deposed that the performance of M/s. Deep Travels was not up to the mark and if any complaint was made against M/s. Deep Travels, the accused R. C. Aggarwal used to scold the complainant.

25. PW19 Sh. Samuel Kongari, who was posted as Officer Accounts in Centaur Hotel, Delhi in the year 2002, identified his signatures on Ex. PW8/B to Ex. PW8/F (Colly.) and deposed that the same were prepared by him.

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26. PW20 Sh. Yogesh Kumar deposed that he was running transportation business under the name and style of M/s. M. D. Travels and had submitted tender with HCI for providing staff transport service to Centaur Hotel, Delhi. He further deposed that the bid submitted by him was never opened and the accused Pohp Singh, who was known to him, had told him that the tender work would be awarded to him. He proved the letter dated 28.02.2003 vide which he had submitted the price bid to the HCI as Ex. PW20/A.

27. PW21 Sh. A. K. Handa deposed that he was posted as Manager in Indraprastha Power Generation Company Ltd. (IPGCL) from 2003 to 2005 and proved the work orders dated 21.02.2004 and 29.06.2005 issued by him to M/s. Deep Travels in respect to the transportation of the staff of IPGCL as Ex. PW21/A and Ex. PW21/B respectively.

28. PW22 Sh. I. J. Banerjee, who was posted as Security Officer in Centaur Hotel, New Delhi in 2002, deposed that M/s. Deep Travels was plying 37 seater bus for guest transportation, whose sitting capacity was much below to the requisite bus as mentioned in the tender.

29. PW23 Sh. B. K. Jha deposed that he was posted as Assistant Manager (Accounts) in Centaur Hotel, New Delhi from 2002 to 2006. Apart from the bills of M/s. Deep Travels already proved by PW16, he proved the remaining bills of M/s. Deep Travels bearing Nos. 672 dated 01.05.2004, 682 dated 03.06.2004, 692 dated 08.07.2004, 727 dated C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 19 of 77 01.09.2004, 741 dated 01.10.2004, 751 dated 01.11.2004, 773 dated 01.12.2004, 795 dated 01.01.2005, 812 dated 01.02.2005, 834 dated 01.03.2005, 874 dated 01.05.2005, 888 dated 01.06.2005, 919 dated 01.08.2005, 929 dated 01.09.2005, 950 dated 01.10.2005, 963 dated 31.10.2005, 979 dated 01.12.2005, 993 dated 31.12.2005, 005 dated 31.01.2006, 014 dated 28.02.2006 as Ex. PW23/E to Ex. PW23/X. He also proved the memo dated 25.08.2006 vide which certain documents of HCI were seized by the CBI from him as Ex. PW23/A and the letters dated 18.03.2003 and 11.06.2003 written by Sh. Ashok Vashisht, the then Manager (Personnel), to Sr. Manager (Accounts) whereby the bills Nos. 516 dated 28.02.2003 and 543 dated 01.06.2003 of M/s. Deep Travels were forwarded for payment as Ex. PW23/B and Ex. PW23/D respectively.

30. PW24 Sh. K. K. Gupta deposed that he was working as Joint Secretary with Ministry of Disinvestment in the year 2002 and was also looking after the disinvestment of Centaur Hotel, New Delhi. He further deposed that no advice was ever given by Ministry of Disinvestment for stopping of floating of any tender as the rule of procedure, under which disinvestment process was undertaken, did not warrant any interference in the form of extension of any agreement or termination of tenders.

31. PW25 Sh. Paul S. D'Souza, who was posted as Deputy General Manager (Admn.) in HCI, Mumbai in the year 2002, proved the letter dated 27/28.05.2002 written by him to the Managing Director, HCI and the remark of the accused R. C. Aggarwal thereon as Ex. PW25/A; the letter C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 20 of 77 dated 03.07.2002 written by accused Anil Kalia to the Deputy General Manager, P & IR and the notes thereon as Ex. PW25/B and the letter dated 07.08.2002 written by accused A. V. Kharkar to the Managing Director, HCI and the notes of accused R. C. Aggarwal thereon as Ex. PW25/C.

32. PW26 Sh. Pramod Kumar Arora deposed that he was posted as Assistant Manager, Corporate Purchase, HCI in the year 2002. He proved the letter dated 08.07.2002 written by accused P. K. Malhotra to M/s. Deep Travels as Ex. PW26/A; the purchase order No. 688 dated 12.10.2002 bearing the signature of accused P. K. Malhotra as Ex. PW26/B; the

purchase order No. 687 dated 12.10.2002 bearing the signature of accused P. K. Malhotra as Ex. PW26/C; the letters dated 16.07.2002 and 17.07.2002 written by accused P. K. Malhotra to M/s. Deep Travels as Ex. PW26/D and Ex. PW26/E respectively; the attendance sheet of the tenderers at the time of bid opening proceedings as Ex. PW26/F; the letter dated 28.02.2003 written by accused P. K. Malhotra to the Sr. Manager, Accounts regarding staff transport tender No. T-01/03 as Ex. PW26/G; the letter dated 07.03.2003 written by the Tender Committee to the Managing Director, HCI regarding annual contract of staff transportation facility as Ex. PW26/H; the attendance sheet of the tenderers at the time of the proceedings of the tender committee dated 17.02.2003 as Ex. PW26/O; three letters written by the accused P. K. Malhotra to M/s. Asian Advertising as Ex. PW26/P to Ex. PW26/R; the letter dated 13.02.2003 written by accused P. K. Malhotra to Deputy General Manager (Operations) as Ex. PW26/S; the letter dated 12.02.2003 written by accused C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 21 of 77 P. K. Malhotra to different tenderers as Ex. PW26/T; the letter dated 03.02.2003 written by accused P. K. Malhotra to M/s. Asian Advertising as Ex. PW26/V; the letter dated 04.02.2003 written by Sh. Ashok Vashisht, the then Manager, Personnel (Operations) to the Manager, Accounts (Corporate Purchase) as Ex. PW26/Y; the letter dated 27.01.2003 written by accused P. K. Malhotra to Executive Manager, Personnel, CFCD as Ex. PW26/Z; the letter dated 06.01.2003 written by the Personnel Department to the Manager, Accounts (Corporate Purchase) and the annexures thereto as Ex. PW26/ZA(Colly.); the letter dated 02.01.2003 written by accused P. K. Malhotra to the Executive Manager, Personnel, CFCD as Ex. PW26/ZB; the letter dated 28.03.2003 written by accused R.C. Aggarwal to the accused A. V. Kharkar as Ex. PW26/ZC and the memo dated 24.04.2006 vide which certain record of HCI was seized by the CBI from him as Ex. PW26/ZD.

33. PW27 Sh. Naresh Kumar deposed that he was working as a Manager with M/s. Chetan Travels and proved the letter dated 16.08.2002 written by him to the General Manager, Centaur Hotel, New Delhi whereby he had quoted rates for staff transportation by diesel and CNG buses as Ex. PW27/B. He further deposed that M/s. Chetan Travels had quoted the amount of Rs. 16.50 per kilometer for CNG vehicles but the contract for staff transportation was awarded to M/s. Deep Travels for an amount of Rs. 17.00 per kilometer for CNG vehicles.

34. PW28 Sh. S. Banerjee deposed that he had worked as General Manager (Purchase) with HCI, Bombay from April, 2004 to 2005 and dealt C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 22 of 77 with the settlement of dues in respect of M/s. Deep Travels. He proved the letter dated 05.04.2004 written by him and Sh. S. Barupal, the then Officer on Special Duty-Finance to the Managing Director, HCI in respect of the settlement of dues of M/s. Deep Travels as Ex. PW12/D.

35. PW29 Sh. J. K. Chattopadhyay deposed that he had worked as Under Secretary with the Ministry of Disinvestment, Govt. of India from 2001 to 2005 and that during the said period, disinvestment process of HCI had commenced. He proved the note dated 10.12.2002 in respect of disinvestment process in Centaur Hotel, Delhi and Chefair Delhi Flight Kitchen, Delhi and his letter dated 10.12.2002 whereby the said note was circulated as Ex. PW29/B (colly.) and the newspaper advertisement dated 14.10.2003 vide which the fresh Expression of Interest (EOI) were invited from the prospective bidders as Ex. PW29/C.

36. PW30 Sh. Subhash Chander Bhalla deposed that he had worked as Assistant General Manager (Accounts) with HCI from 2000 to 2003 and was a member of the tender committee for awarding contract for staff transport of Centaur Hotel. He proved the confirmation letter dated 15.03.2000 of M/s. Deep Travels regarding the modification of rates of the vehicles as Ex. PW30/A. He deposed that the said letter was received by the then Purchase Manager Sh. S.N. Singh and was circulated to the tender committee. He further proved the letter dated 19.09.2001 written by the accused P.K. Malhotra to the legal advisor M/s. Suri & Company informing that the HCI shall abide by the orders of the Hon'ble High Court as Ex.

C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 23 of 77 PW30/B and the letter dated 22.09.2001 written by M/s. Suri & Company to the accused Anil Kalia informing him about the orders passed by the Hon'ble High Court and the noting thereon of accused Anil Kalia as Ex. PW30/C. He also deposed that the process of re-floating of tender was initiated in April, 2002 but the tender was not re-issued because of the orders of the Hon'ble Supreme Court banning plying of diesel buses in the NCT of Delhi.

37. PW31 Sh. G.K. Kelawalla deposed that he was posted as General Manager (Finance) in HCI, Mumbai from 2001 till May, 2003. He further deposed that his advise was not obtained by the Managing Director for extension of contract with effect from 04.07.2002 and he was not aware of any court order with regard to the transportation contract.

38. PW32 Sh. Tanvir Haziq deposed that he was working as Sr. Vice President (Administration) with HCI in December, 2007 and proved the sanction order dated 26.12.2007 passed by him for prosecution of accused D.H.S. Prasad and V.K. Malhotra as Ex. PW32/A.

39. PW33 Sh. Vipin Kumar is the investigating officer of the case. He proved the FIR as Ex. PW33/1; the memo dated 22.11.2006 vide which he had seized the letter dated 04.06.2004 of accused Pohp Singh from Sh. Samuel Kongari, the then Officer Accounts, Centaur Hotel, New Delhi as Ex. PW33/2; two letters both dated 27.06.2002 of M/s. Deep Travels seized by him from Sh. P.K. Arora as Ex. PW33/3 and the statement under Section 161 Cr.P.C. of Sh. Kula Nand Devrani recorded by him as Ex.

40. PW34 Sh. K. K. Pant deposed that he was posted as Under Secretary in the Ministry of Civil Aviation in the year 2008 and proved the sanction order dated 23.06.2008 authenticated by him in the name of the President of India for prosecution of the accused R.C. Aggarwal as Ex. PW34/1.

41. PW35 Sh. Parveen Kumar deposed that he was posted as Executive Manager (Personnel) in HCI, Delhi from 2000 to 2005 and proved the letter dated 25.06.2002 written by him to the Manager Accounts, Corporate Purchase, HCI, Delhi regarding requirement of staff transport as Ex. PW35/1.

42. PW36 Sh. Kula Nand Devrani deposed that he had worked as Steward (F&B), Centaur Hotel, New Delhi from 2000 to 2003. He further deposed that he had been a member of Centaur Hotel Employees Union since the year 1984 and became Chairman of the said union on 27.10.2004. He also deposed that during 2000 to 2004, the transportation facility to the staff of Centaur Hotel was provided by M/s. Deep Travels.

43. PW37 Sh. K. Babu, deposed that he was posted as Deputy Superintendent of Police in CBI, ACU-1, New Delhi in the year 2006 and had conducted search at the house of accused P. K. Malhotra on 13.03.2006. He proved the memo regarding the seizure of documents during the said search as Ex. PW1/A.

C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 25 of 77 Statements of the accused persons

44. The statements of the accused persons under [Section 313](#) Cr.P.C. were recorded on different dates. All the incriminating evidence was put to them to which their stand was of general denial. Accused Nos. 1 to 5 & 8 took similar defence and stated that no undue pecuniary advantage was given to M/s. Deep Travels and that the extensions of staff transport contract were granted to it due to the exigency of situation as the Delhi units of HCI were under disinvestment and the voluntary retirement scheme among the employees of said units was being implemented in terms of advice given by the Government. Accused No. 6 Pohp Singh, who is also representing the accused No. 7 M/s. Deep Travels in the capacity of its partner, stated that the staff transport contract was awarded and extended in favour of the firm legally and that the payments were made to the firm as per the contractual/ agreed rates and that no excess amount was obtained by the firm. He also stated that on account of professional rivalry, his competitors had got this case falsely registered.

Defence evidence

45. The accused persons examined 12 witnesses in support of their defence.

46. DW1 Sh. Aseem Kumar Jha, Under Secretary, Department of Investment and Public Asset Management, Ministry of Finance, Govt. of India, proved his report dated 06.07.2016 to the effect that the summoned record was not available in their office as Ex. DW1/A.

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47. DW2 Sh. Sandeep Dhawan, Sr. Assistant Manager, Centaur Hotel, New Delhi, proved the bill dated 04.11.2004 of M/s. Asian Advertising as Ex. DW2/A; the attested copy of the publication of Tender Notice in newspaper Hindustan Times dated 03.11.2004 as Ex. DW2/B; the attested copy of bill dated 27.01.2005 of M/s. Asian Advertising as Ex. DW2/C; the attested copy of the publication of corrigendum in newspaper Hindustan Times dated 27.01.2005 as Ex. DW2/D; the attested copy of bill dated 02.09.2005 of M/s. Asian Advertising as Ex. DW2/E; the attested copy of the publication of Tender Notice in newspaper Hindustan Times dated 01.09.2005 as Ex. DW2/F; the letter dated 26.07.2016 of Sh. S. Saha, Manager (Accounts) as Ex. DW2/G.

48. DW3 Sh. K. V. Surendranathan, Sr. Manager (Administration), HCI with additional charge of Personnel Department, Centaur Hotel, New Delhi, proved the attested copy of the file pertaining to disciplinary enquiry initiated against Sh. Ashok Vashist, Manager (Personnel) as Ex. DW3/A (Colly.); the attested copy of the file pertaining to disciplinary enquiry initiated against Ms. G.K. Sethi, Sr. Assistant Manager (L & P) as Ex. DW3/B (Colly.); the attested copy of the file pertaining to disciplinary enquiry initiated against Sh. Yogesh Kumar Sharma, Sr. Audit Assistant as Ex. DW3/C (Colly.); the attested copy of the letter dated 20.12.2007 written by Sh. D. C. Jain, DIG, CBI, ACU-II, New Delhi to the Managing Director, HCI as Ex. DW3/D and the attested copy of the staff notice No. MD/HCI/DEL/OR-VRS/120 dated 28/29.03.2003 issued by the C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 27 of 77 accused R.C. Aggarwal as Ex. DW3/E.

49. DW4 Sh. Sunil Raswant, General Manager, Centaur Hotel, New Delhi, proved his report dated 03.08.2016 to the effect that the summoned record could not be traced as Ex. DW4/A; the attested copy of the letter dated 18.06.2002 written by Sh. Rajesh Kashyap, Deputy General Manager (Operations) to the Deputy General Manager (P & IR) along with its enclosures as Ex. DW4/B (Colly.); the attested copy of the letter dated 20.03.2006 written by M/s. M. V. Kini & Co. to the General Manager (Operations) as Ex. DW 4/C and the attested copy of the letter dated 20.03.2006 written by the General Manager (Operations) to M/s. M.V. Kini & Co. as Ex. DW4/D.

50. DW5 Sh. Gagan Batra, Manager, Corporate Affairs, Air India, Air Lines House, New Delhi, produced the copies of office order No. HQ/12- 103 (17) A/1086 dated 07.05.2002 issued by Sh. Amod Sharma, Secretary and Officiating Director (Corporate Office) and certain other documents as Mark DW5/B (Colly.).

51. DW6 Sh. K.V. Surendranathan, Sr. Manager (Administration), HCI with additional charge of Personnel Department, Centaur Hotel, New Delhi, proved the attested copy of the letter dated 01.08.2002 written by the accused R. C. Aggarwal to Sh. Sanat Kaul, Joint Secretary, Ministry of Civil Aviation, New Delhi as Ex. DW6/1; the attested copy of the letter dated 24.07.2002 written by Sh. P. S. D'Souza, Deputy General Manager C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 28 of 77 (P & IR) to the Managing Director, HCI as Ex. DW6/2 and the authorization dated 03.08.2016 of Sh. Pankaj Kumar, Managing Director in his favour to depose in this case as Ex. DW6/3.

52. DW7 Sh. Yogendra Singh, Executive Manager (Vigilance), HCI, Centaur Hotel, New Delhi, produced the copies of the letters dated 27.12.2002 and 16.10.2002 written by the then Chief Vigilance Officer to the Managing Director, HCI as Mark DW7/A and Mark DW 7/B respectively.

53. DW8 Sh. S. Saha, Accounts Manager, Centaur Hotel, HCI, New Delhi, proved the attested copy of ledger account maintained in the office of Centaur Hotel in respect of accused M/s. Deep Travels as Ex. DW8/A (Colly.).

54. DW9 Sh. Aseem K. Jha, Under Secretary to the Govt. of India, Department of Investment and Public Assets Management, Ministry of Finance, New Delhi, had produced certain files containing note sheets/correspondence relating to disinvestment of Centaur Hotel, Delhi and Chefair Flight Kitchen, Delhi. He denied the suggestion that the said record was paginated after the receipt of summons from the court.

55. DW10 Sh. K. V. Surendranathan, Sr. Manager (Administration), HCI with additional charge of Personnel Department, Centaur Hotel, New Delhi, who had earlier appeared as DW3 and DW6, again appeared in the matter as DW10. He proved the letter of authority in his favour issued by C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 29 of 77 Sh. Pankaj Kumar, Managing Director, HCI as Ex. DW10/A; the attested copy of letter No. AAI/HCIL/CVO/2002/2927 dated 16.10.2002 along with its annexures as Ex. DW10/B; the attested copy of letter No. AAI/HCIL/CVO/2002/4196 dated 27.12.2002 along with its annexures as Ex. DW10/C and the letter dated 01.09.2016 written by Sh. Sunil Raswant, General Manager, HCI to the court informing that the original records of Ex. DW10/B and Ex. DW10/C were seized by the CBI, as Ex. DW10/D.

56. DW11 Sh. C. K. Shukla, Under Secretary (Air India), Ministry of Civil Aviation, New Delhi, proved the letter dated 09.09.2016 of Shri Amit Ghosal, Under Secretary to the Govt. of India, to the effect that the summoned record i.e. letter No. HO/ACCTS/GM-F/230 dated 24.05.2002 and letter No. MD/CH/DEL098 dated 01.08.2002 were not traceable in the Ministry, as Ex. DW11/A.

57. DW12 Sh. Rakesh Kumar, Assistant Manager (Accounts), HCI, proved the attested copy of letter No. CP/POR/596 dated 15.05.2002 written by accused P. K. Malhotra to the accused A. V. Kharkar as Ex. DW12/A; the attested copy of letter No. CP/POR/595 dated 10.05.2002 written by accused P. K. Malhotra to Sh. Ashok Vashisht, Sh. K. K. Dhar, Sh. Banerji and Sh. Bali Ram Roy as Ex. DW12/B; the attested copy of letter No. CP/POR/545 dated 13.03.2002 written by the accused P. K. Malhotra to the Assistant General Manager, Accounts (Corporate Purchase) along with its enclosures as Ex. DW12/C (Colly.) and the Survey Committee Report No. CHD/PUR/070 dated 14.05.2002 along with the quotations as Ex. DW12/D (Colly.).

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58. I have heard the PP for the CBI and the counsels for the accused persons. The arguments addressed by them shall be dealt with in detail while appreciating and evaluating the evidence produced on record.

Legal provisions involved

59. [Section 13](#) of the PC Act defines the offence of criminal misconduct. The relevant portion of the said section is reproduced as under:

"13. Criminal misconduct by a public servant. - (1) A public servant is said to commit the offence of criminal misconduct, -

- | | | |
|--------------|-----|-----|
| (a) xxx | xxx | xxx |
| (b) xxx | xxx | xxx |
| (c) xxx | xxx | xxx |
| (d) if he, - | | |

- (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
- (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
- (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) xxx xxx xxx"

[Section 13](#) (2) of the [PC Act](#) prescribes punishment for the offence of criminal misconduct.

The offence of cheating has been defined in [Section 415](#) IPC. It reads thus:

"415. Cheating.--Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 31 of 77 which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation.--A dishonest concealment of facts is a deception within the meaning of this section."

[Section 420](#) IPC provides punishment for the offence of cheating and dishonestly inducing delivery of property.

[Section 120A](#) IPC defines the offence of criminal conspiracy. It reads as under:

"120A. Definition of criminal conspiracy. - When two or more persons agree to do, or cause to be done,-

- (1) an illegal act, or
- (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof."

[Section 120B](#) IPC prescribes punishment for the offence of criminal conspiracy.

The offence of abetment has been defined in [Section 107](#) IPC. It reads thus:

"107. Abetment of a thing.--A person abets the doing of a thing, who-- First - Instigates any person to do that thing; or Secondly- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly- Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.--A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 32 of 77 causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2.--Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act."

[Section 109](#) IPC prescribes punishment for the offence of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.

Sanction for prosecution qua accused R. C. Aggarwal (A1)

60. In the case on hand, it is not in dispute that at the relevant time, accused R. C. Aggarwal was posted as Managing Director, HCI. Since the accused was in service at the time of filing of charge sheet, sanction from the competent authority for his prosecution was required to be obtained in terms of [Section 19](#) (1) of the [PC Act](#). In this regard, the prosecution has examined Sh. K. K. Pant, the then Under Secretary in the Ministry of Civil Aviation, as PW34. In his testimony, PW34 Sh. K. K. Pant has deposed that the President of India was the competent authority to remove accused R. C. Aggarwal from his service and that the sanction order was authenticated by him in the name of President of India. He proved the sanction order dated 23.06.2008 as Ex. PW34/1.

61. In [Central Bureau of Investigation v. Ashok Kumar Aggarwal](#), (2014)14 SCC 295, the Hon'ble Supreme Court has clearly laid down the process to be followed for the grant of sanction in the following words:

"16. In view of the above, the legal propositions can be summarised as under:

C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 33 of 77 16.1. The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction. 16.2. The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction. 16.3. The power to grant sanction is to be exercised

strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

16.4. The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.

16.5. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law."

62. It is a matter of record that Sh. D. C. Jain, Deputy Inspector General of Police, CBI, ACU-II, New Delhi wrote a letter dated 14.03.2008 (Ex. PW34/DA) to Sh. R. K. Singh, Joint Secretary & CVO, Ministry of Civil Aviation, New Delhi requesting him to initiate the process for grant of sanction for prosecution of accused R. C. Aggarwal. In the above letter, it was specifically mentioned that the report submitted by the Superintendent of Police [Ex. PW34/DC (colly.)], which contained the relevant facts of the case and the result of investigation, as well as the photocopies of the original documents and statements of witnesses were enclosed for the perusal of the sanctioning authority. In his cross-examination, PW34 Sh. K. K. Pant has deposed that he had seen the said report along with the documents sent by the CBI at the time of signing of C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 34 of 77 sanction order. A perusal of the sanction order shows that the same is quite comprehensive and the material facts and circumstances of the case have been spelt out. As it is apparent from the recital of the sanction order that the sanctioning authority had granted the sanction after due application of mind, the requirement of [Section 19\(1\)](#) of the PC Act has been duly complied with qua accused R. C. Aggarwal.

Sanction for prosecution qua accused D. H. S. Prasad (A4) and accused V. K. Malhotra (A5)

63. The accused Nos. 4 & 5 were posted as Executive Manager (Accounts) and Deputy Manager Accounts (Corporate Purchase) respectively in Centaur Hotel, Delhi at the relevant time. Since they were also in service at the time of filing of charge sheet, the investigating officer had obtained sanction for their prosecution from Sh. Tanvir Haziq, the then Senior Vice President (Administration), HCI, Centaur Hotel, Delhi. Sh. Tanvir Haziq, who has been examined by the prosecution as PW32, has proved the sanction order dated 26.12.2007 as Ex. PW32/A. In para No. 8 of the sanction order, PW32 Sh. Tanvir Haziq has clearly mentioned that he was the competent authority to remove the accused Nos. 4 & 5 from their service. The said fact has not been disputed by the accused Nos. 4 & 5.

64. The counsel for the accused Nos. 4 & 5 has submitted that vide letter dated 20.12.2007, Sh. D. C. Jain, Deputy Inspector General of Police, CBI, ACU-II, New Delhi had requested Codr. D. Jena, Managing Director, HCI, Centaur Hotel, New Delhi for according of sanction by the competent C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 35 of 77 authority for launching prosecution against the accused Nos. 4 & 5 and it had been mentioned in the said letter that the photocopies of the original documents and statements of the witnesses had been enclosed for the perusal of the sanctioning authority. He has pointed out that the copy of the said letter, which was produced by DW3 Sh. K. V. Surendranathan, Senior Manager (Administration), HCI as Ex. DW3/D, shows that it contains a noting 'n/a psc as discussed' dated 03.01.2008 addressed to Senior Vice President (Administration). He has contended that from the said noting, it is clear that the letter dated 20.12.2007 of Sh. D. C. Jain had been placed before PW32 Sh. Tanvir Haziq on 03.01.2008 and therefore, at the time of signing of sanction order on 26.12.2007, neither the documents nor the statements of witnesses were available for perusal with PW32 Sh. Tanvir Haziq. He has argued that since the sanction order had been signed by PW32 Sh. Tanvir Haziq without perusal and application of mind to the evidence against the accused Nos. 4 & 5, the sanction order is bad in the eyes of law.

65. It is seen from the letter dated 20.12.2007 (Ex. DW3/D) that in addition to the grant of sanction by the competent authority, Sh. D. C. Jain had also recommended regular disciplinary action for major penalty against some officials including accused D. H. S. Prasad (A4). DW3 Sh. K. V. Surendranathan had produced the file pertaining to the disciplinary enquiry and from the said record, the copy of letter dated 20.12.2007 (Ex. DW3/D) had been placed on record. In his testimony, DW3 has deposed that in pursuance to the letter dated 20.12.2007 (Ex.

C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 36 of 77 DW3/D), the disciplinary proceedings were initiated against the officials. It appears that after the grant of sanction for prosecution of accused Nos. 4 & 5 on 26.12.2007, the letter dated 20.12.2007 was again put up before PW32 Sh. Tanvir Haziq on 03.01.2008 for the purpose of obtaining necessary approval for initiating disciplinary enquiry against the officials. Since the sanction order dated 26.12.2007 makes mention of the facts and circumstances of the case in detail and PW32 Sh. Tanvir Haziq has deposed that he had carefully perused the documents placed before him by the CBI, the contention of the counsel for the accused Nos. 4 & 5 that the letter dated 20.12.2007 was placed before the sanctioning authority for the first time on 03.01.2008 is clearly misconceived. From the testimony of PW32 Sh. Tanvir Haziq, the court is satisfied that the sanction for the prosecution of accused Nos. 4 & 5 was accorded after due application of mind.

Appreciation and evaluation of evidence qua the offence of abetment against accused Anil Kalia (A8)

66. It is a matter of record that the tender floated by HCI for staff transport service for its Delhi units for the period 01.04.2000 to 31.03.2002 was challenged by one M/s. Kapson Travels before the Hon'ble High Court through Civil Writ Petition No. 1461/2000 and vide order dated 20.09.2001, the said writ petition was disposed of on the undertaking given on behalf of HCI that it would permit M/s. Kapson Travels to bid for the next tender starting from April, 2002 and that the existing contractor M/s. Deep Travels would not be given weightage for providing service during the tender ending on 31.03.2002. The observations made by the C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 37 of 77 Hon'ble High Court in the order dated 20.09.2001 were brought to the knowledge of accused Anil Kalia by the Law Firm M/s. Suri & Company, which represented HCI in the writ petition, vide fax letter dated 22.09.2001. The said fax letter has been proved by PW30 Sh. S. C. Bhalla, who was the Assistant General Manager (Accounts) at the relevant time, as Ex. PW30/C. The receiving of the said letter by accused Anil Kalia is not in dispute.

67. PP for the CBI has argued that accused Anil Kalia committed the offence of abetment by dishonestly concealing the factum of undertaking given before the Hon'ble High Court in the writ petition from the co- accused persons as well as the members of the tender committee with a view that the staff transport contract in favour of accused M/s. Deep Travels (A7) would be extended thereby resulting in undue pecuniary advantage to it.

68. On the other hand, the defence counsel has contended that accused Anil Kalia had no such dishonest intention and in fact, he had brought the letter dated 22.09.2001 received from M/s. Suri & Company to the notice of all the members of the tender committee.

69. Admittedly, accused Anil Kalia was the Chairperson of the tender committee at the relevant time. A perusal of the fax letter dated 22.09.2001 (Ex. PW30/C) shows that upon receiving the same, accused Anil Kalia made an endorsement on it and marked the letter to accused P. K. Malhotra C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 38 of 77 (A3), who was a member of tender committee, with the instruction to inform the tender committee members about the same for necessary action. The prosecution has itself placed on record the letter dated 28.09.2001 (Ex. PW2/A41) written by accused P. K. Malhotra (A3) to M/s. Suri & Company requesting them to provide the copy of the order passed by the Hon'ble High Court in the writ petition, and the status report dated 28.12.2001 (Ex. PW2/A35) in respect of the staff transport prepared by accused P. K. Malhotra (A3) specifying that the certified copy of the order had been received on 04.10.2001. From the record, it is seen that a note dated 27.02.2002 (Ex. PW2/A55) duly signed by Sh. G. K. Kelawalla, General Manager (Finance), A. V. Kharkar (A2), Sh. S. C. Bhalla, AGM

(Accounts), Sh. A. S. Kataria, Sr. Manager (Security & Vigilance) and P. K. Malhotra (A3) was prepared, wherein the factum of non-regularization of the contract of M/s. Deep Travels due to pendency of court case was mentioned and the tender committee was advised to submit report for the regularization of the contract. Pursuant thereto, a draft note was prepared by the tender committee on 04.03.2002 in which, the direction passed by the Hon'ble High Court in the writ petition had been specifically mentioned. The said fact is evident from the final note (Ex. PW2/A10) prepared by the tender committee recommending regularization of the contract of staff transport for the period 12.04.2000 to 11.04.2002. From the above documents, it is clear that the order dated 20.09.2001 passed by the Hon'ble High Court in the writ petition was well within the knowledge of all the members of the tender committee before the expiry of the tender period on 11.04.2002. If the accused Anil Kalia had the intention C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 39 of 77 to conceal the said order, he would not have marked the letter dated 22.09.2001 (Ex. PW30/C) received from the Law Firm M/s. Suri & Company to accused P. K. Malhotra (A3) with the instruction to inform all the members of the tender committee about the same for necessary action.

70. As far as the alleged concealment of order dated 20.09.2001 of the Hon'ble High Court from the co-accused persons is concerned, it is pertinent to mention that accused D. H. S. Prasad (A4) and accused V. K. Malhotra (A5) were not even the members of the tender committee at the relevant time. Accused P. K. Malhotra (A3), being the member of the tender committee, knew about the order dated 20.09.2001. As mentioned above, accused A. V. Kharkar (A2) was one of the signatories to the note dated 27.02.2002 (Ex. PW2/A55), wherein the factum of non-regularization of the contract of M/s. Deep Travels due to the pendency of the court case had been mentioned and thus, there can be no doubt that he was also aware of the direction issued by the Hon'ble High Court in the writ petition. Sh. G. K. Kelawalla, who was also one of the signatories to the said note dated 27.02.2002, has been examined by the prosecution as PW31. In his cross-examination conducted on behalf of accused Anil Kalia, PW31 stated that the note dated 27.02.2002 was placed by him before accused R. C. Aggarwal (A1) for information on 04.03.2002 and that when he apprised him of the directions passed by the Hon'ble High Court in the writ petition, accused R. C. Aggarwal had replied that he was aware about the same. He further deposed that the above note was marked by accused R. C. Aggarwal to the Deputy General Manager (Corporate Purchase) on C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 40 of 77 21.03.2002 with the remarks 'we may discuss on this issue'. Apart there from, accused A. V. Kharkar (A2) had also placed the final note (Ex. PW2/A10) prepared by the tender committee recommending regularization of the contract of staff transport for the period 12.04.2000 to 11.04.2002 before accused R. C. Aggarwal (A1) vide his letter dated 07.08.2002 (Ex.

PW25/C). Hence, the order dated 20.09.2001 of the Hon'ble High Court was also within the knowledge of accused R. C. Aggarwal (A1).

71. Since it is evident from the record that the order dated 20.09.2001 passed by the Hon'ble High Court in the writ petition had been brought to the knowledge of all the members of the tender committee as well as accused R. C. Aggarwal (A1), who was the competent authority being the Managing Director of HCI, the case of the prosecution that accused Anil Kalia (A8) committed the offence of abetment by concealing the undertaking given on behalf of HCI before the Hon'ble High Court must fail.

Appreciation and evaluation of evidence qua the offences of criminal conspiracy, cheating and criminal misconduct

72. PP for the CBI has submitted that during the period 2002 to 2005, the accused public servants entered into a criminal conspiracy amongst themselves and with accused Pohp Singh (A6), partner of M/s. Deep Travels (A7), to cheat HCI and in pursuance to the said conspiracy, they abused their official positions and granted extension of staff transport contract of 42/52 seater CNG buses in favour of contractor M/s. Deep C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 41 of 77 Travels from time to time at exorbitant rates resulting in undue pecuniary advantage to M/s. Deep Travels and corresponding loss to HCI and thereby, all of them committed the offences in question.

73. Per contra, the counsel for the accused persons have submitted that in the circumstances that prevailed at the relevant time, the accused public servants were constrained to extend the contract of M/s. Deep Travels from time to time and since the payments were made to the contractor in accordance with the contractual rate, no offence is made out against the accused persons.

74. Dishonest intention is the gist of the offence of cheating and criminal misconduct. Thus, the question which requires to be considered is whether the extensions granted to M/s. Deep Travels (A7) from time to time and the payments released to it were actuated by dishonest intention on the part of the accused persons.

(I) Extensions granted to M/s. Deep Travels from time to time

75. PP for the CBI has submitted that after the expiry of the tender period of staff transport contract on 31.03.2002, it was incumbent upon the HCI to initiate the process for fresh tender in view of the undertaking given before the Hon'ble High Court in Civil Writ Petition No. 1461/2000 as well as the procedure prescribed in the purchase manual. She has argued that though the process for fresh public tender was commenced with the approval of accused R.

C. Aggarwal (A1) on 10.06.2002 on the C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 42 of 77 recommendation made by Sh. P. S. D'Souza, the then Deputy General Manager (P & IR), but on 03.07.2002, accused R. C. Aggarwal recalled his decision and instructed the tender committee to put up a proposal for extension of contract in favour of M/s. Deep Travels (A7). She has further argued that the tender committee accordingly prepared a note dated 04.07.2002 recommending extension of contract in favour of M/s. Deep Travels for a period of three months and accused R. C. Aggarwal approved the same on 08.07.2002 in violation of the court order and the purchase manual. She has pointed out that while making recommendation for extension, the tender committee had relied upon the information given by the accused A. V. Kharkar (A2) to the effect that the Department of Disinvestment had advised against the floating of fresh tenders in view of ongoing disinvestment process of Delhi units of HCI whereas no such advice had been given by the said department. She has argued that the extension of contract in favour of M/s. Deep Travels on the basis of the false information goes to show that the accused persons had acted with dishonest intention in conspiracy with each other.

76. On the other hand, the counsel for accused R. C. Aggarwal (A1) has submitted that the said accused had never granted his approval for floating of fresh public tender and that out of the two recommendations, namely change of routes to reduce the mileage and floating of tender for appointment of transport contractor, made by Sh. P. S. D'Souza vide his letter dated 27/28.05.2002, accused R. C. Aggarwal had approved only the first proposal of change of routes to reduce mileage. He has argued that C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 43 of 77 since the advice against entering into new contracts and for extending the existing contracts had already been received on 23.05.2002 from Sh. K. K. Gupta, Joint Secretary, Ministry of Disinvestment, no dishonest intention can be imputed to accused R. C. Aggarwal for granting extension of contract to M/s. Deep Travels.

77. It has been submitted on behalf of accused P. K. Malhotra (A3) that the said accused being the Manager Accounts (Corporate Purchase), was responsible to process the recommendations and approvals of his superiors and had no role to play in the making of decisions. The counsel for the accused P. K. Malhotra has submitted that since in the record note dated 27.02.2002 prepared for the regularization of contract of M/s. Deep Travels for the period 01.04.2000 to 31.03.2002, it had been recommended by Sh. G. K. Kelawalla, the then General Manager (Finance), that in view of the advanced stage of disinvestment, the Delhi units of HCI should resort to selective tendering for the contracts expiring on 31.03.2002, accused P. K. Malhotra prepared a list of proposed parties for the purpose of selective tender and also included the name of M/s. Kapsons Travels in the said list in compliance of the undertaking given on behalf of HCI before the Hon'ble High Court. The counsel has further submitted that later on, when the recommendation made by Sh. P. S.

D'Souza was approved by accused R. C. Aggarwal (A1) on 10.06.2002, accused P. K. Malhotra started processing the file for floating public tender, however, upon receiving the advice from Ministry of Disinvestment, the tender committee prepared a note dated 04.07.2002 recommending extension of contract of M/s. Deep C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 44 of 77 Travels, which was approved by accused R. C. Aggarwal on 08.07.2002. He has argued that since accused P. K. Malhotra was acting on the instructions of his seniors, the question of dishonest intention on his part does not arise.

78. It is a matter of record that due to the pendency of the Civil Writ Petition No. 1461/2000, the contract of staff transport awarded to M/s. Deep Travels could not be regularized for the period 01.04.2000 to 31.03.2002. Since the tender period was about to expire, a record note dated 27.02.2002 (Ex. PW2/A55) was prepared, wherein the tender committee was advised to submit report for the regularization of the contract. A perusal of the said note shows that Sh. G. K. Kelawalla (PW31), who was one of the signatories, had recommended that in view of the advanced stage of disinvestment, the Delhi units of HCI should resort to selective tendering for tenders expiring on 31.03.2002 and that in case the process of such limited tendering was likely to take time, they should put up request for extension of the existing contracts for approval. Accused R. C. Aggarwal (A1) kept the said note for discussion with the Deputy General Manager (Corporate Purchase). Before any decision on the said recommendation could have been taken, the Hon'ble Supreme Court imposed restrictions on plying of diesel buses in the NCT of Delhi with effect from 05.04.2002 and directed that the commercial vehicles be plied on CNG fuel. In the wake of the said development, the tender committee advised the Corporate Purchase to conduct market survey to ascertain the financial implication at CNG bus rates vide its record note dated C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 45 of 77 02/06.05.2002 (Ex. PW30/D1). Accordingly, accused P. K. Malhotra (A3) constituted a committee for conducting the open market survey for CNG based staff transport vide his letter dated 10.05.2002 (Ex. DW12/B). After conducting the market survey, the committee submitted its report dated 14.05.2002 [Ex. DW12/D (Colly.)]. The record shows that shortly thereafter, accused A. V. Kharkar (A2) had prepared a note dated 23.05.2002 (Ex. PW14/B) mentioning that Sh. K. K. Gupta, Joint Secretary, Ministry of Disinvestment had advised accused R. C. Aggarwal (A1) on phone that the existing purchase contracts be extended upto 31.07.2002 with a clause to terminate the same by serving 15/30 days' notice so that no new commitments were made by HCI for its units undergoing disinvestment as the financial bids for the transfer of businesses were likely to be invited by end June/early July, 2002.

79. It is the case of the prosecution that the note dated 23.05.2002 (Ex. PW14/B) of accused A. V. Kharkar (A2) was a bogus note as no such advice had been given by Sh. K. K. Gupta and that the said note had been prepared with the motive to make ground for extending the

contract of M/s. Deep Travels. To prove the same, the prosecution has examined Sh. K. K. Gupta as PW24. In his testimony, though PW24 admitted that he was looking after the disinvestment of Centaur Hotel, Delhi but denied that any such advice was given by him by stating that the Ministry of Disinvestment only interacted with Ministry of Civil Aviation and not with the authorities working under the control of the said Ministry. To contradict the testimony of PW24, the accused persons have examined DW6 Sh. K. V.

C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 46 of 77 Surendranathan, the then Senior Manager (Administration), HCI for production of original letter No. HO/ACCTS/GM-F/230 dated 24.05.2002 written by R. C. Aggarwal (A1) to Sh. Sanat Kaul, the then Joint Secretary, Ministry of Civil Aviation informing him about the advice received from Sh. K. K. Gupta. DW6 produced the copy of the said letter as Mark DW6/A. Since the document produced by the witness is a photocopy, a question may arise as to whether the same can be read in evidence. DW6 has deposed that the document had been received by him from the Head Office of HCI in Mumbai. A perusal of Mark DW6/A shows that it had been received by the witness from the Head Office of HCI through fax. Since the document had been produced from the proper custody, the same should be read in evidence. The said letter shows that accused R. C. Aggarwal (A1) had informed the Ministry of Civil Aviation that in view of the advice received from Sh. K. K. Gupta on 23.05.2002, the Delhi units of HCI had been instructed not to enter into new contracts and extend the existing contracts upto 31.07.2002. Had no such advice been received from Sh. K. K. Gupta, accused R. C. Aggarwal would not have written about the same to the Ministry of Civil Aviation. The possibility of rendering such advice is further strengthened by the fact that the Delhi units of HCI were indeed undergoing the process of disinvestment/sale at the relevant time. Though the prosecution has alleged that the process of disinvestment of Delhi units of HCI had been discontinued in May, 2002 but a perusal of the note dated 23.12.2002 of Sh. P. V. Bhide, Joint Secretary, Ministry of Disinvestment, which had been prepared by him for being placed before the Cabinet Committee on Disinvestment and is available in the file Ex.

C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 47 of 77 PW29/A, shows that the advertisement inviting Expressions of Interests for Delhi units of HCI was issued on 16.04.2002 and that in pursuance thereto, a voluntary retirement scheme was introduced in HCI on 08.07.2002 so that the financial implications for the purchase of such units could be informed to the bidders. Thus, the stand of the prosecution that the process of disinvestment had been discontinued in May, 2002 is contrary to the record. Here it is noteworthy that Sh. P. S. D'Souza, the then Deputy General Manager (Administration), had also prepared a note dated 24.07.2002 (Ex. DW6/2) mentioning that during discussions held by him and accused R. C. Aggarwal (A1) with Sh. J. K. Chattopadhyay, Under Secretary, Ministry of Disinvestment on 23.07.2002 relating to the disinvestment of various units of HCI, Sh. J. K.

Chattopadhyay had advised that HCI should extend the contracts upto 30.09.2002 and that wherever it is not possible, HCI should enter into short term arrangements to meet out its essential requirements and avoid any long term arrangements as the same might be objected by the successful buyers. Accused R. C. Aggarwal (A1) had apprised about the said advise to Sh. Sanat Kaul, Joint Secretary, Ministry of Civil Aviation vide letter dated 01.08.2002 (Ex. DW6/1). From the above, it is clear that accused R. C. Aggarwal was receiving advice from the senior officials of Ministry of Disinvestment from time to time regarding extension of existing contracts and not to enter into any long term arrangements in view of the process of disinvestment of Delhi units of HCI.

80. The allegation of the prosecution that accused R. C. Aggarwal (A1) C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 48 of 77 had initially granted approval for floating of public tender is based on the endorsement made by him on the letter dated 27/28.05.2002 (Ex. PW25/A) written to him by Sh. P. S. D'Souza, the then Deputy General Manager (P & IR). PP for the CBI has urged that once the accused R. C. Aggarwal had granted approval for floating of public tender, his subsequent decision to recall the same and extend the contract of M/s. Deep Travels (A7) was clearly tainted with malafide. Per contra, the defence counsel has submitted that accused R. C. Aggarwal had never granted approval for floating of public tender. For the sake of convenience, the said letter is reproduced as under:

"	Managing Director HCI
HO/ADMN/CHDA/267	27th May, 2002

Sub: Staff Transport Facilities at Delhi.

This has reference Dy. General Manager (Admn.) Delhi's letter no. CHD/PER/40(A)/1101 dated 10th May, 2002 addressed to the General Manager (T).

It is agreed by the local Management in consultation with the Union operating there to change the routes and fix up 4 points for picking up and dropping of staff, as a result of which the total kilometers per day is reduced approx. to 988 kilometres against 1816 kilometres as per the present picking up and dropping points as per proposal no. 2. Since there is a lot of saving on the total number of kilometres, it would be appropriate on our part to give our sanction for floating tenders and appointing the transport contractor.

Submitted for your approval please.

(P. S. D'Souza) DY. GENERAL MANAGER (P&IR) (O)"

The above letter shows that Sh. P. S. D'Souza had sought the approval of accused R. C. Aggarwal (A1) on two counts:

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- (i) To change the routes and fix up 4 points for picking up and dropping of staff as it would reduce the total kilometers per day from 1816 to 988 kilometers; and
- (ii) To float tender for appointing new contractor.

Accused R. C. Aggarwal (A1) had made an endorsement 'as proposed' on the said letter. It is the stand of accused R. C. Aggarwal that he had only approved the first proposal of change of routes for reducing the mileage and not the second proposal of floating of tender. He has submitted that in order to signify the same, he had drawn two lines alongside the first proposal. Since accused R. C. Aggarwal had already received the advice not to enter into new contracts and extend the existing contracts upto 31.07.2002 from Sh. K. K. Gupta, Joint Secretary, Ministry of Disinvestment on 23.05.2002 and on the next day, he had written a letter to the Ministry of Civil Aviation, under whose control the HCI was working, informing that the said advice had been conveyed to all the concerned units, it is difficult to comprehend that he would have given approval for floating of fresh public tender. Considering the same, the version of accused R. C. Aggarwal (A1) on the above score has to be accepted.

81. It is further the case of the prosecution that on 03.07.2002, accused R. C. Aggarwal (A1) illegally gave direction to the tender committee to put up the proposal for extension of staff transport contract in favour of M/s. Deep Travels (A7) and that on the aforesaid direction, the tender committee prepared note dated 04.07.2002 recommending extension of contract in favour of M/s. Deep Travels for a period of 3 months, which was approved C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 50 of 77 by accused R. C. Aggarwal in violation of purchase manual as well as undertaking given on behalf of HCI in the civil writ petition. The allegation that accused R. C. Aggarwal had directed the tender committee to put up the proposal for extension of staff transport contract is based on the noting made by him on the letter dated 03.07.2002 (Ex. PW25/B) written by accused Anil Kalia (A8) to Sh. P. S. D'Souza (PW25). It is seen from the above letter that accused Anil Kalia had enclosed a letter No. CHD- CFCD/PER/40/1509 dated 28th June/2nd July, 2002 received from the Administration department containing recommendation in regard to staff transport facilities and had requested Sh. P. S. D'Souza to take up the matter with the competent authority. Since the enclosed letter of Administration department has not been produced on record by the prosecution, it is not possible to ascertain the recommendation made in the said letter. However, Sh. P. S. D'Souza had made a note on the letter dated 03.07.2002 from which, it

appears that the said recommendation was in respect of change of routes to reduce the mileage. Though the remarks made by accused R. C. Aggarwal on the letter dated 03.07.2002 (Ex. PW25/B) is not completely legible but it is apparent therefrom that he had expressed his displeasure for the delay in the matter and had directed to put up a proper proposal quickly. The tender committee accordingly put up the note on 04.07.2002 (Ex. PW5/A). A perusal of the said note shows that after making reference to the advice received from the Department of Disinvestment that no fresh tenders be issued for awarding new contracts in view of ongoing process of disinvestment of Delhi units of HCI and the order of Hon'ble Supreme Court imposing ban on diesel buses with the C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 51 of 77 directive to ply CNG buses, the committee had reported that the revised rates for CNG buses had been obtained from the existing transporter i.e. M/s. Deep Travels and as the quotation given by it at the rate of Rs. 17.40 per kilometer was less than the rates of Rs. 22/- per kilometer and Rs. 25/- per kilometer being paid by Air India and Delhi Transport Corporation respectively for CNG buses, it recommended that the contract of existing transporter be extended for a period of 3 months upon inspection of buses and that if the performance of the transporter was found satisfactory by the User department during the said period, the same would be further extended for another period of 3 months and so on, keeping in view the disinvestment process. The said recommendation was approved by accused R. C. Aggarwal (A1) on 08.07.2002. Needless to say, it was the responsibility of the tender committee to work out the modalities of new arrangement in view of the advice received from the Ministry of Disinvestment and make recommendation to the competent authority i.e. accused R. C. Aggarwal (A1). Since the members of the tender committee were senior officials of different departments and had reported that by extending the contract of the existing transporter at the revised rates quoted by it, there would be saving of Rs. 8.32 lacs approximately in three months, accused R. C. Aggarwal (A1) was completely justified in approving the proposal put by the tender committee. Here it is worthwhile to observe that floating of public tender is a long drawn process. As the period of contract of the existing transporter had already expired and the Ministry of Disinvestment had advised against entering into new contracts and to make short term arrangements, if required, the only viable option available in the C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 52 of 77 attending circumstances was to resort to selective inquiries. A perusal of the purchase manual of HCI, which has been proved on record as Ex. PW14/A, shows that Clause 4.7 thereof also recognizes the recourse of selective tender. Even otherwise, mere violation of the provisions of purchase manual per se does not constitute any criminal offence unless the circumstances are compatible only with hypothesis of the guilt of the accused persons and wholly incompatible with their innocence. I am fortified in taking this view by the decision rendered by the Hon'ble Apex Court in [A. Sivaprakash v. State of Kerala](#), (2016) 12 SCC 273, wherein it has been observed thus :

"20. In *C. Chenga Reddy v. State of A.P.*, this Court held that even when codal violations were established and it was also proved that there were irregularities committed by allotting/awarding the work in violation of circulars, that by itself was not sufficient to prove that a criminal case was made out. The Court went on to hold:

"22. On a careful consideration of the material on the record, we are of the opinion that though the prosecution has established that the appellants have committed not only codal violations but also irregularities by ignoring various circulars and departmental orders issued from time to time in the matter of allotment of work of jungle clearance on nomination basis and have committed departmental lapse yet, none of the circumstances relied upon by the prosecution are of any conclusive nature and all the circumstances put together do not lead to the irresistible conclusion that the said circumstances are compatible only with the hypothesis of the guilt of the appellants and wholly incompatible with their innocence. In *Abdulla Mohd.*

Pagarkar v. State (UT of Goa, Daman and Diu), under somewhat similar circumstances this Court opined that mere disregard of relevant provisions of the Financial Code as well as ordinary norms of procedural behaviour of government officials and contractors, without conclusively establishing, beyond a reasonable doubt, the guilt of the officials and contractors concerned, may give rise to a strong suspicion but that cannot be held to establish the guilt of the accused. The established circumstances in this case also do not C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 53 of 77 establish criminality of the appellants beyond the realm of suspicion and, in our opinion, the approach of the trial court and the High Court to the requirements of proof in relation to a criminal charge was not proper."

82. In the light of the above discussion, it can not be said that there was any dishonest intention on the part of the accused public servants in recommending and approving the extension of staff transport contract in favour of M/s. Deep Travels (A7).

83. There is another aspect of the matter. The tender committee, which gave recommendation for extension of contract of the existing transporter, comprised of accused Anil Kalia (A8), Sh. S. K. Bakshi (PW2), Sh. S. C. Bhalla (PW30), Sh. A.S. Kataria, the then Senior Manager (Security & Vigilance), Sh. Parveen Kumar (PW35) and accused P. K. Malhotra (A3). The decision for making such recommendation was unanimous. If there was any conspiracy between the tender committee members and accused R. C. Aggarwal (A1) in making the said recommendation, all the members of the tender committee ought to have been chargesheeted as accused. However, quite surprisingly, out of the six members of the committee, only two

members have been chargesheeted and the remaining four members were let off the hook without any explanation. In fact, three of them have been examined as prosecution witnesses. It needs little emphasis that the approach of pick and choose adopted by the investigating agency was against the doctrine of parity. In this regard, the following observations made by the Hon'ble Supreme Court in [Bongaigaon Refinery & Petrochemicals Ltd. and others v. Girish Chandra Sarma](#), (2007) 7 C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 54 of 77 SCC 206, are apposite:

"18. After going through the report and the finding recorded by the Division Bench of the High Court, we are of opinion that in fact the Division Bench correctly assessed the situation that the respondent alone was made a scapegoat whereas the decision by all three committees was unanimous decision by all these members participating in the negotiations and the price was finalized accordingly. It is not the respondent alone can be held responsible when the decision was taken by the committees. If the decision of the Committee stinks, it cannot be said that the respondent was alone stink, it will be arbitrary. If all fish stink, pick one and say it stinks only is unfair in the matter of unanimous decision of the Committee."

84. PP for the CBI has next contended that as per the recommendation of the tender committee, the contract of staff transport was to be extended for a period of three months after the inspection of the CNG operated buses, however, accused P. K. Malhotra (A3) issued the letter of intent to the transporter without conducting the inspection of the buses on the asking of accused R. C. Aggarwal (A1). She has argued that the above circumstance shows that the accused persons had dishonest intention to cause undue pecuniary advantage to the transporter M/s. Deep Travels (A7).

85. As mentioned earlier, the recommendation of the tender committee was approved by accused R. C. Aggarwal (A1) on 08.07.2002. Since the proposed extension was subject to the inspection of CNG operated buses, accused P. K. Malhotra (A3) asked the transporter to produce the buses alongwith registration documents before the inspection committee on 09.07.2002 vide letter dated 08.07.2002 (Ex. PW26/A). As the transporter did not produce the buses on 09.07.2002, accused P. K. Malhotra wrote another letter dated 09.07.2002 (Ex. PW2/A49) to the transporter requiring C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 55 of 77 it to bring all the four vehicles for inspection immediately. The record shows that vide letter dated 16.07.2002 (Ex. PW5/D), accused R. C. Aggarwal expressed displeasure to accused P. K. Malhotra for not issuing the work order despite urgency and asked him to issue the same without any further delay. In response thereto, accused P. K. Malhotra wrote a letter dated 16.07.2002 (Ex. PW5/E) to accused R. C. Aggarwal, whereby

he informed that the extension letter had been issued to the transporter on 16.07.2002 subject to the inspection and approval of CNG buses by the inspection committee and also furnished explanation for the delay in the issuance of the extension letter. The very fact that accused R. C. Aggarwal had conveyed displeasure for the delay and accused P. K. Malhotra was constrained to furnish explanation for the same rules out the possibility of any conspiracy between them. Here it is worth mentioning that while making extension of contract for a period of three months with effect from 18.07.2002 vide letter dated 16.07.2002 (Ex. PW26/D), accused P. K. Malhotra had made it clear to the transporter that the extension was subject to the inspection and approval of CNG buses by the Inspection Committee and that in case of any lapse on the part of the transporter to ply CNG buses, the diesel rate of Rs. 13.50 per kilometer would be applicable in place of CNG rate of Rs. 17.40 per kilometer. Thus, it is clear that the condition of inspection of buses had not been waived of. In fact, imposition of the further condition that payment would be made at diesel rate in the event of any lapse on the part of the transporter to ply CNG buses negates the hypothesis of dishonest intention on the part of the accused persons to cause undue pecuniary advantage to M/s. Deep Travels (A7).

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86. PP for the CBI has further submitted that vide its minutes dated 07.11.2002, the tender committee had recommended for termination of contract of the existing transporter M/s. Deep Travels and floating of new public tender as the performance of the transporter was not found satisfactory but accused R. C. Aggarwal (A1) did not approve the same by observing that the minutes were very vague. She has stated that thereafter, in its next meeting held on 29.11.2002, the tender committee changed its earlier recommendation and proposed for floating of selective enquiries by observing that the existing transporter could also be considered for the same if it improved upon its performance and the said proposal was approved by accused R. C. Aggarwal. She has submitted that in its subsequent meeting dated 29.01.2003, the tender committee again changed its previous recommendation and proposed for floating of public tender, which was also approved by accused R. C. Aggarwal. She has further submitted that thereafter, though the public tender was floated and technical bids were opened but the commercial bids were not opened on the pretext of working out the impact of voluntary retirement scheme on the transport requirement and finally, the tender was cancelled in December, 2003 on the ground that the validity period thereof had expired. She has argued that the above circumstances clearly reflect that the accused persons had conspired amongst themselves and deliberately changed their decisions time and again to facilitate the extension of contract in favour of the existing transporter. She has further argued that even thereafter, the existing contract was further extended from time to time during the next two years i.e. 2004 C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No.

57 of 77 and 2005 on one pretext or the other, which also indicates the involvement of accused persons in the conspiracy.

87. On the other hand, the counsel for the accused persons have submitted that there is no evidence on record to show that the accused public servants had entered into any conspiracy or abused their official position to cause any undue pecuniary advantage to M/s. Deep Travels. They have urged that the decisions for the extension of contract of M/s. Deep Travels were taken due to the exigency of the prevailing circumstances.

88. No doubt, the tender committee changed its recommendations from time to time and accused R. C. Aggarwal (A1) had approved the same but the circumstances which prompted them to do so assume importance. It is seen from the record that vide minutes of its meeting dated 07.11.2002 (Ex. PW2/A57), the tender committee had recommended to terminate the contract of M/s. Deep Travels and float new public tender by taking note of the observation of DGM-Administration that the performance of the transporter was not satisfactory as it was plying 42 seater buses in place of 52 seater buses on most of the routes and was also not adhering to the timings. When the said minutes were placed before accused R. C. Aggarwal (A1), he returned the same with the remark that the minutes were vague. The reason as to why the said remark had been made can be found in the first paragraph of the letter dated 20.12.2002 (Ex. PW15/DX4) written by accused A. V. Kharkar (A2) to accused R. C. Aggarwal (A1), whereby the C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 58 of 77 minutes of the meeting dated 29.11.2002 were placed before accused R. C. Aggarwal. It had been mentioned therein that when the tender committee report dated 07.11.2002 had been placed before accused R. C. Aggarwal, he had asked the tender committee to specify the complaints and also go into the details of the performance of the transporter in general. Consequently, in its next meeting dated 29.11.2002, the tender committee reviewed the performance of the transporter from the record of the Security department. Considering the fact that the arrival of the buses were being delayed by five to ten minutes, the committee advised the transporter to rectify the same and observed that warning letters be issued to it in case of such lapses. The committee further observed that whenever the transporter had plied 42 seater buses, proportionate deduction be made from its bills. Taking note of the fact that the contract was expiring on 31.12.2002 and that it would take minimum 30 to 45 days to finalise the fresh contract, the committee recommended that the existing contract be extended for one month. Further, keeping in view that the Delhi units of HCI were in advanced stage of disinvestment, the committee recommended that fresh selective quotations be called from the parties for a shorter period of six months, extendable by another six months in case the process of disinvestment got delayed. The committee also recommended that the existing transporter could also be considered for selective inquiries if its performance was improved. The minutes of the above meeting of the tender committee (Ex. PW2/A58) were drawn on

03.12.2002. The said minutes were placed before accused R. C. Aggarwal (A1) by accused A. V. Kharkar (A2) through his letter dated 20.12.2002 (Ex. PW15/DX4) and accused R. C.

C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 59 of 77 Aggarwal approved the same. While changing its earlier recommendation and making new proposal for floating of selective inquiries for a shorter period in place of public tender, the tender committee had kept in mind that the disinvestment process of the Delhi units of HCI was at an advanced stage. As mentioned earlier, in pursuance to inviting Expressions of Interest for the sale of Delhi units of HCI, a voluntary retirement scheme was introduced on 08.07.2002. It is a matter of record that the fulfilment of voluntary retirement scheme formalities was treated as condition precedent for the sale of such units and that out of 1154 employees of the Delhi units of HCI, 689 employees had opted for voluntary retirement scheme. In view of the above and the fact that the participation of the existing transporter in the proposed selective inquiries was made conditional on the improvement in its performance and proportionate deduction from its bills was also advised as and when it plied 42 seater buses, no dishonest intention is discernible from the said recommendation. Here it is important to note that vide his letter dated 28.01.2003 (Ex. PW9/A), accused P. K. Malhotra (A3) informed Deputy General Manager (Operations) that since the performance of the existing transporter was not satisfactory as per the performance report given by the User department, its name was not included in the selective tender list. Infact, the above letter was written by accused P. K. Malhotra in response to the comments sought by the Deputy General Manager (Operations) on the letter dated 27.01.2003 sent by the existing transporter in respect of non-inclusion of its name in the selective tender list. The very fact that accused P. K. Malhotra had not included the name of the existing transporter in the selective tender list makes it evident that he C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 60 of 77 was not the part of the alleged conspiracy. It is further seen from the record that vide letter dated 29.01.2003 (Ex. PW14/C) written to accused R. C. Aggarwal (A1), the tender committee once again changed its recommendation and proposed for floating public tender in order to obtain competitive rates and maintain transparency. The committee also recommended for extension of the existing contract for two months i.e. from 01.02.2003 to 31.03.2003 by observing that it would take two months time to finalise the next contract. Accused R. C. Aggarwal approved the above recommendation on 30.01.2003. In this context, the counsel for the accused persons have drawn the attention of the court to the extracts from the minutes of meeting of Cabinet Committee on Disinvestment held on 27.12.2002 (Ex. PW29/DE). A perusal thereof shows that after considering the note dated 23.12.2002 from the Ministry of Disinvestment, though the Cabinet Committee approved the re-advertisement for inviting fresh Expressions of Interest for the Delhi units of HCI but observed that the same be issued after the Government's announcement on joint venture development of International Airports. The counsel for the accused persons have submitted that since there was a shift in the policy of

the Government as the disinvestment of Delhi units of HCI was linked with the joint venture development of International Airports and the process was expected to take time, the tender committee thought it proper to opt for public tender so that the competitive rates be obtained. The possibility of the same cannot be ruled out. Here it is noteworthy that at the time of making the recommendations dated 07.11.2002, 03.12.2002 and 29.01.2003, the tender committee comprised of five members, four members and six members C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 61 of 77 respectively. All the above said three recommendations were the collective decisions of the members of the tender committee. Even if the allegation of prosecution that the members of the tender committee had colluded with accused R. C. Aggarwal (A1) in making the above recommendations is assumed to be true, all the members of the tender committee were equally responsible for the offence of conspiracy. No explanation has been furnished for picking only accused P. K. Malhotra (A3) and accused Anil Kalia (A8) for the offence of conspiracy/abetment and absolving the other members of the tender committee for the same. Needless to say, the above approach being discriminatory cannot be sustained.

89. The record further shows that the public tender was published on 04.02.2003 & 05.02.2003. On 28.02.2003, the technical bids were opened by the new tender committee comprising of accused Anil Kalia (A8), accused A. V. Kharkar (A2) and accused D. H. S. Prasad (A4). Upon scrutiny of the bids, only four parties were found eligible for opening of commercial bids. Clause 4.22 of the Purchase Manual of HCI (Ex. PW14/A) prescribes that the tenders should be finalised within three months of the date of opening. Thus, the commercial bids were required to be opened by the tender committee on or before 31.05.2003. However, before the commercial bids could be opened, Sh. K. K. Padmanabhan, Under Secretary to the Government of India vide letter dated 28.03.2003 (Ex. PW29/DC) informed accused R. C. Aggarwal (A1) that the competent authority had granted approval for implementation of modified voluntary retirement scheme in HCI based on Gujarat pattern. Since the actual C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 62 of 77 requirement of staff transport would have been known only after the implementation of voluntary retirement scheme, accused R. C. Aggarwal (A1) informed accused A. V. Kharkar (A2) that the opening of commercial bids be kept pending for about 30 days vide letter dated 28.03.2003 (Ex. PW33/DC). The modified voluntary retirement scheme was introduced in HCI vide staff notice dated 28/29.03.2003 (Ex. PW2/D2). Through the above staff notice, it was notified that within a period of 30 days vide letter dated 28.03.2003 (Ex. PW33/DC), the employees, who had not applied for voluntary retirement scheme earlier, could apply for the scheme and that the employees, who had applied earlier and whose applications were already accepted, could withdraw their applications. A perusal of the modified voluntary retirement scheme, which forms part of Ex. PW29/A (Colly.), shows that Clause 6.1 thereof provided that the scheme would be kept operative for a period of one month from the date of

announcement of the scheme and that the Management would convey its acceptance to the application of the employee within 90 days of the closure date of the scheme. Since the modified voluntary retirement scheme was announced on 29.03.2003, the competent authority was required to convey its acceptance to such applications on or before 27.07.2003. In his cross-examination, PW2 Sh. S. K. Bakshi has admitted that he was the Incharge of the Administration department at the relevant time and that the applications in respect of the voluntary retirement scheme were processed in his department. He also admitted that with the reduction in the strength of the employees, there would have been proportionate reduction in the requirement of staff transport buses and their mileage and that the same C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 63 of 77 would have reduced the financial burden on HCI. It is a matter of record that the process of voluntary retirement scheme could not be completed till 27.07.2003 and that the first and second batch of the voluntary retirement scheme optees were relieved on 12.06.2003 and 05.09.2003 respectively. Since the processing of the voluntary retirement scheme applications and working out its impact on the transport arrangement was likely to take time and it was anticipated that the actual requirement of staff transport would change to a substantial extent, the tender committee vide its letter dated 22.05.2003 (Ex. PW2/A52) informed accused R. C. Aggarwal (A1) that it would not be possible to finalise the staff transport tender at that stage and recommended for extension of the existing contract till 30.06.2003. Accused R. C. Aggarwal approved the same on 30.05.2003. From the above, it is apparent that the commercial bids could not be opened within the period of its validity i.e. till 31.05.2003 due to the supervening compelling circumstances and thus, the allegation of the prosecution that the same were not opened by the accused persons with dishonest intention to frustrate the public tender cannot be sustained. Here it is pertinent to mention that accused A. V. Kharkar (A2), who was a member of the new tender committee, had retired from the service on 31.01.2003 but he was re-engaged on contract basis with effect from 13.02.2003 as Advisor (Contract & Purchase). It transpires from the record that since two batches of voluntary retirement scheme optees had been relieved on 12.06.2003 and 05.09.2003 and more time was required to work out its impact on the actual requirement of staff transport, the tender committee proposed for further extension of the existing contract from C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 64 of 77 01.07.2003 to 31.08.2003 vide its letter dated 10.07.2003 (Ex. PW 14/DX10) and thereafter, from 01.09.2003 to 31.10.2003 vide its letter dated 06.09.2003 (Ex. PW14/DX11). Here it is worth mentioning that the later proposal dated 06.09.2003 was made only by accused A. V. Kharkar (A2) and accused D. H. S. Prasad (A4) as accused Anil Kalia (A8) ceased to be the member of tender committee. Both the above proposals were also recommended by Sh. Suresh Barupal, the then OSD (Finance), HCI, Mumbai and the same were approved by accused R. C. Aggarwal (A1). Sh. Suresh Barupal has been examined by the prosecution as PW15. In his cross-examination, PW15 has admitted that he had recommended the above proposals as more than half of the employees

of Delhi units of HCI had opted for voluntary retirement scheme and time was required to work out its impact on the actual requirement of staff transport. The record shows that thereafter, vide its letter dated 12.12.2003 (Ex. PW14/DX12), the tender committee comprising of two members i.e. accused A. V. Kharkar (A2) and accused D. H. S. Prasaad (A4) proposed for cancellation of public tender as the validity period thereof had expired and further extension of the existing contract upto 31.03.2004 by observing that the disinvestment process of the Delhi units of HCI was at advanced stage. The above proposal was approved by accused R. C. Aggarwal (A1). As mentioned earlier, since the commercial bids could not be opened due to supervening compelling circumstances, no dishonest motive can be imputed to any of the accused persons for cancellation of public tender.

90. During the period of last extension of the contract of M/s. Deep C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 65 of 77 Travels (A7), accused A. V. Kharkar (A2) had ceased to be the member of tender committee and in his place, accused V. K. Malhotra (A5) was made a member. Vide its letter dated 30.03.2004 (Ex. PW14/DX7), the new tender committee comprising of accused D. H. S. Prasad (A4) and accused V. K. Malhotra (A5) sought further extension of the contract from 01.04.2004 to 30.06.2004 by observing that the disinvestment process was at advanced stage. The above proposal was also recommended by PW15 Sh. Suresh Barupal and was approved by accused R. C. Aggarwal (A1). It is seen from Ex. PW29/A, which is the file of Ministry of Disinvestment in respect to the disinvestment of three units of HCI, that accused R. C. Aggarwal (A1) and Sh. Suresh Barupal (PW15) were attending the meetings of Inter-Ministerial Group for Disinvestment and that the process of disinvestment of Delhi units of HCI was actually in progress as fresh advertisements inviting Expressions of Interest (EOIs) had been published on 14.10.2003; in response thereto, 39 EOIs had been received; the process of short listing of bidders had also been completed and the further process of inviting financial bids had been considered by the Inter-Ministerial Group in its meeting dated 10.03.2004. However, it transpires that the process of disinvestment slowed down from May, 2004 onwards as a new Government came to power and had proposed for setting up a board for reconstruction of public sector enterprises and make recommendations on disinvestment upon examination of each case. The record shows that thereafter, accused R. C. Aggarwal (A1) increased the strength of tender committee. Vide its letter dated 11.06.2004, the new tender committee [consisting of 9 members including accused D. H. S. Prasad (A4) and C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 66 of 77 accused V. K. Malhotra (A5)] recommended for extension of all existing 31 contracts of Delhi units of HCI from 01.07.2004 to 30.09.2004 by observing that even if fresh tenders were to be floated, it would take three months time for the same. Though accused R. C. Aggarwal (A1) granted approval for the extension but he directed that the process for calling fresh enquiries be also initiated. Subsequently, vide its letter dated 23.09.2004 (Ex. PW12/DX2), the tender committee informed accused R. C.

Aggarwal (A1) that the process of finalization of various annual tenders was expected to take at least two to three months and recommended for extension of all the existing contracts from 01.10.2004 to 31.12.2004. When the above letter was placed before accused R. C. Aggarwal (A1), he observed that he had no other alternative but to accept the recommendation but directed that the tender process be initiated quickly. Thereafter, vide its letter dated 23.12.2004 (Ex. PW12/DX3), the tender committee intimated accused R. C. Aggarwal (A1) that though the advertisements inviting tenders were published on 03.11.2004 and 04.11.2004 but a corrigendum was required to be issued and again sought extension of all the existing contracts from 01.01.2005 to 31.03.2005. In response thereto, accused R. C. Aggarwal (A1) wrote letter dated 31.12.2004 to the General Manager (Finance) (Ex. PW2/A54) expressing dissatisfaction over the delay caused and stating that he was not in favour of granting extensions time and again. Further while approving the recommendation, he specifically directed that the contracts be awarded as early as possible by following due procedure. In the meantime, the Hon'ble High Court of Delhi stayed the tender process in a writ petition filed by M/s. M. D. Travels. This fact was informed by the C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 67 of 77 tender committee to accused R. C. Aggarwal (A1) vide its letter dated 28.03.2005 (Ex. PW12/DX4) and accordingly, the existing contract was extended till 30.06.2005. The factum of stay of tender process by the Hon'ble High Court has not been disputed by the prosecution. Thereafter, in view of the stay of the tender process, the tender committee again sought further extension of the contract till 30.09.2005 vide its letter dated 29.06.2005 (Ex. PW12/DX5), which was approved by accused R. C. Aggarwal (A1). No further correspondence between the tender committee and accused R. C. Aggarwal regarding the extension of contract for the remaining period of the year 2005 is available on record. The very fact that after the slowing down of the disinvestment process, accused R. C. Aggarwal (A1) had increased the strength of the tender committee and specifically directed that the process for calling fresh enquiries be initiated rules out the possibility of any dishonest intention on his part. Further, it is evident that for the laxity of the tender committee to finalise the tender process from July, 2004 till the stay granted by the Hon'ble High Court, he had also expressed dissatisfaction from time to time. In the gamut of the entire facts and circumstances, it is clear that there was no dishonest intention on the part of the accused public servants in recommending /granting extensions of contract of M/s. Deep Travels from 2002 to 2005.

(II) Payments made to the transporter

91. PP for the CBI has submitted that in the month of August, 2002, M/s. Chetan Travels and M/s. Yadav Travels had submitted their quotations for staff transport contract offering CNG buses at the rates of Rs. 16.50 and Rs.

C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 68 of 77 16.60 per kilometer respectively. She has argued that even though the said quotations were lower than the rate of Rs. 17.40 per kilometer being charged by the existing contractor i.e. M/s. Deep Travels (A7) but the accused public servants dishonestly ignored the same and thereby, caused loss of Rs. 7,71,428.20 to the HCI during the period January, 2003 to February, 2006, which is evident from the comparative statement Ex. PW8/F prepared by the Accounts department.

92. On the other hand, the counsels for the accused persons have submitted that both the quotations were completely vague in as much as the same neither specified the number of buses available, their sitting capacity and models nor they made any mention as to whether the rates offered were inclusive or exclusive of empty trip and parking charges. They have argued that since the said quotations were not invited by HCI, the same were rightly not entertained especially in view of the advice received from the Ministry of Disinvestment not to enter into new contracts and extend the existing contracts and thus, the calculation of loss on the basis of rates offered in the said quotations was preposterous.

93. The record shows that M/s. Chetan Travels and M/s. Yadav Travels had submitted their quotations vide letters dated 16.08.2002 (Ex. PW27/B) and 20.08.2002 (Ex. PW7/A) respectively. By that time, the staff transport contract in favour of M/s. Deep Travels (A7) had already been extended vide letter dated 16.07.2002 (Ex. PW26/D) for a period of three months with effect from 18.07.2002. Once the said contract was in force, the C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 69 of 77 department could not have considered the quotations submitted by M/s. Chetan travels and M/s. Yadav Travels. Further, as per the Purchase Manual of HCI (Ex. PW14/A), it was not permissible for a party to give quotation for a contract in the absence of an invitation from the department through public or selective tender. It is the admitted position that HCI had not invited any quotation for the staff transport contract at that time and that the said firms had submitted the quotations on their own. Despite the same, the tender committee thought it appropriate to refer the quotations to the Head Office of HCI in Mumbai on 21.08.2002 for advice. In pursuance thereto, an advice was received from the Head Office through letter dated 03/05.09.2002 (Ex. PW15/C) of accused A. V. Kharkar (A2), wherein he opined that since the Ministry of Disinvestment had advised to only extend the existing contracts in view of the ongoing disinvestment process and not to issue any fresh tenders or enter into new contracts, the quotations received from M/s. Chetan Travels and M/s. Yadav Travels could not be considered for the time being and that in case it was decided later on to call for fresh tenders, the offers from the concerned parties might be invited. However, accused A. V. Kharkar (A2) also advised to negotiate with M/s. Deep Travels (A7) and try to bring down the contractual rate to the rates offered by the said parties. Accordingly, the tender committee called M/s. Deep Travels on 10.09.2002 for negotiation of rates but despite the persuasion of the tender

committee, the contractor refused to reduce the rates. The tender committee prepared a record note dated 10.09.2002 (Ex. PW5/C) in that regard. Apart from the above, both the quotations were lacking in material specifications, as pointed out by the counsels for the C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 70 of 77 accused persons. Infact, in his cross-examination, PW7 Sh. Rakesh Kumar, who was the proprietor of M/s. Yadav Travels, has admitted that when he had submitted the quotation (Ex. PW7/A), he was not in possession of any bus of required sitting capacity. As far as M/s. Chetan Travels is concerned, it is a matter of record that the said firm had applied for the staff transport contract in the public tender issued in the year 2003 but it was disqualified in the technical bid for not possessing three buses of requisite sitting capacity. Considering the above coupled with the fact that HCI had received advice from the senior officials of Ministry of Disinvestment to extend the existing contracts and not to enter into new contracts in view of the ongoing disinvestment process, no malafide can be imputed to any of the public servants in not entertaining the quotations of M/s. Chetan Travels and M/s. Yadav Travels. With regard to the assessment of alleged pecuniary loss, a perusal of the comparative statement Ex. PW8/F shows that the same was calculated for the period January, 2003 to February, 2006 on the basis of difference between the rate of Rs. 17.40 per kilometer being charged by M/s. Deep Travels and the rate of Rs. 16.50 per kilometer as offered by M/s. Chetan Travels. PW19 Sh. Samuel Kongari, who was posted as Officer (Accounts), Centaur Hotel, Delhi at the relevant time, has admitted that the comparative statement Ex. PW8/F was prepared at the instance of the IO. Since the quotation submitted by M/s. Chetan Travels vide its letter dated 16.08.2002 (Ex. PW27/B) was lacking in material specifications and the said firm was disqualified in the next public tender for the year 2003, the assessment of alleged loss on the basis of rate of Rs. 16.50 quoted by M/s. Chetan Travels was a complete folly and has to C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 71 of 77 be discarded.

94. PP for the CBI has lastly contended that accused D. H. S. Prasad (A4), the then Executive Manager Accounts, and accused V. K. Malhotra (A5), the then Deputy Manager Accounts, in conspiracy with accused R. C. Aggarwal (A1), gave instructions for the payment of 42 seater buses at the rate of Rs. 14.05 per kilometer against the approved rate of Rs. 11/- per kilometer resulting in excess payment of Rs. 12,94,822/- to M/s. Deep Travels (A7) for the period 23.07.2002 to September, 2005 as assessed vide comparative statement Ex. PW8/I. She has submitted that since the transporter was plying 42 seater buses in place of 52 seater buses and the rate of 42 seater buses was not decided, accused R. C. Aggarwal (A1) constituted a committee of Sh. S. Barupal (PW15) and Sh. S. Banerjee (PW28) to work out the dues of the transporter. She has further submitted that the said committee observed that in May, 2003, negotiations were held with the transporter and it had agreed to reduce the rate for mini buses including 42 seater buses from Rs. 14.05 per kilometer to Rs. 11/- per kilometer and accordingly, sought approval for settling the bills in respect of 42 seater buses

at reduced rate of Rs. 11/- per kilometer vide its report dated 05.04.2002, which was approved by accused R. C. Aggarwal (A1). She has pointed out that accused D. H. S. Prasad (A4) had also confirmed that the negotiated rate for the mini buses was Rs. 11/- per kilometer vide his letter dated 13.04.2004.

95. Per contra, the counsels for accused Nos. 4 to 7 have submitted that C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 72 of 77 no document pertaining to the alleged negotiations in May, 2003 has been placed on record by the prosecution. They have contended that since no such settlement as mentioned in the report dated 05.04.2004 of Sh. S. Barupal and Sh. S. Banerjee ever took place between the transporter and the department, the recommendation made in the said report was without any basis. They have stated that it is evident from the note dated 22.01.2004 prepared by the tender committee, which also included accused D. H. S. Prasad (A4), that the rate of Rs. 11/- per kilometer was fixed only for 20 seater buses that were used for guest transport and not for 42 seater buses that were used for staff transport. Qua the letter dated 13.04.2004 of the accused D. H. S. Prasad (A4), it has been submitted that he was directed on 13.04.2004 to confirm the negotiated rates as mentioned in the report dated 05.04.2004 immediately by return fax and due to shortage of time and oversight, he could not point out that the rate of Rs. 11/- per kilometer was only for 20 seater CNG buses as per the note dated 22.01.2004 of the tender committee.

96. As mentioned earlier, M/s. Deep Travels was issued work order to provide the services of 52 seater CNG buses for staff transport at the rate of Rs. 17.40 per kilometer vide letter dated 16.07.2002 (Ex. PW26/D) issued by accused P. K. Malhotra (A3). The performance of the transporter was reviewed by the tender committee on 29.11.2002 and upon noticing that the transporter was plying 42 seater buses in place of 52 seater buses on some of the routes, it had observed vide its minutes Ex. PW2/A58 that whenever the transporter had plied 42 seater buses, proportionate deduction be made C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 73 of 77 from its bills. The counsels for the accused persons have submitted that the proportionate rate of 42 seater buses can be calculated by applying unitary method. Applying the said method, the proportionate rate of 42 seater buses is calculated as under:

Rate for 52 seats = 17.40 (in Rs.) per km
Rate for 1 seat = 17.40

Rate for 42 seats = 17.40 42

= 14.05 per km

97. It is a matter of record that at the relevant time, M/s. Deep Travels was providing services for staff transport contract as well as guest transport contract. While the first contract related to transportation of the staff officials of both the Delhi units of HCI, the second contract related to transportation of clients i.e. guests staying at the Centaur Hotel. On 22.01.2004, the tender committee comprising of accused A. V. Kharkar (A2), accused D. H. S. Prasad (A4) and Sh. Rajesh Kashyap, the then Deputy General Manager (operations) prepared a note (Ex. PW15/A) regarding the settlement of dues of M/s. Deep Travels and inter alia recommended that its guest transport contract be regularized at rate of Rs. 11/- per kilometer for 20 seater CNG buses with effect from 23.07.2002 to 31.03.2004 by observing that the transporter had agreed to reduce the rate from Rs. 14.05 per kilometer to Rs. 11/- per kilometer. Thereafter, on 05.04.2004, the committee consisting of Sh. S. Barupal (PW15) and Sh. S. Banerjee (PW28) submitted the report (Ex. PW12/D) in respect of the settlement of dues of M/s. Deep Travels for staff transport contract as well C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 74 of 77 as guest transport contract. In the said report, the committee sought approval for settling the bills in respect of 20/35/42 seater CNG buses at the rate of Rs. 11/- per kilometer by observing that in May, 2003, negotiations were held with the transporter and it had agreed to reduce the rate for all such buses from Rs.14.05 per kilometer to Rs. 11/- per kilometer. Though the above report was approved by accused R. C. Aggarwal (A1) but the prosecution has failed to place on record any document to show that negotiations were held with the transporter in May, 2003 and that the transporter had agreed to reduce the rate of 42 seater CNG buses from Rs. 14.05 per kilometer to Rs. 11/- per kilometer. In the absence of any such document, the recommendation made vide report dated 05.04.2004 (Ex. PW12/D) and the approval thereof by accused R. C. Aggarwal (A1) render no help to the case of the prosecution. Here it is noteworthy that PW15 Sh. S. Barupal has stated in his cross-examination that the negotiated rates of 20/35/42 seater CNG buses were mentioned in the report dated 05.04.2004 (Ex. PW12/D) on the basis of note dated 22.01.2004 (Ex. PW15/A) prepared by the tender committee regarding the settlement of dues of M/s. Deep Travels. However, it is evident from the note Ex. PW15/A that the rate of Rs. 11/- per kilometer had been agreed by the transporter only in respect of 20 seater CNG buses which were used for guest transport. The above fact is corroborated by the letter dated 04.06.2004 written by the transporter to Senior Manager (Accounts), wherein it had been specified that the rates of 20 and 42 seater CNG buses were Rs. 11/- per kilometer and Rs. 14.05 per kilometer respectively. The above letter dated 04.06.2004 was seized by the IO from Sh. Samuel C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 75 of 77 Kongari (PW19) vide memo dated 22.11.2006 (Ex. PW33/2). It is also seen from the record that vide its note dated 28.05.2004 (Ex. PW12/F), the tender committee proposed for hiring 42 seater buses in place of 52 seater buses as there was substantial reduction in the staff strength pursuant to the implementation of voluntary retirement scheme and the rate of 42 seater buses was less by Rs. 3.35 per kilometer as compared to 52 seater buses. In other words, the tender committee

sought approval for hiring 42 seater buses at the rate of Rs. 14.05 per kilometer as the difference between the rates of Rs. 17.40 per kilometer for 52 seater CNG buses and Rs. 14.05 per kilometer for 42 seater CNG buses comes to Rs. 3.35. The above proposal was also recommended by PW15 Sh. S. Barupal, who was one of the members of the committee that had submitted the report dated 05.04.2004 (Ex. PW12/D), and was approved by accused R. C. Aggarwal (A1). In view of the above, it is established that the approved rate for 42 seater CNG buses was Rs. 14.05 per kilometer and at no point of time, M/s. Deep Travels had agreed to reduce the rate of such buses to Rs. 11/- per kilometer. Accordingly, the payment for 42 seater buses was rightly made to M/s. Deep Travels (A7) at the rate of Rs. 14.05 per kilometer and no wrongful loss was caused by the accused persons to HCI.

Conclusion

98. In the light of above discussion, it is evident that the prosecution has miserably failed to bring home the guilt of the accused persons for the offences alleged against them. Resultantly, the accused persons namely R. C. Aggarwal (A1), A. V. Kharkar (A2), P. K. Malhotra (A3), D. H. S.

C.C. No. 05/2019 CBI v. R.C. Aggarwal & Ors. Page No. 76 of 77 Prasad (A4), V. K. Malhotra (A5) and Pohp Singh (A6) are acquitted of the charge for the offences under [Sections 120B IPC](#), 420 [IPC](#) read with 120B [IPC](#) and 13(2) read with 13(1) (d) [PC Act](#) read with 120B [IPC](#). Accused Anil Kalia (A8) is also acquitted of the charge for the offence under [Section 109 IPC](#).

SANJAY Digitally signed by
SANJAY GARG

Announced on 18.12.2020

GARG Date: 2020.12.18
20:57:00 +05'30'

(Sanjay Garg)
Special Judge (PC Act) (CBI)-18,
Rouse Avenue District Courts,
New Delhi.