

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH, COURT-V

COMPANY PETITION NO. 72/213/ND/2022

Application under Section 213 of the Companies Act, 2013 read with Rule 80 of the National Company Law Tribunal Rule, 2016 and/or any other applicable provisions of the National Company Law Tribunal Rule, 2016

IN THE MATTER OF:

SUPERTECH REALTORS PRIVATE LIMITED & ANR.

... PETITIONERS

VERSUS

INDIABULLS HOUSING FINANCE LIMITED & ANR

.... RESPONDENTS

MEMO OF PARTIES

IN THE MATTER OF:

1. SUPERTECH REALTORS PRIVATE LIMITED

Registered Office: 1114, Hemkunt Chambers, 89,
Nehru Place, New Delhi-110019

Email: headoffice@supertechlimited.com

Through its Authorized Representative:
Mr. Roshan Jha

...PETITIONER NO. 1

2. REVITAL REALTY PRIVATE LIMITED

Registered Office: 1114, Hemkunt Chambers, 89,
Nehru Place, New Delhi-110019

Email: headoffice@supertechlimited.com

Through its Authorized Representative:
Mr. Roshan Jha

...PETITIONER NO. 2

VERSUS

1. INDIABULLS HOUSING FINANCE LIMITED

Registered Office: M-62 & 63, 1st Floor,
Connaught Place, New Delhi - 110001
Also at: 448-451 Udyog Vihar,
Phase -V, Gurugram, Haryana - 122001
Email: ibsecretarial@indiabulls.com

....RESPONDENT NO.1

2. INDIABULLS COMMERCIAL CREDIT LIMITED

Registered Office: M-62 & 63, 1st Floor,
Connaught Place, New Delhi-110001
Email: ajisingh@indiabulls.com

....RESPONDENT NO.2

Order Pronounced on: 07.02.2024

CORAM

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

PRESENT

For the Applicant : Ishan Dewan, V. Siddharth,
Gunjan Arora, Advs

For the Respondent : Mr. Sumesh Dhawan,
Ms. Vatsala Kak, Mr. Raghav Dembla,
Mr. Shaurya Shyam and
Mr. Sagar Thakkar, Advs

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. The instant Company Petition is filed by the Petitioners namely,
Supertech Realtors Private Limited and Revital Realty Private

Limited through its representative, Mr. Roshan Jha (hereinafter referred to as "Petitioners") under Section 213 of the Companies Act, 2013 r/w Rules 80 of the NCLT Rules, 2016 as against the Respondents namely, Indiabulls Housing Finance Limited and Indiabulls Commercial Credit Limited (hereinafter referred to as "Respondent") seeking following reliefs:

- a.** Pass an order directing an investigation into the affairs of the Respondent Companies in terms of the Section 213 (b) of the Companies Act, 2013.
- b.** Pass an order against the Respondent(s) for committing fraud under Section 447 of the Companies Act, 2013 and as per the applicable laws;
- c.** Pass any order this Hon'ble Tribunal may deem fit in abovementioned facts and circumstances.

Averment by the Applicant

- 2.** The Respondent No. 1 i.e Indiabulls Housing Finance Limited was incorporated on 28.12.2005, under the provisions of the Companies Act, 1956, having Corporate Identification Number L65922DL2005PLC136029 and the registered office of the Respondent No. 1 is situated at M-62 & 63, 1st Floor, Connaught Place, New Delhi - 110001 Also at: 448-451 Udyog Vihar, Phase -V,

Gurugram, Haryana - 122001 and the Respondent No. 1 is carrying on the business of housing finance institution.

- 3.** The Respondent No. 2 is Indiabulls Commercial Credit Limited incorporated under the provisions of Companies Act, 1956 in 2006 having Corporate Identification Number as U65923DL2006PLC150632 and the registered office of the Respondent No. 2 is situated at Registered Office: M-62 & 63, 1st Floor, Connaught Place, New Delhi-110001 and The Respondent No.2 is a wholly owned subsidiary of Respondent No.1 Indiabulls Housing Finance Limited. The Respondent No.2 is also a non-Deposit taking Systematically Important (ND-SI) Non-Banking Financial Company (NBFC) registered with the Reserve Bank of India.
- 4.** The Petitioners submitted the reason which constrained the Petitioner to approach this Tribunal being aggrieved of the mala fide actions of the Respondent Companies, the business of which companies is being conducted with for fraudulent and unlawful purposes, and where the Respondent companies have defrauded the petitioners and more so the public at large.
- 5.** The instant Petitioner is being preferred praying for directions that an investigation be carried out into the fraudulent and unlawful

affairs of the Respondent companies as they have and still continue to misappropriate, bungle and usurp the huge amounts of public monies including but not limited to the amounts to the tune of Rs. 277.23 crores in excess of what was due towards the loans advanced to the Petitioner, which was held by the Petitioners in trust of its customers i.e. homebuyers of different projects. Further submitted that the Respondents have also fraudulently usurped a huge amount from the escrow accounts which is against the statutory provisions.

- 6.** Petitioners submitted that the instant matter is squarely covered by the ratio underlined by the Hon'ble Supreme Court of India in *Barium Chemicals Ltd. V. Company Law Board 1996 36 Comp Cas 639* as the amounts usurped by the Respondent's Companies were held by the Petitioners in view to construct and develop the projects wherein numerous homebuyers have purchased their dream homes.
- 7.** Further the Petitioners submitted that the Respondents till date have sanctioned in total of 80 loan facilities to the Supertech Group Companies for a total amount of Rs.6353.63 Crores to the Petitioners. Out of the total sanctioned amount, only a partial amount of Rs.5363.40 Crores was disbursed by the Respondents till date after illegally and fraudulently deducting exorbitant amounts

towards interest payments at the very outset. As on 31.01.2022, the total amount accrued to the Respondents was Rs.5873.29 Crores (including Principal amount of Rs.5363.40 Crores plus interest of Rs.509.89 Crores approximately). Against this total accrued sum of Rs. 5873.29 Crores, it is pertinent to mention that the Respondents till date have usurped an amount of Rs 6150.52 Crores which, inter alia, includes Rs. 5334.41 Crores towards principal, Rs. 500.19 Crores towards interests, Rs.17.25 Crores withdrawn fraudulently by the Respondents directly from the Escrow accounts of the Petitioners in violation of the mandatory provisions of RERA Act and without any information or details of the adjustment of the same and 298.67 Crores paid in kind as transfer of total number of 528 (approximately) units in different projects from Petitioners to Respondents. It is pertinent to mention that till date that the Respondents have proceeded malafidely and fraudulently by usurping additional monies from the Petitioners which is evident from the fact they have failed to even share the details of accounts in which it has been adjusted although payments have been made in excess.

- 8.** The Petitioner submitted that the amount of Rs. 17.25 Crores has been illegally and arbitrarily withdrawn from the Escrow Accounts

since March 2019 till date i.e., after the RERA Act, came into power, which ought to have been utilised for construction purposes only. However, the same has never been accounted for by the Respondent. The said action by the Respondents of withdrawing huge amounts from the escrow accounts is not only in violation of pre-RERA escrow agreements executed between the parties but also in grave contravention to the provisions of RERA Act, 2016 wherein 70% of the amounts in the Escrow Accounts are mandatorily to be used for the construction of the projects.

- 9.** The Petitioner has submitted the following documents in relation to the facts above mentioned
- a) Copies of some of the loan agreements by way of illustration
 - b) Copies of some of such escrow agreements.
 - c) Copy of the calculation sheet outlining the fraudulent deduction of Rs. 707 crores by the respondents.
 - d) Copy of Bank Statements indicating the withdrawal of amounts from the Escrow Accounts.
 - e) Copy of statement of accounts along with its summary.
 - f) Copy of order passed by Haryana Real Estate Appellate tribunal dated 01.05.2019.

g) Copy of master data, Article of Association and Memorandum of Association of Respondent Company.

Reply of the Respondents Companies

10. Per contra, the Respondent Companies through his reply submitted that the Company Petition is liable to be dismissed as the Petitioners being the borrower of the Respondent, as a counterblast to the recovery proceedings initiated by the Respondents under Section 13(4) of the SARFAESI Act dated 23.11.2020 and 24.11.2020 coupled with the fact that an Original Application has been filed the Respondent No.2 before Hon'ble DRT-II, New Delhi on 28.03.2022 and the same is still pending , the Petitioners have initiated multiple litigations against the Respondents in separate judicial forums but on the exact same cause of action and have sought similar prayer in all the proceedings. Respondents Companies submitted that apart from the captioned Petition, the Petitioners have also filed:-

- Petition under Section 9 of the Indian Arbitration and Conciliation Act, 1996 being OMP (Comm.) 89/2022 and
- Writ Petition being W.P. No. (Civil) No. 4865/2022
- Writ Petition being W.P. (Civil)No. 4491/2023

11. Further the Respondent Companies submitted that the Respondent No. 1 herein also filed a Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 against the Petitioner No.2 herein for default of an amount of Rs. 159 Crores on 04.04.2022. While the above stated Petitioner under Section 7 was dismissed vide Order dated 23.05.2022 on the ground of limitation, the Hon'ble NCLAT vide its order dated 23.05.2023 set aside the Order dated 23.05.2022 and remanded the matter back for consideration before the NCLT and the same is still pending adjudication. It is submitted that the Petitioners herein filed their captioned Petition as a counterblast to the same. Furthermore, the Petitioners have also filed Additional Affidavit dated 15.05.2023 in the captioned Petition putting forth the same allegations as have already been levelled by them in the afore-stated cases pending before the Hon'ble Delhi High Court.

12. It is submitted that the Petitioner Companies have instituted the above proceedings on the exact same facts and grounds seeking similar reliefs of identical nature. A Comparative analysis of the above mentioned petitions filed by the Petitioners and the allegations levelled in the present proceedings is annexed as ANNEXURE R-1 with the Reply..

- 13.** Further the Respondent Companies submitted that the Petitioners also filed W.P. (Civil) No. 4865/2022 before the Hon'ble High Court of Delhi on similar facts which was dismissed vide Order dated 20.05.2022. Further, the Hon'ble High Court also observed that as the Petitioners had already approached the Reserve Bank of India ("RBI"), they should await the outcome of their complaint as RBI is empowered to decide whether investigation is required or not. The Hon'ble High Court also noted that as regards the amount in question, the Petitioners had already invoked their remedy in the form of OMP (Comm.) 89/2022 which is pending with respect to the same issue of reconciliation before the Hon'ble Delhi High Court.
- 14.** The Respondent through its Ld. Council submitted that the main ingredient of Section 213 of the Companies Act, 2013 is to show that the business of the Company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose which is oppressive to any of the members of the Company. It is stated that the Petition as filed by the Petitioners, it is clear that the only grievance that Petitioners have from the Respondent.
- 15.** It is submitted that the dispute between the parties in this matter is primarily with respect to the differences arising out of reconciliation

of accounts and the same has already been looked into by the RBI which is Sectoral regulator of the Respondent. In its capacity as the Sectoral Regulator, the RBI has been vested with the necessary powers to look into the allegations levelled by the Petitioners and basis the evidence adduced before it, a clean chit was given to the Respondents by the RBI vide its order dated 09.09.2022.

- 16.** It is submitted that once the dispute with respect to adjustment of accounts and other allegations has already been looked into by RBI, there is no parallel jurisdiction vested with the NCLT to look into the allegations that fall in the domain of the Sectoral regulator i.e., the RBI in this case. To support its contention the Respondent has placed the reliance on Hon'ble Supreme Court Judgment dated 04.01.2023 of *IBF Agro Industries Limited v. SICGIL India Limited and Others*, which is held as below;

“39. When Constitutional Courts are called upon to interpret provisions affecting the exercise of powers and jurisdiction of these regulatory bodies, it is the duty of such courts to ensure that transactions falling within the province of the regulators are necessarily subjected to their scrutiny and regulation. This will ensure that the regulatory body, charged with the duty to protect the consumers has real time control over the sector, thus, realizing the purpose of their constitution.”

17. It is submitted that to filed a joint petition by Petitioner No. 1 and 2 under Section 213(b) of the Act, the Petitioners is required a permission to present the joint petition in terms of Rule 23A (1) of the National Company Law Tribunal Rules “NCLT Rule” from this Adjudicating Authority. As per the terms of Rule 23A (2) of “NCLT Rule” such permission is granted by the Adjudicating Authority only in cases where the joining of the Petitioners is permitted by the Act. The provisions of Section 213(b) do not envisage filing of a joint petition and therefore the present Petition is liable to be dismissed on this ground alone.

18. It is submitted that nowhere in their Petition, have the Petitioners disclosed the fact that they are already embroiled in multiple litigations against the Respondents basis the same cause of Action and praying for almost identical reliefs.

Analysis and Findings

19. We have heard the Ld. Counsels for the parties and perused the averments made in the application and reply filed by the parties. The relevant documents annexed with the respective submissions have been perused.

20. The present Petition has been filed under Section 213 of the Companies Act, 2013 by the Petitioner Companies seeking inter alia to appoint an

Inspector to carry out the Investigation into the affairs of the Respondent Companies . The Section 213 of the Companies Act, 2013 read as follows;

213. Investigation into Company's Affairs in other cases

The Tribunal may,-

(a) On an application made by-

(i) not less than one hundred members or members holding not less than one-tenth of the total voting power, in the case of a company having a share capital; or

(ii) not less than one-fifth of the persons on the company's register of members, in the case of a company having no share capital, and supported by such evidence as may be necessary for the purpose of showing that the applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company; or

(b) On an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that-

i. the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose;

ii. persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or

iii. the members of the company have not been given all the Information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company, order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government and where such an order is passed, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct:

Provided that if after investigation it is proved that-

i. the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or

ii.any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, then, every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447.

21. The present Petition has been filed under sub-section (b) of Section 213 of the Companies Act, 2013 and as per the said Section the Petitioner is required to satisfy this Tribunal that there are circumstances suggesting that the business of the Respondent companies is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose.

22. Vide order dated 26.04.2023, this Tribunal directed the Petitioner to satisfy the existence of prima facie case in this regard. He is also directed to submit a comparative chart of litigations so far raised against the Respondent Companies seeking investigation into the Company before various fora and outcome of the said litigation.

23. In compliance of the Order dated 26.04.2023 the Petitioner through its affidavit dated 11.05.2023 in para 3 submitted the decision of the

Hon'ble High Court of Delhi which was disposed off by the Hon'ble High Court of Delhi vide order dated 20.05.2022 with the following directions:

"In above circumstances, now that Petitioners have approached RBI, in the opinion of the Court, Petitioners should now await the outcome of their complaint. RBI is fully empowered to examine the compliant and take a decision thereon in accordance with law. Whether indeed an investigation is required in light of the allegations made by the Petitioners - is for RBI to decide. There is no compelling reason for the Court to undertake such exercise and grant prayer (a) as sought for in the present petition. In case RBI finds no merit in the compliant and decides not to investigate into the affairs of Respondents No. 2 and 3, Petitioners would then have the liberty to pursue their remedies as are available under law. The Court is not expressing any opinion on the Petitioners' compliant and RBI shall niake an independent assessment uninfluenced by any of the observations made herein. It is expected that RBI shall take a decision not later than 8 weeks from today. "

- 24.** Further the petitioner through its affidavit dated 11.05.2023 in para 4 submitted that pursuant to the aforesaid order, from May 2022 till August 2022, the Respondents on the repeated insistence and supervision of the Reserve Bank of India started providing information.

However, without carrying out any investigation, the RBI merely acted as

a medium for facilitating exchange of information, but refused to even look into the grievances of the Petitioners; and thereafter, even after rendering a finding that the Respondents have breached RBI guidelines and its Fair Practices Code, let the Respondents off with a mere warning to improve its conduct by way of an order dated 09.09.2022. The relevant para of the RBI vide Order dated 09.09.2022 shown as belows:

As regards the allegation of Supertech that Indiabulls and its directors forced it to enter into terms in relation to 80 loans which were illegal, one sided, non- negotiable and detrimental to their interest etc., Indiabulls have submitted copies of the loan agreements for all the 80 loan accounts including addendums thereto. It is observed that all the terms and conditions have been duly signed and accepted by Supertech. Thus, the parties based on their commercial wisdom have entered into contractual obligations and commitments on their own choice and free will. Therefore, allegations of illegality now alleged by Supertech cannot form basis of any relief sought by Supertech in its representation dated April 06, 2022.

It is observed that Indiabulls have provided relevant information with respect to the loan accounts and details of the adjustments made by it with respect to payments made by Supertech. Indiabulls has also clarified the basis of adjustment of Rs. 707 crore paid by Supertech, towards upfront interest payment as per the terms and conditions agreed upon. Further

Indiabulls has assured that adjustment of Rs. 9.75 crore received from Supertech would be made by it and pending such adjustment interest on the said amount would also be paid. Therefore, taking note of the above position and assurance given by Indiabulls, it is concluded that the issue raised by Supertech does not warrant any intervention by RBI. Even otherwise, the issue essentially is a matter of reconciliation of accounts between lender-borrower and to be dealt with as per the grievance redressal mechanisms in place. However, Indiabulls is advised to complete the adjustment of Rs. 9.75 crore mentioned above and inform the position to Supertech within 15 days of receipt of this order

- 25.** The above-mentioned order indicates that the RBI has already examined the issues raised by the petitioners. The RBI also found that the issue raised by Supertech is essentially a matter of reconciliation of accounts. The RBI's order has already been challenged before the Hon'ble Delhi High Court as Writ Petition (Civil) bearing no. 4491 of 2023. However, it is still pending before the Hon'ble Delhi High Court, and the next hearing date for the Writ Petition (Civil) bearing no. 4491 of 2023 is listed on 29.02.2024.
- 26.** The Petitioner Counsel was unable to explain the provision of law with respect to his *locus standi* to file this application under Section 213 of Companies Act, 2013.

- 27.** However, even on merits, we find that the averments made in the Petition by the Petitioners are not supported by any material documents in order to substantiate such allegations. The documents filed by the Petitioner along with the Petition would show that the allegations made by the Petitioner are not corroborated with the documents filed therewith. *Prima facie*, the Petitioner has miserably failed to make out a case under Section 213(b) of the Companies Act, 2013 and also failed to satisfy this Tribunal that the affairs of the Respondent Company have been conducted in a fraudulent manner or unlawful purpose and on the said count itself this Petition is liable to be dismissed.
- 28.** At this stage, when the matter was taken for maintainability of this application, the Petitioner Counsel has also not satisfied this Tribunal regarding the entitlement of the Petitioner to file this application.
- 29.** The Hon'ble NCLAT, New Delhi in Company Appeal (AT)(Insol.) No. 574 of 2019 in the matter of *Mr. Lagadapati Ramesh Vs. Mrs. Ramanathan Bhuvaneshwari*, dated 20.09.2019 wherein it is held as below:
- “that the Adjudicating Authority is not competent to straightway direct any investigation to be conducted by the ‘Serious Fraud Investigation Office’ without giving notice with regard to the same to the Promoters and others and after following the procedure prescribed under the Companies Act and that too after forming a prima facie opinion that the matter requires*

investigation and contends that in the absence of the same the impugned order is legally untenable”.

30. Thus, on the perusal of the documents submitted by the Petitioner and the in view of the discussion made supra, the Petition i.e CP No-72/213/ND/2022 as filed by the Petitioner under Section 213 of the Companies Act, 2013 stands dismissed in limine. No costs

Sd/-

(DR. SANJEEV RANJAN)

MEMBER (TECHNICAL)

Sd/-

(MAHENDRA KHANDELWAL)

MEMBER (JUDICIAL)