



COMPETITION COMMISSION OF INDIA

Case No. 06 of 2018

In Re:

- 1. Mr. Chirag S. Shastri** **Informant No. 1**
Raw House No. 20, New Nandanvan Raw House,
Opp. Shreyas Society, Satellite,
Ahmedabad – 380 015
Gujarat.
- 2. Mr. Shailesh S. Shastri** **Informant No. 2**
Raw House No. 20, New Nandanvan Raw House,
Opp. Shreyas Society, Satellite,
Ahmedabad – 380 015
Gujarat.
- 3. Ms. Medha C. Shastri** **Informant No. 3**
Raw House No. 20, New Nandanvan Raw House,
Opp. Shreyas Society, Satellite,
Ahmedabad – 380 015
Gujarat.
- 4. Ms. Anilaben S. Shastri** **Informant No. 4**
Raw House No. 20, New Nandanvan Raw House,
Opp. Shreyas Society, Satellite,
Ahmedabad – 380 015
Gujarat.

And

- 1. Indiabulls Housing Finance Limited** **Opposite Party No. 1**
4th Floor, Indiabulls Finance Center,
Senapati Bapat Marg, Elphinstone Road,
Mumbai – 400 013
Maharashtra.
- 2. Indiabulls Housing Finance Limited** **Opposite Party No. 2**
1st Floor, Radhika House,
Law Garden Road, Ellis Bridge,
Ahmedabad – 380 006
Gujarat.



CORAM

Mr. Ashok Kumar Gupta
Chairperson

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Appearance: For Informant:
Mr. Nishith M. Pandit, Advocate

For Opposite Parties:
Mr. Karan Singh Chandhiok, Advocate; Mr. Vikram Sobti, Advocate;
Mr. Mehul Parti, Advocate; Mr. Ajay, DGM (Legal); Mr. Sahil, Legal
Manager and Ms. Depika, Legal Manager

Order under Section 26(2) of the Competition Act, 2002

1. The present information was filed by Mr. Chirag S. Shastri (hereinafter Informant No.1), Mr. Shailesh S. Shastri (hereinafter Informant No. 2), Ms. Medha C. Shastri (hereinafter Informant No. 3) and Ms. Anilaben S. Shastri (hereinafter Informant No. 4) (hereinafter Informant No. 1, Informant No. 2, Informant No. 3 and Informant No. 4 are collectively referred to as the **“Informants”**) under Section 19(1) (a) of the Competition Act, 2002 (hereinafter the **“Act”**) against Indiabulls Housing Finance Limited, located at Mumbai (hereinafter **“OP-1”**) and Indiabulls Housing Finance Limited located at Ahmedabad (hereinafter **“OP-2”**) (hereinafter OP-1 and OP-2 are collectively referred to as the **Opposite Parties / OPs**) alleging, *inter alia*, contravention of provisions of Sections 3 and 4 of the Act.
2. OP-1 is a private housing finance company in India providing financial services to consumers and OP-2 is a branch office of OP-1.



सत्यमेव जयते



3. It is stated that the Informants and OP-2 had executed a Loan Agreement on 30.06.2008 for a loan of Rs 47,58,426/- (Rupees Forty Seven Lakhs Fifty Eight Thousand Four Hundred Twenty Six Only) at the floating interest rate of 16.00% to be paid in 120 months with a proposed Equal Monthly Instalments (EMI) of Rs 79,710/- (Rupees Seventy Nine Thousand Seven Hundred Ten Only).
4. It is further stated that during the period 30.06.2008 to 29.08.2013, the rate of interest charged by the OP-2 was increased from 16.00% to 22.75%. However, after 29.08.2013, OP-2 has fixed the rate of interest @ 22.75% *vis-à-vis* the Informants.
5. It is averred that in the year 2015, the Informants came to know that the rate of interest, tenure of loan, principal amount due, *etc.* were increased and re-scheduled by OP-2. The Informants allege that under the terms of revised loan, OP-2 arbitrarily increased the tenure of loan to 420 months and EMI to Rs 84,121/- (Rupees Eighty Four Thousand One Hundred Twenty One Only) and rate of interest to 22.5%. Subsequently, OP-2 sent an email dated 21.01.2016 with another revised terms and conditions of the loan along with options for restructuring the loan account. However, the Informants rejected the said offer as even after making a payment of Rs. 73,84,050/- by the Informants (as on 15.12.2015), OP-2 kept the principal amount due at 44,28,038.44/-.
6. It is submitted that the Reserve Bank of India has, from time to time, changed repo rate; however, OP-2 has never revised the rate of interest charged to the Informants. Further, OP-2 is charging the highest possible rate of interest from the Informants whereas the rate of interest charged to other consumers is different and substantially less.
7. It is the case of the Informants that when they tried to switch the aforesaid loan to another financial institution, it was informed that they would be charged with switching fee @ 2%, pre-payment charges, *etc.* which the Informants could not afford to pay. Further, when the Informants asked for foreclosure of loan, OP-2



सत्यमेव जयते



communicated the outstanding amount to be Rs. 47,60,619.23/-, higher than the original loan amount.

8. It is alleged that the interest charged by the OPs are unfair and discriminatory and therefore in violation of Section 3(1) and 4 of the Act. Further, the terms and conditions of the Loan Agreement dated 30.06.2008 are alleged to be in contravention of Sections 3(1), 3(3) and Section 4 of the Act. It is also alleged that by charging the highest possible rate of interest from the Informants, OP-2 has indirectly eliminated or minimized the possibility of existence of any other player in the aftermarket or loan recovery market. This conduct according to the Informants is prohibited under section 4(2)(c) of the Act.
9. Accordingly, the Informants have prayed to the Commission to direct OP-2 to stop such alleged unfair and discriminatory trade practices and impose penalty on the OPs for contravening the provisions of Sections 3 and 4 of the Act.
10. The Commission has perused the information and submissions of the Informant and Opposite Parties. The Commission also heard the arguments made by the respective counsel of the Informants and Opposite Parties and considered the opinion of National Housing Bank (NHB), the sectoral regulator of housing finance companies.
11. The Commission observes that Informants have availed loan from OP-1, which was disbursed by OP-2, the branch office of OP-1. With regard to the grievances of the Informants, it is observed that the Informants are aggrieved with the alleged unfair and discriminatory rate of interest charged by OP-2 which has put them in financial hardship. That even if they want to switch to another financial institution, the switching cost is allegedly too high for them to move to other lending institutions. The Informants have alleged that the terms and conditions of the Loan Agreement are unfair and discriminatory. Therefore, the conduct of OP-2 amounts to be in violation of Sections 3(1), 3(3) and Section 4 of the Act.
12. Under the provisions of Section 4 of the Act, the conduct of an enterprise or group would be examined if the enterprise or the group is a dominant entity in the relevant



market(s). Thus, the starting point while analysing a Section 4 allegation is determining whether the entities against which allegations have been levied are covered under the definition of enterprise or group. The next step is to delineate appropriate relevant market(s) where the conduct of such enterprise or group has been alleged to be abusive. Subsequently, it is to be determined whether such enterprise or group is dominant in the relevant market(s).

13. The Commission notes that the OPs squarely fall within the definition of enterprise. Further, as per Section 2(r) of the Act, the relevant market may be defined either in terms of relevant product market or relevant geographic market or both.
14. The Commission notes that the Informants, while defining the relevant market, have referred to the aftermarket or loan recovery market. On this issue, reference is made to the earlier decision of the Commission in Case No. 43 of 2016 (*In Re: Onicra Credit Rating Agency of India Limited and Indiabulls Housing Finance Limited*) wherein the Commission observed as below:

“The Commission notes that the arguments of the Informant regarding the purported aftermarket and the abuse therein are misplaced as the loan services of the nature impugned herein do not involve any aftermarket as alleged by the Informant. Availing additional loan or migration of a loan from one lender to another are independent services and availing additional loan or migration from one lender to another cannot be considered as an aftermarket. An aftermarket is a special kind of antitrust market consisting of unique replacement parts, post warranty service or other consumables specific to some primary product. The term, therefore, refers to markets for complementary goods and services such as maintenance, upgrades, and replacement parts that may be needed after the consumer has purchased a durable good. Further, an independent secondary aftermarket would generally exist if consumers are not able to ascertain the life time cost of the primary product/ service at the time of its purchase, there is a high switching cost to shift to substitutes and the manufacturer/ service provider of the primary product/ service has the ability to substantially hike the price



सत्यमेव जयते



of the good/service offered in the secondary market (i.e. aftermarket) in spite of reputational concerns. The Informant has not shown the presence of any of above factors in the instant case and those are also not discernible from the facts presented in the information. By contrast, the terms and conditions of the loan including the rate of interest, term of repayment, rate of pre-payment penalty, etc. were made certain to the Informant at the time of availing the loan itself, which enables the Informant to ascertain the life time cost of the loan facility including the cost of migration of the loan to other lenders. In view of the above, the Commission notes that facts of the case do not involve any aftermarket.”

15. The Commission is of the view that the ratio of above decision of the Commission is applicable in the instant case also. Accordingly, the after-market argument of the Informants does not hold good and is rejected.
16. With regard to the relevant product market, the Commission notes that the Informants had taken loan against property which is distinct from other types of loans such as personal loan, property loan, home loan, auto loan, etc. While money is fungible, the end use of loan except for personal loan is generally stated in the loan agreement. Accordingly, all loans may not fall in the same relevant product market. Upon considering the factors such as intended use, rate of interest charged, etc. ‘loan against property’ can be distinguished from other types of loans. Thus, loan against property can be considered as a distinct loan product. Further, since banks and other home finance companies compete with each other for providing loan against property, the Commission does not deem it necessary to distinguish between the two. Thus, the relevant product market in the instant case is delineated as the market for “*provision of loan against property*”.
17. With regard to the relevant geographic market, the Commission observes that conditions of competition are homogenous across India. There are no barriers or regulatory issues in availing loan against property from any bank / financial institution located at any place within India. Therefore, the relevant geographic market in the



सत्यमेव जयते



instant case can be considered to be “*India*”. Accordingly, the relevant market in the instant matter can be taken as market for ‘*provision of loan against property in India*’.

18. On dominance, the Commission notes that the Informants have admitted that the market share of the OP group is less than that of other financial institutions. They have only stated that the OP group is dominant in the so called after-market as defined by them. Since, the view on after-market has already been dealt with in the above paras, the Commission need not go any further in this regard.
19. On the assessment of dominance of the OPs in the market of *provision of loan against property in India*, the Commission observes that the aforesaid relevant market is fragmented and competitive with presence of a large number of banks (SBI, HDFC Bank, ICICI Bank, HSBC Bank *etc.*), non-banking financial companies (Muthoot Finance Limited, Bajaj Finance Limited, Mahindra Financial Services Limited *etc.*) housing finance companies (LICHFC, DHFL, PNB HFL *etc.*) and other financial institutions competing with each other. Neither in the information nor during the preliminary conference has any submission been made by the Informant to suggest that the OPs enjoy dominance. Therefore, the OPs are not dominant in the aforesaid relevant market. In the absence of dominance, the issue of abuse of dominant position against the OPs does not survive.
20. In view of the foregoing, the Commission is of the opinion that there is no *prima facie* case of contravention of the provisions of Section 4 of the Act against the OPs.
21. With regard to the allegations under Section 3(1) and 3(3) of the Act, the Commission observes that the Informants have not suggested existence of any agreement, as envisaged in Section 3 of the Act, involving the OPs. Even after examining the facts of the case, the Commission has not found anything that would suggest that there was any kind of horizontal agreement that could be brought under the scanner of Section 3 of the Act. As a result, no *prima facie* case of contravention of the provisions of Section 3 of the Act is made out against the OPs.



सत्यमेव जयते



Fair Competition
For Greater Good

22. In view of the above analysis and discussion, the Commission is of the view that there exists no *prima facie* case of contravention of the provisions of Sections 3 and 4 of the Act and accordingly, the matter is ordered to be closed forthwith in terms of the provisions of Section 26(2) of the Act.
23. The Secretary is directed to communicate to the parties, accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

Date: 02.01.2019

New Delhi