



**COMPETITION COMMISSION OF INDIA**

**Case No. 21 of 2015**

**In Re:**

**M/s Dhanvir Food Product**

**Through its partner**

**Village- Bhanga, Kichha,**

**US Nagar, Uttarakhand**

**Informant**

**And**

**Bank of Baroda**

**Through its Chief Managing Director**

**Regd. Office – Baroda House,**

**PB No. 506, Mandvi,**

**Badodara, Gujarat**

**Opposite PartyNo. 1**

**Bank of Baroda**

**Through its Chief Manager**

**Naveen Mandi Haldwani,**

**Naveen Mandi Stahla, Haldwani,**

**Dist-Nainital, Uttarakhand**

**Opposite PartyNo. 2**

**CORAM**

**Mr. Ashok Chawla**

**Chairperson**

**Mr. S. L. Bunker**

**Member**



**Mr. Sudhir Mital**  
**Member**

**Mr. Augustine Peter**  
**Member**

**Mr. U. C. Nahta**  
**Member**

**Mr. M. S. Sahoo**  
**Member**

**Present:** Shri Ravi Rajan and Shri Gaurav Singh, Advocates  
for the Informant

**Order under Section 26(2) of the Competition Act, 2002**

1. The present information has been filed by M/s Dhanvir Food Product (through its partner) (hereinafter referred to as the '**Informant**') against Bank of Baroda, Badodara, Gujarat through its Chief Managing Director (**OP-1**) and Bank of Baroda, Nainital, Uttarakhand through its Chief Manager (**OP-2**) under section 19(1)(a) of the Competition Act, 2002 (the "**Act**") alleging, *inter alia* contravention of the provisions of sections 3 and 4 of the Act in the matter.
2. As per the information, the Informant is a registered Partnership Firm situated at village Bhanga, Kichha, U.S. Nagar, Uttarakhand. It is submitted that the Informant availed a term loan of Rs.7.25 crore @ 13.15% p.a. rate of interest from OP-2 for construction of



factory building and also to purchase plant and machinery *vide* sanction letter dated 17.12.2013. The said loan was to be repaid by the Informant in 27 quarterly instalments. The total agreed door to door tenor for repayment was of 95 months.

3. It is submitted that out of 27 instalments, 6 instalments were paid by the Informant. Subsequently, the Informant allegedly came to know about the term loan being offered by the Punjab National Bank (PNB) at the interest rate of 11.50% p.a. Considering PNB a better option, the Informant requested the OP-2 to foreclose its loan account.
4. It is alleged that the OP-2 had agreed to foreclose the loan account of the Informant on condition of payment of foreclosure penalty of Rs.18,86,711/- ( @ 0.50% per annum) for the residual period of 65 months in terms of clause 25 of the sanction letter. The Informant is stated to have requested OP-2 to waive-off the foreclosure penalty and issuance of an NOC, which was allegedly rejected by the OP-2. The Informant is alleged to have made the foreclosure penalty of Rs.18,86,711/- *vide* its letter dated 10/01/2015 under protest.
5. It is alleged by the Informant that clause 25 of the sanction letter and the said foreclosure penalty as levied by the OP-2 are arbitrary, unreasonable and in violation of the provisions of the Act. It is also alleged that the conduct of the OP-2 is also in violation of the guidelines issued by the Reserve Bank of India (RBI).



6. It is further alleged that the conduct of OPs is detrimental to competition amongst the banks in the market. It is against the interest of the borrower as it prevents the borrower from switching over to other bank and other financial institutions who offer better options. It is submitted that the motive of the OPs for levying an arbitrary prepayment penalty or foreclosure charges are:
  - a. To deter or limit competition among banks/financial institutions
  - b. Driving existing competitors out of the market.
  - c. Foreclosure of competition by hindering entry into the market.
  - d. To create a barrier for the existing customers who wish to switch over
  - e. To enhance their fee based income.
7. The Informant has alleged that such conduct of the OPs is in contravention of the provisions of sections 3 & 4 of the Act.
8. Based on the above allegations and the information, the Informant has prayed, *inter alia*, for the issuance of direction to the OPs for refund of Rs.18,86,711/- and for amendment of the clause pertaining to the foreclosure charges.
9. The Commission has perused the material available on record including the information. The Counsel on behalf of the Informant was also heard by the Commission on 06.05.2015.
10. Facts of the case reveal that the Informant is primarily aggrieved by the prepayment/foreclosure charges levied by the OP-2. It is further alleged that clause 25 of the sanction letter of the OPs is in violation of section 3(1), 3(3)(b) and 4(1) of the Act.



11. In the present case, the Informant has not provided any material to show that OPs have been imposing pre-payment penalty or foreclosure charges in pursuance of some agreement entered into by them with any other enterprise engaged in similar trade or business. Thus, *prima facie*, no case of contravention of section 3 can be made out against the OPs in the instant case.
12. With regard to section 4 of the Act in the present case, it appears that the relevant product market would be the “*market of commercial/corporate loan in India*”. The Commission notes that no information is available either on record or in public domain which provides specific data of commercial/ corporate loan as provided by the banks and other financial institutions. Left with no other alternative, the details of the total advances of major banks in India from period 2010-11 to 2014 (*source: Moneycontrol*), which is available in the consolidated balance sheet of these different banks may be considered to examine the position of OPs in the relevant market.
13. The Commission observes that as on March 2014, the State Bank of India’s (SBI) advance was Rs.15.8 lakh crore whereas Bank of Baroda (BoB) had approximately Rs.4 lakh crore advances. The figures indicate that SBI is consistently leading in terms of advances followed by BoB. PNB and ICICI Bank have been found to be placed at third and fourth position, respectively. Almost similar trend has been observed in previous financial years also. The size of SBI, in terms of total advances given by it, varies from 4 to 4.4 times (approx.) of BoB in terms of advances in the last four years.



14. From the above analysis of advances given by the banks, the Commission is of the considered opinion that *prima faice*, OP-1 is not dominant in the relevant market. Further, there is no information available on record and in the public domain to show the position of strength of OP-1 which enables it to operate independently of competitive forces prevailing in the relevant market. In the absence of dominance of the OP-1 in the relevant market, the question of determination of abuse of dominance in terms of section 4 of the Act does not arise.

15. It is noteworthy to mention that RBI has issued guidelines on “Levy of foreclosure charges/pre-payment penalty on Floating Rate Term Loans” for all scheduled commercial banks and financial institutions in 2014 advising them to abstain from charging foreclosure charges/pre-payment penalties on all floating rate term loans sanctioned to any individual borrower.

16. In the light of the above analysis, the Commission finds that no *prima facie* case of contravention of the provisions of sections 3 and 4 of the Act is made out against the OPs in the instant matter. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.



17. The Secretary is directed to inform the parties accordingly.

**Sd/-**

**(Ashok Chawla)**  
**Chairperson**

**Sd/-**

**(S. L. Bunker)**  
**Member**

**Sd/-**

**(Sudhir Mital)**  
**Member**

**Sd/-**

**(Augustine Peter)**  
**Member**

**Sd/-**

**(U. C. Nahta)**  
**Member**

**Sd/-**

**(M. S. Sahoo)**  
**Member**

**New Delhi**  
**Date: 02/06/2015**