

PROCEEDINGS OF THE COMPETENT AUTHORITY &
ADDITIONAL CHIEF SECRETARY TO GOVERNMENT
UNDER UNDER SECTION 7(3)
OF BANNING OF UNREGULATED DEPOSIT SCHEMES ACT, 2019
PRESENT : SRI.BISHWANATH SINHA IAS

HOME (SC) DEPARTMENT

No.SC3/212/2024-HOME Dated,Thiruvananthapuram (19-02-2025)

Sub: Home Department - Banning of Unregulated Deposit Schemes Act,2019 - M/s IHFL Construction Loan Services - Review Petition submitted by Sri. M.P. Shamsudeen - disposed of - Orders issued.

Ref: SC3/122/2023/Home Dated,Thiruvananthapuram 21-07-2023

ORDER

Whereas crime cases were registered against IHFL Construction Loan Services, located at 340, RR Complex, Covai Main Road, Perumanallur, Tirupur - 641666, in various police stations across the States of Kerala and Tamil Nadu based on complaints filed by several contractors and builders who were duped by the company into parting with substantial amounts of money as Earnest Money Deposit, the then Competent Authority, invoking Section 7(3) of the BUDS Act, ordered the attachment of all movable and immovable properties of the accused persons, as per the proceedings referred to above. Crime No. 53/2023 of Perinthalmanna Police Station was among the cases registered against the company, in which Sri M.P. Shamsudeen, proprietor of TRJ Projects Private Limited, was also named as an accused. Consequently, he filed a review petition before the Competent Authority, which has been examined and disposed of as follows.

The petitioner contends that he is himself a victim of fraudulent acts and breach of trust committed by M/s IHFL Construction Loan Services. An FIR bearing number 56/2023 dtd 9-11-2023 in CCB Police Station Coimbatore City, Tamil Nadu has been registered on the complaint of the petitioner against M/s IHFL Limited also, which is under investigation. To substantiate his claim as he is a victim, he submitted multiple documents

demonstrating that he was one of the signatories of an agreement with M/s IHFL Limited and P.A. Ashokan Thamarai Groups.

As part of this agreement, the petitioner transferred Rs. 5.15 crore as Earnest Money Deposit (EMD) and Rs. 1.11 crore as land value to IHFL. He has enclosed bank transfer records as evidence of these transactions. Additionally, to establish his non-involvement in the fraudulent activities perpetrated by M/s IHFL, the petitioner has provided bank transfer details indicating that Rs. 70 lakh was transferred into his account and the same amount was subsequently transferred to IHFL.

Earlier, WP(Crl) 356/2023 was filed by Dr. Varun, Jamsheer&, Shameem(Sign Arch Builder), and others before the Hon'ble High Court, seeking a directive for the constitution of a Special Investigation Team to investigate the IHFL fraud case. The petitioners argued that the actions of the accused constituted violations of the provisions of the BUDS Act and requested the inclusion of relevant sections of the Act in the criminal cases registered against them.

The petitioners, who are builders from Kerala, had invested in a housing project of a Tirupur-based company, IHFL, believing that it was authorized to implement the 'Pradhan Mantri Awas Yojana' in Tamil Nadu. They were deceived by the proprietors of IHFL, who collected crores of rupees as EMD and ancillary charges for executing the project and issued fraudulent work orders. Additionally, the accused collected money from the petitioners under various pretexts. Several criminal cases, including Crime No. 53/2023 of Perinthalmanna Police Station have been registered against the company, in which Sri M.P. Shamsudeen is also arrayed as an accused.

A hearing was conducted by the then Competent Authority on 14.06.2022 to examine the evidence related to the IHFL scam. However, Sri Shamsudeen was not invited to the hearing. During the proceedings, it was observed that M/s IHFL had collected money from the builders as security deposits for the proposed construction work. Later, the builders discovered that they had been issued fraudulent work orders. A Memorandum of Understanding (MoU) was signed among IHFL Construction Loan Services, a firm registered under the Companies Act, represented by Sri A. Rajasekhar as the financial partner, Sri P.A. Asokan of Thamarai Groups as the owner, and the affected parties, including the petitioners in WP(Crl) 356/2023. Sri. M.P. Shamsudeen had signed a similar agreement with Sri A. Rajasekhar and Sri P.A. Asokan of Thamarai Groups. This MoU established an agreement for engaging the petitioners as subcontractors for

the construction and development of the housing project. The document confirms that the accused collected EMD as an interest-free refundable deposit to secure the obligations of the petitioners in the project, with an undertaking by the owner and the financial partner to refund the collected deposits.

A crucial point for determination was whether the money collected from the builders as security deposits for executing the housing construction project falls within the ambit of "deposit" as defined in Section 2(4) of the Banning of Unregulated Deposit Schemes (BUDS) Act, 2019. According to this provision, a deposit is defined as any amount of money received as an advance, loan, or in any other form by a deposit taker, with a promise of return, either in cash, kind, or as a specified service, with or without additional benefits. In light of this definition and the MoU signed between the parties, it was construed that the EMD collected by the company qualifies as a deposit under the BUDS Act. Since it was not collected in the ordinary course of business and does not fall under any exclusion clauses under Section 2(4)(a) to (l) of the Act, M/s IHFL was found to be in violation of the provisions of the BUDS Act, warranting further action under Section 7(3).

Consequently, the then Competent Authority invoked Section 7(3) of the BUDS Act and ordered the attachment of all movable and immovable properties of the accused persons. In addition, the police incorporated the relevant provisions of the BUDS Act in the cases registered against the accused. Recording these, the Hon'ble High Court disposed of WP(Crl) 356/2023.

Following the submission of the review petition, a thorough re-examination of all relevant documents was conducted. The tripartite MoU signed between Sri M.P. Shamsudeen, M/s IHFL Construction Loan Services, and P.A. Asokan Thamarai Groups was scrutinized, revealing that Sri Shamsudeen acted in the capacity of a contractor. His rights and responsibilities as a contractor were explicitly described in the agreement, including the requirement to pay EMD and security deposits as stipulated in the schedule. Bank statements confirm that Sri Shamsudeen transferred Rs. 5.15 crore as EMD and Rs. 1.11 crore as land value to IHFL, as per the MoU.

Further scrutiny of financial transactions revealed that on 08.06.2020, Sri Jamsheer transferred Rs. 5 lakh to MPS Constructions, owned by Sri M.P. Shamsudeen. On 01.10.2020, Sign Arch Builders, owned by Sri Jamsheer,

transferred Rs. 45 lakh to MPS Constructions, with both transactions credited to MPS Constructions' SBI Perinthalmanna Branch account. Subsequently, on 07.10.2020, Rs. 50 lakh was transferred from MPS Constructions' SBI Perinthalmanna Branch account to IHFL. On 02.01.2021, Rs. 20 lakh was credited to the CSB Bank account of TRJ Projects, seemingly from Sign Arch Builders, and on 04.01.2021, Rs. 65 lakh was transferred from MPS Constructions' SBI Perinthalmanna Branch account to M/s IHFL Construction Loan Services, which includes Rs. 20 lakh received from Sign Arch Builders. A comprehensive analysis of the financial records confirms that the entire amount received in the bank accounts of TRJ Projects and MPS Constructions was promptly transferred to M/s IHFL, indicating a direct fund flow without any delay.

On 09.01.2021, IHFL acknowledged the receipt of Rs. 70 lakh through TRJ Projects and issued a work order for constructing 1,000 units of 440 sq. ft. buildings to Sri Shameem and Jamsheer of Sign Arch Builders. A consultancy agreement between TRJ Projects Private Limited, represented by Sri Shamsudeen as the consultant, and Sign Arch Builders, represented by Shameem and Jamsheer as clients, was also submitted for scrutiny. The agreement delineates the financial responsibilities of both parties in implementing the housing project through IHFL. Clause IV(b) of the MoU specifies that the EMD would be released to the contractor/client by IHFL (mentioned as provider in the MoU) only after the completion of 75% of the housing units. The agreement clarifies that Sign Arch Builders were fully aware of their financial obligations to IHFL, and TRJ Projects had no responsibility for returning the EMD.

Since Section 2(4) of the BUDS Act defines "deposit" as any amount of money received by a deposit taker with a promise of return, the amounts received by M/s IHFL qualify under this definition. Both Sri Shamsudeen and Sign Arch Builders deposited money with IHFL and suffered financial losses due to IHFL's fraudulent activities. Even though funds were routed through the bank accounts of Shamsudeen's company, the agreement clearly states that the liability for returning the EMD rests solely with IHFL. The fund flow analysis confirms that IHFL was the ultimate, final and sole deposit taker and, therefore, the entity responsible for violations under the BUDS Act.

Sri M.P. Shamsudeen appears to have acted as an unintentional actor in the fraudulent scheme executed by IHFL. The complainant, Sign Arch Builders, entered into an agreement with him and knowingly transferred funds to his company, which were then forwarded to IHFL. Since the

complainant was aware of this transaction, TRJ Projects functioned merely as a medium between the complainant and IHFL, who remains the primary, sole, and final deposit taker responsible for the fraudulent activities.

In view of the inadvertent oversight of financial records and documentary evidence, as well as the express provisions of the agreements involved, the Competent Authority, exercising its curative powers of the Civil Court conferred under Section 7 of the BUDS Act and Rule 6 of Kerala BUDS Rules 2021, thereby invoking Section 151 of the Code of Civil Procedure, 1908, modifies the order bearing number SC3/122/2023/Home dated 21-07-2023.

Sri M.P. Shamsudeen, proprietor of TRJ Projects Private Limited, is excluded from the scope of Sections 5 and 23 of the BUDS Act, as he is also a victim of the fraudulent activities of IHFL Construction Loan Services. However, this order shall not affect the applicability of other IPC sections in the case.

The Investigating Officer is directed to file a modification petition before the Competent Court to remove Sections 5 and 23 of the BUDS Act from the charges against Sri M.P. Shamsudeen.

The proceedings referred to above stands modified to the above extent.

BISHWANATH SINHA

Forwarded/By order

Section Officer.

To:

The Competent Authority for BUDS Act, Tamil Nadu.(with C/L)
All District Collectors
The State Police Chief
The Additional Director General of Police (Crimes)
All District Police Chiefs
The Inspector General of Registration Department
The Transport Commissioner
The Lead Bank Managers
Registrar of Co-operative Societies

General Managers of KSFE/District Managers of KFC etc (through the District Collectors)

The Accountant General(Audit/A&E)Kerala, Thiruvananthapuram

I & PR (Web & New Media) Department.

Stock File/Office Copy

Copy to : Sri M.P. Shamsudeen Mangadan Parmbath House,
Anamangadu Amsam, Manalaya Desarn,
Anamangadu Village, Perinthalmanna,
Malappuram