

**IN RE: MR. CHIRAG S. SHASTRI (INFORMANT NO. 1), MR. SHAILESH S. SHASTRI (INFORMANT NO. 2), MS. MEDHA C. SHASTRI (INFORMANT NO. 3), MS. ANILABEN S. SHASTRI (INFORMANT NO. 4) AND INDIABULLS HOUSING FINANCE LIMITED (OPPOSITE PARTY NO. 1), INDIABULLS HOUSING FINANCE LIMITED (OPPOSITE PARTY NO. 2)**

**Case No. 06 of 2018**

**Date of Decision: 02-01-2019**

**Keywords:** abuse of dominance, loan against property

**Rule:** Section 3, Section 4

OP-1 was a private housing finance company in India providing financial services to consumers and OP-2 was a branch office of OP-1. Informants and OP-2 had executed a loan agreement on 30.06.2008 at the floating interest rate of 16.00% to be paid in 120 months.

The Informants claimed that in the year 2015, the rate of interest, tenure of loan, principal amount due, etc. were increased and re-scheduled by OP-2. The Informants also submitted that OP-2 was charging the highest possible rate of interest from the Informants whereas the rate of interest charged to other consumers was different and substantially less. It was also submitted that when Informants 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 they could not afford to pay.

The Informants asserted that the interest charged by the OPs were unfair and discriminatory and therefore in violation of Section 3(1) and 4 of the Competition Act. Further, the terms and conditions of the Loan Agreement were claimed to be in violation of Sections 3(1), 3(3) and Section 4 of the Act. It was also alleged that by charging the highest possible rate of interest of 16% from the Informants, OP-2 had indirectly eliminated or minimized the possibility of existence of any other player in the aftermarket or loan recovery market, which was prohibited under Section 4(2)(c) of the Act.

***Analysis of the Commission***

The Commission noted that the loan taken by Informants could be called a ‘loan against property’ which is different from other types of loans such as personal loan, property loan, home loan, etc. in terms of intended use, rate of interest charged, etc. Thus, loan against property can be considered as a distinct loan product. Hence, the relevant product market in the instant case was delineated as the market for “*provision of loan against property*”. The Commission also considered that conditions of competition were homogenous across India. There were 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 instant case was considered to be “India”. Accordingly, the relevant market in the instant matter was taken as market for ‘*provision of loan against property in India*’.

On the allegation of abuse of dominance, the Commission observed that the aforementioned relevant market was fragmented and competitive with the presence of a large number of banks, non-banking financial companies, housing finance companies and other financial institutions competing with each other. Moreover, there was no submission by the Informants suggesting that the OPs enjoy a dominant position in the market. Therefore, in the view of the Commission, the OPs were held to be not dominant in the relevant market. Hence, no *prima facie* case of contravention of Section 4 was made out.

With respect to the allegations under Section 3(1) and 3(3) of the Act, the Commission remarked that the Informants had not suggested the existence of an ‘agreement’ which is the *sine qua non* of contravention of Section 3. Additionally, the Commission had not found anything that would suggest that there was any kind of horizontal agreement that could be brought under the scrutiny of Section 3 of the Act. As a result, no *prima facie* case of contravention of the provisions of Section 3 of the Act could be made out against the OPs.