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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 4113/2024 & CM APPL. 16783/2024****TEJO RATNA KONGARA**

..... Petitioner

Through: Mr. Sajjan Poovayya, Senior
Advocate with Mr. K.V. Girish, Mr.
Arvia Ahmed and Ms. Priya Singh,
Advocates.
(M): 9999592754

versus

NATIONAL HOUSING BANK & ORS.

..... Respondents

Through: Learned counsel for R-3 (appearance
not given)

CORAM:**HON'BLE MS. JUSTICE MINI PUSHKARNA****J U D G M E N T****16.04.2024****MINI PUSHKARNA, J:**

1. The present petition has been filed seeking directions against the respondent no. 1/National Housing Bank ("NHB") to consider and decide upon the petitioner's representation dated 18th August, 2023, with further prayer for direction to respondent no. 1 to call upon respondent no. 2, i.e., India Bulls Housing Finance Limited ("IBHFL") to produce the responses and relevant documents, disclosing the actions taken by them in respect of the query dated 6th April, 2023 addressed by the petitioner.

2. Facts on record show that the petitioner is a minority shareholder in India Bulls Real Estate Limited ("IBREL"). The petitioner came across certain informations from public documents in relation to IBREL and



Embassy Group of companies. While examining the scheme of amalgamation between the Embassy Group and IBREL, the petitioner found material information of the fraudulent sanction and disbursement of loans by IBHFL to Embassy Group. Thus, the petitioner submitted a representation dated 18th August, 2023 to NHB and highlighted various irregularities committed by IBHFL with regard to fraudulent sanction and disbursement of loans by IBHFL to Embassy Group by creation of unauthorised charges on land belonging to Karnataka Industrial Area Development Board ("KIADB"). Since the NHB did not consider the petitioner's representation/complaint, the present writ petition has been filed.

3. Learned Senior Counsel for the petitioner submits that the proceedings were filed in Karnataka High Court at Bangalore, in which the fraudulent actions by IBHFL was brought out in public.

4. It is submitted that IBHFL released a huge amount of ₹1,318/- Crores (Rupees One Thousand Three Hundred and Eighteen Crores) to Embassy Group of Companies by creating charges on a property not belonging to any of the Embassy Group of Companies and without the knowledge and requisite consent of KIADB. Such sanction, disbursement and deployment of funds by IBHFL to Embassy Group of companies, raises serious concerns, which require to be closely scrutinized by the NHB. The amounts were disbursed to Embassy Group of companies by creating charges on land owned by a statutory authority in a fraudulent manner.

5. Thus, it is prayed that directions be issued to the NHB to consider and decide upon the petitioner's representation.

6. Having heard learned Senior Counsel for the petitioner and having perused the record, at the outset, it would be useful to refer to the



representation dated 18th August, 2023 submitted by the petitioner, relevant portions of which are extracted as below:

“xxx xxx xxx

2. I am a minority shareholder of Indiabulls Real Estate Ltd. (IBREL) and while examining the scheme of amalgamation between Embassy group and IBREL, I found material information of the fraudulent sanction and disbursement of loans by Indiabulls Housing Finance Limited (IBHFL) to Embassy Group. I had made detailed representations to SEBI seeking disclosures and also move an application for impleadment before the Hon'ble NCLT, Chandigarh in C.P. (CAA) No.14/Chd./Hry/2022. SEBI Vide its Order dated 15th December 2021, observed that “separate disclosures were not made in respect of the assets & liabilities of the entities (including Embassy One Developers Pvt. Ltd (EODPL), Embassy East Business Park Pvt Ltd. (earlier known as Concord India Pvt. Ltd) (EEBPPL/Concord) and Summit Developments Pvt. Ltd (SDPL) whose shareholding was transferred to NAM as part of internal restructuring. In this regard, BSE has been advised to intervene in NCLT, Chandigarh with the observation that disclosures may be made of the assets & liabilities of the entities...”

The Order passed by SEBI dated 15.12.2022 is enclosed for reference as Annexure C.

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7. It is pertinent to state that the Hon'ble NCLT, Chandigarh was pleased to take on record the additional documents filed by me in respect of the fraudulent charges created by Embassy Group without the consent of KIADB. The scheme of arrangement between Indiabulls Real Estate Limited (IBREL) and Embassy group was rejected by the Hon'ble NCLT, Chandigarh on account of improper valuations submitted under the Scheme. A copy of the Order dated 9th May 2023 passed by the Hon'ble NCLT, Chandigarh in C.P. (CAA) No.14/Chd./Hry/2022 is enclosed as Annexure E.

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12. I therefore request NHB, through your good office to collect such credit information as described in the Explanation to Section 25 of the Act from IBHFL as the loan sanctioned by IBHFL is without due verification of relevant documents. Further, the purpose of the loan and deployment of loan amount of thousands of crores by Embassy group requires scrutiny since the mortgaged property continues to remain vacant and undeveloped. I regret to inform you that despite RBI



forwarding my complaint to NHB for necessary action, I have not received any response on the status of my complaint. Kindly enquire into this fraudulent gross irregularity in sanctioning funds by IBHFL to IBREL. The relevant action/information in this regard may be furnished to me so that I may appraise the Hon'ble NCLAT, New Delhi which is considering the Appeal of IBREL against the Order dated 9th May 2023 passed by the Hon'ble NCLT, Chandigarh in C.P. (CAA) No.14/Chd./Hry/2022 through an appropriate intervention/ Appeal.

xxx xxx xxx”

(Emphasis Supplied)

7. Perusal of the aforesaid representation submitted by the petitioner clearly shows that the petitioner is contesting the amalgamation proceedings between the Embassy Group of companies and IBREL before the National Company Law Tribunal (“NCLT”), Chandigarh, wherein the petitioner had moved an application for his impleadment.

8. Further, it is manifest from the aforesaid representation that the purpose of the representation by the petitioner before the NHB is to collect relevant information so that the petitioner can apprise the same to the National Company Law Appellate Tribunal (“NCLAT”), New Delhi, which is considering the appeal of IBREL against an order passed by NCLT, Chandigarh. After collecting such information from the NHB by way of the aforesaid representation, the petitioner intends to file an appropriate intervention application/appeal before the NCLAT, New Delhi.

9. This Court also notes that the petitioner had earlier approached NCLT, Chandigarh, where in the order dated 9th May, 2023, it was held as follows:

“xxx xxx xxx

10.1.5 The Applicant, i.e. Tejo Ratna Kongara, has filed another application bearing CA No. 29/2023 to permit the Applicant to obtain the reports filed by the Income Tax Department in Diary No. 259 dated



04.07.2022 and Diary No. 293/7 dated 05.05.2022¹², supplementary reports vide Diary No. 293/8 dated 08.09.2022 and Diary No. 293/12 dated 17.11.2022.

11. As regards the objector's claim that it should be allowed to step into the shoes of the earlier applicant, i.e., Sh. Dhanekula Dharanish, from whom it has purchased the entire lot of 20,100 equity shares of the applicant company, it is noted that the original applicant did not meet the threshold limit of 10% of the shareholding for raising objections as stipulated under the proviso to Section 230(4) of the Companies Act 2013. It is also noted that the amalgamation of companies results in competing interests and rights of different stakeholders, and in the interest of pragmatism, each and every stakeholder's whole interests are stated to be affected and cannot be entertained by the Tribunal. In normal circumstances, the provisions of Section 230(4) of the Companies Act lays down that the particular threshold of 10% of shareholding needs to be respected. Otherwise, small shareholders having been very minuscule stake in the company will have the potential to derail any amalgamation process and thereby affect the broader interest of the companies amalgamating. Furthermore, by just buying shares from the earlier objector, on commercial consideration, the right to object does not necessarily pass on to the buyer of the shares. In view of this, we refuse to entertain the prayer of the objector and did not find it appropriate to go into the merits of the objections raised.

12. As regards the prayer of CA No. 29/2023, seeking permission to obtain the reports filed by the Income Tax Department, we are of the view that the report filed by the Department is for the consideration of the Bench alone, and the same are not to be shared with any third party.

13. We are also conscious of the directions of the Hon'ble Punjab and Haryana High Court in the case of **Tejo Ratna Kongara VS. The National Company Law Tribunal, Chandigarh and others** in CWP-9490-2023 dated 03.02.2023, wherein the Hon'ble High Court has noted CA No. 09/2023 and CA No. 29/2023 have already been reserved by this Bench and has observed that they do not find any ground to restrain this Tribunal from deciding the main company petition.

14. In view of the aforementioned discussion, we find no justification in allowing the prayers made by the applicant in CA No. 09/2023 and CA No. 29/2023. In the result, the objections in these applications fail.

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10. Thus, it is clear that the petitioner has been in litigation with IBREL and seeks to collect information and documents through the process of the



present petition, so as to use the same to file intervention application before NCLAT, New Delhi in the appeal filed by IBREL against the order dated 9th May, 2023 passed by NCLT, Chandigarh, or to file a separate appeal himself against the order dated 9th May, 2023 passed by NCLT, Chandigarh.

11. Writ jurisdiction of this Court cannot be used by a party for collecting evidence and documents against another party, against whom the petitioner has pending disputes. Writ jurisdiction is meant to safeguard the constitutional, legal and vested rights of a party. The powers vested with this Court under writ jurisdiction are large that are used by this Court to ensure that the constitutional and legal rights of parties are protected and secured. Thus, explaining the contours of writ jurisdiction of a High Court, Supreme Court in the case of ***Bandhua Mukti Morcha Versus Union of India and Others, (1984) 3 SCC 161***, has held as follows:

“xxx xxx xxx

15. We may point out that what we have said above in regard to the exercise of jurisdiction by the Supreme Court under Article 32 must apply equally in relation to the exercise of jurisdiction by the High Courts under Article 226, for the latter jurisdiction is also a new constitutional jurisdiction and it is conferred in the same wide terms as the jurisdiction under Article 32 and the same powers can and must therefore be exercised by the High Courts while exercising jurisdiction under Article 226. In fact, the jurisdiction of the High Courts under Article 226 is much wider, because the High Courts are required to exercise this jurisdiction not only for enforcement of a fundamental right but also for enforcement of any legal right and there are many rights conferred on the poor and the disadvantaged which are the creation of statute and they need to be enforced as urgently and vigorously as fundamental rights.

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12. The Court process, much less a writ jurisdiction, cannot be used as a fishing and roving enquiry against a party with whom the petitioner has



pending disputes, for the purposes of collecting evidence and documents to be used against such a party. The present petition filed by the petitioner is clearly a misuse and abuse of the process of the Court.

13. Thus, in the case of *Suresh Kumar Versus GNCT of Delhi & Others*, 2011 SCC OnLine Del 3757, this Court has held as follows:

“xxx xxx xxx

8. The petitioner has to himself make out a case and cannot seek a direction for summoning of the records to enable him to make out a case, without even making out a case for summoning of records. The petitioner cannot make this Court commence a roving and fishing enquiry. The Full Bench of this Court in Prakash Vir Shastri v. UOI AIR 1974 Delhi 1 refused an application seeking production of documents to find out if there had been any violation of Article 14 and held that the petition should be decided on the material on record and under Article 226 of the Constitution, the Court should not embark upon a roving enquiry. The Division Bench of this Court recently also in A.G.R. Investment Ltd. v. Additional Commissioner of Income Tax 176 (2011) DLT 703 held that to make a roving enquiry does not come within the ambit and sweep of exercise of power under Article 226. The Apex Court also in A. Hamsaveni v. State of T.N. (1994) 6 SCC 51 held that the petition can succeed only if the petitioners make out a case but not to give a chance to establish a claim. Similarly, in N.K. Singh v. UOI (1994) 6 SCC 98 it was held that no roving enquiry is called for or justified within the scope of judicial review with reference to the private rights of an individual. Yet again in Sadananda Halo v. Momtaz Ali Sheikh (2008) 4 SCC 619 the Apex Court held that it is not for the High Court to, at the instance of unsuccessful candidates, place itself into a position of fact finding commission and to commence a roving enquiry. Reference may also be made to Ratan Chandra Sammanta v. UOI 1993 Supp (4) SCC 67 reiterating that a writ is issued in favour of a person who has some right and not for the sake of roving enquiry leaving scope for manoeuvring; it was further held that where neither steps to enforce claim are taken except sending vague representations nor any material produced before the Court, it would be too dangerous to accept a plea, as here, to call upon the respondents to produce their records.

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(Emphasis Supplied)



14. Similarly, holding that Court cannot be used as a tool to create evidence, in the case of ***Rajinder Singh Versus Ran Singh and Others, 2018 SCC OnLine HP 889***, it has been held as follows:

“xxx xxx xxx

10. In my considered view, in the present case, but obvious, onus is on the plaintiff to prove his case. It is not a case where either any scientific investigation is necessary or, as has been held by the learned court below, the Court deems a local investigation necessary for the purpose of elucidating in the matter in dispute. In fact, it has been clearly stated by the learned trial Court in the order impugned that the Court cannot be used as a tool to create evidence because it is for the parties to prove their case and the parties cannot depend upon the Court to collect evidence for it.

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(Emphasis Supplied)

15. Thus, it is clear that the petitioner is trying to collect evidence and documents against IBREL, as is manifest from the representation dated 18th August, 2023 submitted by the petitioner to NHB. Neither any constitutional nor any legal right of the petitioner is being violated or breached, for protection of which the present petition has been filed. This Court will not become a party in a fact finding and evidence collecting process in order to aid the petitioner, which is the manifest purpose of filing the present petition. The present petition is clearly a misuse and abuse of the process of law.

16. Thus, holding that the process of Court must be used bona fide and properly and must not be abused, Supreme Court in the case of ***K.K. Modi Versus K.N. Modi and Others, (1998) 3 SCC 573***, has held as follows:

“xxx xxx xxx

43. The Supreme Court Practice 1995 published by Sweet & Maxwell in paragraphs 18/19/33 (p. 344) explains the phrase “abuse of the process of the court” thus:



“This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation. ... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material.”

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(Emphasis Supplied)

17. In view of the aforesaid detailed discussion, no merit is found in the present petition. The same is accordingly dismissed along with the pending application.

**(MINI PUSHKARNA)
JUDGE**

APRIL 16, 2024
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