



COMPETITION COMMISSION OF INDIA

Case No. 48 of 2019

In Re:

Ms. Lakshmi Sharma
No. 120, Arun Vihar,
Sector-37, Noida, U.P-201301

Informant

And

Punjab National Bank ('PNB')
Plot No. 4, Sector-10,
Dwarka, Delhi-110075

Opposite Party

CORAM:

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

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

1. The present information has been filed by Ms. Lakshmi Sharma ('**Informant**') under Section 19(1)(a) of the Competition Act, 2002 ('**Act**') against Punjab National Bank ('**OP**/'**PNB**') alleging contravention of the provisions of Section 4 of the Act.

FACTS, IN BRIEF, AS STATED IN THE INFORMATION

2. The Informant is a senior citizen of India and had participated in an Auction Bid of Property No. 120, Arun Vihar, Sector-37, Noida, U.P, auctioned by PNB, a nationalised bank.



3. The Informant submits that a sale notice dated 01.10.2011 was published in newspaper wherein the OP through its Chief Manager of the Branch located at Sector-27, Noida, U.P. invited the bids from public at large for the sale of the property situated at Residential House No. 120, Sector-37, Arun Vihar, Noida, Distt. G.B. Nagar (whose Previous Owners are mentioned to be Shri Atul Kumar Awasthi and Smt. Asha Awasthi) with a Reserve Price of Rs. 180.00 Lacs. In terms of the above publications, bid was to be filed and the earnest money of Rs. 18.00 Lacs was to be deposited with the Bank till 02.11.2011 and it was to be opened on 03.11.2011 at the said Branch office of the OP. However, the opening of tender was deferred till 04.11.2011 since the previous Owner/Borrower of the OP had moved a stay-application against sale of the property before the Debt Recovery Tribunal, Lucknow in the above Securitization Application.
4. After opening of the bids, the Informant with the highest bid of Rs. 189.00 Lacs was declared successful and OP issued bid acceptance letter dated 04.11.2011 wherein the Informant was asked to deposit 25% of the bid amount *i.e.* Rs. 47.50 Lacs including the earnest money of Rs. 18.00 Lacs. For the remaining payment the Informant was granted time, as per the provision of law, till 19.11.2011. The Informant states that she paid 25% of the bid amount *i.e.* Rs. 47.50 Lacs by submission of Demand Draft No. 14675 for Rs. 18.00 Lacs along with the Tender Form and Rs. 29.50 Lacs by another Demand Draft.
5. The Informant made the payment for entire (100%) auction amount in the year 2011 and was issued sale certificate by the OP on 24.11.2011. The Informant contends that the auction was conducted by the OP in a dishonest and illegal manner without obtaining physical peaceful possession or perfect marketable title from the borrower/previous owner of the property.



6. The Informant states that despite making the entire payment she has been in litigation with OP, wherein the latter has used its dominant position in the market to conceal its gross deficiencies, negligence and blatant illegalities. It is stated that the Informant was forced to spend huge money in litigation and 5 years of her life in getting her rights as the owner.
7. The Informant submits that the OP in abuse of its dominant position in the market auctioned the property without obtaining physical peaceful possession or perfect marketable title from the borrower/ previous owner. Further, even prior to transfer of the rights of the property in question in favor of the Informant being an auction purchaser, OP disbursed the excess money generated from the sale and taken from Informant to the tune of approx. Rs. 25 Lacs in favor of the defaulter *i.e.*, borrower/ previous owner. The Informant submits that the OP had strict timelines for the Informant to deposit the bid amount and even upon receipt of the entire payment did not transfer a perfect marketable title (of ownership) or the possession of the property within the time specified in the terms of auction.
8. The Informant has also alleged that the OP has been deficient in performance of the agreement and has misused its position in the market to obtain money from the Informant by suppressing and concealing material facts for fulfillment of its vested interests.
9. The Informant has further submitted that only after the auction had taken place, OP approached the Noida Authority for issuance of Transfer Memorandum, and the said authority asked the OP to complete the formalities. The Informant has placed on record various letters dated 12.11.2011, 15.02.2012, 16.04.2012, and 27.04.2012 which the PNB has written to various authorities for transfer of the above said property without obtaining the physical possession of the same.



10. The Informant states that the previous owner Mrs. Asha Awasthi, who seemed to be interested in retaining the property filed a petition before the Debt Recovery Tribunal against PNB(OP) which further shows that OP had not complied with the norms of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('**SARFAESI Act**') and had not obtained physical possession of property in terms of SARFAESI Act, and instead the PNB allowed the borrower to take away the money obtained from the Informant. The Informant has placed on record the Orders passed by Hon'ble High Court at Judicature at Lucknow (U.P.) and orders passed by Hon'ble DRT Lucknow (U.P.) which also goes to show that the first owner *i.e.* Mrs. Asha Awasthi was in possession of the above said property till 28.02.2015 when the District Magistrate, Gautam Budh Nagar issued order for transfer of physical possession under SARFAESI Act.
11. Further, Informant alleged that the OP has paid residual amount of Rs. 25,00,000/- (Twenty Five Lacs) of the auction money to the borrower and allowed her to withdraw this amount without taking physical possession in terms of the SARFAESI Act causing huge monetary losses to the complainant. The Transfer Deed of the above said property was executed on 11.01.2016 in favor of the Informant.
12. The Informant has alleged that the OP is guilty of using its dominant position in the market for hiding its deficiency of services on various grounds. The Informant has submitted that the OP did not comply with its agreement with the Informant to hand over physical possession of the property within 30 days of receiving the full payment. On the other hand, it passed on money to the said defaulter, without even taking NOC/ Physical possession of the property. The Informant had already paid 100% payment and was involved in a litigation for almost 5 years for which she suffered huge monetary losses.



13. The Informant has also alleged that OP has grossly erred in complying with rules & regulations framed by Central Government, Reserve Bank of India as well as by the Ministry of Finance & SEBI. Further, the OP being a listed Government entity, it has blatantly flouted rules in obtaining the funds toward the disputed property which caused losses to Informant.
14. In view of the facts and circumstances of the case, the Informant has prayed that this Commission may:
- a) Pass an order directing compensation to the tune of Rs. 2 crore towards using its dominant position in the market and hiding its gross deficiency, and blatant negligence and illegalities committed by it towards the loss of monetary growth over her investment for not providing auctioned property with perfect marketable title and physical peaceful possession as agreed for along with interest @ 12% pa from the date of instituting the Informant till the actual payment along with costs and expenses;
 - b) Pass an order of penalty against the OP
 - c) And such other orders which the Commission deems fit and proper in the interest of justice.
15. The Commission considered the matter in its ordinary meetings held on 23.01.2020 and 28.04.2020.
16. The Commission is of the opinion that *prima facie* the present case involves issue of transfer of ownership title and possession of property, a NPA (Non-Performing Asset), purchased by the Informant in an auction conducted by the PNB. Such auction was done by the Bank in accordance with remedies available to it as a secured creditor under the provisions of the SARFAESI Act.



17. The Commission upon consideration of the material on record, notes that any bank under the provisions of SARFAESI Act has a right of enforcement of its security interest under the provisions of Section 13 of the said Act and if a borrower makes any default in repayment of loan or any instalment then his or her account is classifiable as a Non-Performing Asset (NPA) by the secured creditor. The main purpose behind the provisions of the SARFAESI Act is to provide for banks and other financial institution to auction residential or commercial properties (of Defaulter) to recover outstanding loan facilities in the event of any defaults by the borrower/guarantor.
18. As regards the provisions of the Act, the Informant has alleged contravention of Section 4 of the Act which deals with abuse of dominant position. The Commission notes that the 'dominant position' as defined under the Explanation to Section 4(2) of the Act means a position of strength that allows an entity to operate independently of competitive forces prevailing in the relevant market or affect its competitors or consumers in its favour.
19. The Commission observes that it may not be germane to define a precise relevant market in the present matter. A bank acting under the remedies available to it under the SARFAESI Act for recovery cannot be termed as a dominant entity when it acts in accordance with provision thereof, as it is acting in recovery of its funds/money in order to mitigate losses in such transaction (where account has been declared NPA). It has not been indicated in the information as to how the alleged conduct of PNB which may have resulted in violation of the provisions of the SARFAESI Act or any rules framed thereunder has caused any violation of the provisions of the Competition Act, 2002.
20. The Commission also in regard to its recent order dated 14.05.2020, in Case No. 44 of 2019 (*M/s RH Agro Private Limited vs State Bank of India & Ors*), has observed that an auction/transaction initiated by a bank/ financial institutions for the purpose



of recovery in terms of provisions of SARFAESI Act may not amount to violation of the provisions of Competition Act, 2002. Thus, the Commission is of the opinion that no competition concern can be said to have arisen in the present matter and the Information is closed forthwith against the OP under Section 26(2) of the Act.

21. The Secretary is directed to communicate to the Informant, accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Dated: 22.05.2020