

**KANHAIYA SINGHAL V INDIABULLS HOUSING FINANCE LTD. & ORS.**

**Case No. 11 of 2019**

**Decision Date:** 24.05.2019

**Keywords:** Housing Loan; exorbitant revision of interest rate; abuse of dominance

**Rule:** s 3, 4 of the Competition Act, 2002.

The Informant is an Advocate-on-Record in the Supreme Court of India. OP-1 is a housing finance company. Other OPs are the officers/ employees of OP-1 and are responsible for the day-to-day business activities of OP-1.

The Informant had availed a Home Loan facility from OP-1, for which he entered into a Loan Agreement with OP-1. He was extended a home loan of Rs. 1,00,00,000/- (Rupees One crore only) at a rate of interest of 8.75% p.a. repayable in 240 equated monthly 4 instalments ('EMI') of Rs. 88,372/-. OP-1 increased the rate of interest from 8.75% p.a. to 11.15% p.a. and the same was intimated to the Informant via emails. Due to the increase in rate of interest, the period of loan was increased to 364 months from 240 months without taking any consent from the Informant.

He requested OP-1 not to encash the undated and unfilled cheques and also not to execute the Electronic Clearing Service (ECS) authorisation. However, OP-1 continued its illegal action by presenting an ECS for Rs. 1,01,854/-. Therefore, OP-1 misused the ECS authorisation.

The Informant maintains that he was forced to sign a number of papers by the OPs and the Loan Agreement does not mention either about the frequent revision of interest rate or that OP-1 is authorised to revise the rate of interest exorbitantly.

**ALLEGATIONS**

**s 3, Agreement having anticompetitive effects:** The Informant alleged that the Loan Agreement consists of clauses, which have an appreciable adverse effect on competition in India, and contravene the provisions of Section 3 of the Act.

**s 4, Abuse of Dominance:** Despite a drop in the market rate of interest by the RBI, OP-1 is not willing to reduce the rate of interest, which is due to its dominant position.

## ANALYSIS

OPs, except for OP-1, are officials / employees of OP-1. The Informant has not provided any evidence to show that these OPs have indulged in any conduct which are in violation of the provisions of Sections 3 and 4 of the Act.

**On Anti-Competitive Agreements:** The Informant has not suggested existence of any agreement, as envisaged under Section 3 of the Act, involving the OPs. The Commission too did not find anything that would suggest that there exists any kind of horizontal/ vertical agreement that could be brought under the purview of Section 3 of the Act.

### **On Dominance:**

**Relevant Market Analysis:** Market for provision of home loans in India

- **Relevant Product Market:** It is observed that home loan is distinct from other types of loans such as personal loan, property loan, vehicle loan, etc. Further, home loan can be distinguished from other types of loans based on the factors such as intended use, rate of interest charged, term of payment, etc. That banks and home finance companies extend home loans and compete with each other for providing home loan services, therefore, the Commission does not deem it necessary to distinguish between home loans offered by various lending entities. Based on the above, home loan can be considered as a distinct product or service. Thus, the relevant product market in the instant case is delineated as the “market for provision of home loans.”
- **Relevant Geographic Market:** There exists no distinction between one region and another with reference to availing home loan services within India. Therefore, the relevant geographic market in the instant case can be considered to be “India”.

**Analysis of OP’s position in the Relevant Market:** The Commission noted that home loan market in India has many providers including Banks, Non-Banking Financial Companies (NBFCs) and Housing Finance Companies (HFCs). Few prominent home loan providers are State Bank of India (SBI), Punjab National Bank (PNB), ICICI Bank, HDFC Bank and DHFL. The housing finance market in India is fragmented, with 80-plus players. Considering the large number of players operating in the relevant market which suggests that not only the market is competitive in nature but also that OP-1 does not seem to have the ability to operate independently of the competitive forces, OP-1 is not found to be dominant in the relevant market defined supra. [The Commission relied on National Housing Bank’s report to evaluate

the total outstanding loans and saw the shares of loans extended by different loan providers in this market to determine their influence in the market.]

**HOLDING:**

No case of contravention of the provisions of Section 3 of the Act is made out against the OPs; OP-1 is not found to be dominant in the defined relevant market. In the absence of dominance, the issue of abuse of dominant position against the OP-1 does not survive.

The Commission found no case of contravention of the provisions of Section 3 or Section 4 of the Act against the OPs in the instant case. The matter was thus closed.