

BEFORE THE
COMPETITION COMMISSION OF INDIA
[Case No.60/2011]

Dated: 10.04.2012

Shri B. Venkat Reddy
House No. 1-16, Prabhat Nagar,
Chaitanya Puri Colony,
R.R. District, Hyderabad

Informant

1. Shri Ram Transport Finance Company
Limited, M. No. 12-13-1274, 2nd Floor,
Maspack House, Near St. Ann's School,
Tarnaka Main Road, Secunderabad.

2. Shri Ram Transport Finance Company
Limited, Southern Regional Office at
3rd Floor, # 4, Mookambika Complex,
Lady Desika Road, Mylapore, Chennai.

3. Shri Ram Transport Finance Company
Limited, Regional Head Office at # 117-118
Dalamal Towers, 211, Nariman Point
Mumbai.

Opposite Parties

ORDER UNDER SECTION 26(6) OF THE COMPETITION ACT, 2002

The present matter relates to an information received from Mr. B. Venkat Reddy (hereinafter referred to as "the Informant") under section 19 (1) (a) of the Competition Act, 2002 (hereinafter referred to as "the Act") on



22.09.2011 against M/s Shri Ram Transport Finance Company Limited (hereinafter referred to as 'Opposite Party') alleging that the Opposite Party has abused its dominant position in the business of providing finance for purchase of commercial vehicles in India.

2. The facts and allegations of the case as mentioned in the information, in brief, are as follows:

2.1 The Opposite Party is a registered Non-Banking Finance Company (NBFC) under the Reserve Bank of India Act, 1934. It is engaged in the business of providing finance for purchase of used and new commercial vehicles in India and is operating through its regional and branch offices located at different places in India. Besides, the Opposite Party also provides finance to Small Road Transport Operators (SRTOs) for the purchase of ancillary transport equipments, vehicle parts and to meet their working capital needs.

2.2 As per the information, the informant had applied for a vehicle loan of Rs. 10,00,000 (Rupees Ten Lakh Only) to purchase a second hand Ashok Leyland lorry bearing Registration No. AP 28 W 0232. The Opposite Party sanctioned the said loan amount in favour of the informant vide loan agreement no. SL-SBD-76666 in the month of October 2006 at the agreed rate of interest of 5.13% or 5.70% per annum. The aforesaid loan was liable to be repaid within a period of four (4) years ending in October-November 2010.



2.3 It has been alleged by the informant that at the time of disbursement of the loan amount, the Opposite Party obtained the signature of the informant on various documents such as blank finance agreement, blank demand promissory note, blank transfer forms , blank papers and 10 blank cheques. The Opposite Party, however, did not furnish the copies of the said documents as well as the copy of loan agreement to the informant.

2.4 The informant's lorry was duly hypothecated in favour of the Opposite Party for securing repayment of the aforesaid loan amount. This was entered in the R.C.Book vide an entry dated 30.10.2006.

2.5 As per the informant, as on 05.05.2010, an amount of Rs. 5,07,623(Rupees Five Lakh Seven Thousand Six Hundred Twenty Three Only) remained as outstanding towards the loan amount. Since he was not able to repay the aforesaid amount, he was left with no option but to opt for re-scheduling the same. The informant has alleged that the Opposite Party treated the outstanding amount of his existing loan as fresh loan transactions and accordingly changed the terms and conditions of the existing loan. After the loan was rescheduled, a fresh agreement was executed vide loan agreement no. TARNKO 00329000 between the informant and the Opposite Party on 05.05.2010 for Rs. 5, 07,623.

2.6 The informant has submitted that the Opposite Party imposed an enhanced rate of interest of 10% to 12% per annum along with penal



interest as calculated on monthly compounded basis on the rescheduled loan amount which was much higher than the initial agreed rate of interest.

2.7 As per the informant, the Opposite Party did not disburse a single rupee out of the aforesaid res-scheduled amounts. Further, even while he had already paid Rs. 10,00,000 since October 2006 till March 2011 towards repayment of loan amount, the Opposite Party issued a notice dated 15.03.2011 intimating that an amount of Rs. 8,75,271 was due and payable on the 2nd loan agreement on account of which the Hypothecated Lorry was liable to be seized and auctioned.

2.8 The informant has alleged that the Opposite Party finally seized the hypothecated lorry in March 2011 and subsequently auctioned it for an amount of Rs. 4,25,000/- (Rupees Four Lakh Twenty Five Thousand only). After completing the auction, the informant was asked to pay the balance amount of Rs.5,07,623/- to the Opposite Party.

2.9 It has also been submitted by the informant that the Opposite Party not only charged the rate of interest which was higher than the agreed rate of interest but also arbitrarily imposed other charges for hiring, documentation and processing, account statement, cheque bouncing, foreclosure of loan account etc. As a result, the actual interest rate being charged by the Opposite Party was around 3% to 4% per month and 40% annually which was exceptionally high and unfair. As per the informant the



high rate of interest charged by the Opposite Party was grossly usurious and excessive which was in violation of the Usurious Loans Act, 1918.

2.10 The informant has also alleged that the Opposite Party has been calculating interest rate by following the flat method instead of the diminishing balance method as projected in its brochures and advertisements. Further, the Opposite Party first recovered the interest component of the loan amount and thereafter the principal component which constituted a misleading and disruptive trade practice.

2.11 According to the informant, as per clauses of the loan agreement, the Opposite Party has reserved the right to seize and sell the hypothecated vehicle in case a customer fails to pay the loan outstanding amount as calculated and demanded unilaterally by the Opposite Party during the agreed time period. The informant has submitted that the Opposite Party is luring the customers including the informant into the vortex of a debt trap by offering attractive terms and conditions in the brochure and advertisement and thereafter is compelling them to pay huge interest rate and other charges at a higher rate.

2.12 The informant also alleged that the Opposite Party at the time of sanction of loans, compelled him to sign the loan agreement and other documents on the dotted lines. The informant did not have any say regarding the terms and conditions contained in the loan agreement. As per the informant,



these terms and conditions of the loan agreement are unfair, one sided and illegal and not in accordance with the provisions of the Act.

2.13 The informant has submitted that the Opposite Party is in a dominant position in the commercial vehicle finance market in South India and its market share in India is around 30-35 % which is substantial compared to its competitors operating in South India. As per the informant, the Opposite Party has abused its dominant position by imposing unrealistic and unfair terms and conditions in the loan agreement and forcing the informant to enter into rescheduling of fresh new loan agreement for the outstanding amount of earlier loans at a higher rate of interest. As per the informant, the aforesaid practice of the Opposite Party constitutes abuse of its dominant position under the provisions of the Act.

3. The Commission after carefully considering the information along with all relevant materials available on record formed an opinion that a prima facie case existed in the matter and passed an order under section 26(1) on 05.10.2011 directing Director General (hereinafter referred to as "DG") to investigate the matter. The Commission in its order under section 26(1) also observed that the allegations and the issues involved in the instant case were akin to the information in case No. 14 of 2011. The Opposite Parties in both the cases were also found to be the same. In view of these, the Commission had held that the information in case no. 14 and the instant case might be clubbed.



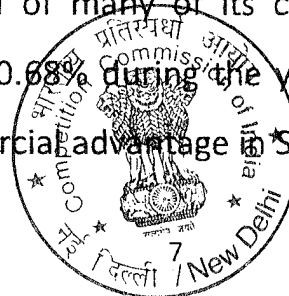
4. The DG conducted the investigation and submitted his report of investigation to the Commission on 24.01.2012 in the instant case as per the provisions of section 26 (3) of the Act.

5. Findings of DG

5.1 In course of proceedings, DG gathered information from the informant, the Opposite Party and also from other sources on various aspects of commercial vehicle finance in India. DG also examined the contents of the loan agreement between the informant and the Opposite Party.

5.2 In order to ascertain the dominance of the Opposite Party, DG delineated the relevant market as the 'service of pre-owned financing of heavy commercial vehicle by Non-Banking Financial Companies (NBFCs) in the territory of India.'

5.3 It has been submitted by the DG that the Opposite Party is the largest asset financing NBFC having 25% market share in pre-owned commercial vehicles and 8% market share in new commercial vehicles in India in 2010-2011. In terms of branches, tie up with other private financiers and number of employees, there is a huge presence of the Opposite Party in India having 488 branches and 17,000 employees. In terms of growth, the Opposite Party is ahead of many of its competitors with compounded annual growth rate of 40.68% during the years 2006-2011. The Opposite Party also enjoys commercial advantage in South India over its competitors

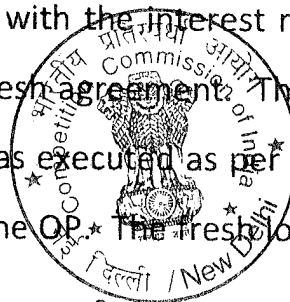


because of its large presence. It has an edge over its competitors also in terms of infrastructure, resources, branches etc. Besides, the consumers are highly dependent on the Opposite Party for commercial vehicle financing.

5.4 It has also been submitted by the DG that the Opposite Party provides unique commercial vehicle finance schemes to the drivers and lower income group, whereas its competitor do not have such schemes. The Opposite Party also provides loans to pre-owned truck owners for the replacement of tyres, engine, etc. which is unique in the relevant market.

5.5 Based upon the market share and factors stated above, DG has concluded that the Opposite Party is in a dominant position in the relevant market.

5.6 According to DG, the allegations in the instant case pertain to the agreement executed in 2006, vide which the OP financed the informant for purchase of a commercial lorry vehicle. The informant had agreed to pay interest at rate of 10.72% per annum for the loan amount of Rs.10 lakh. As the informant failed to pay the entire loan amount within the stipulated time period, he contacted the OP through its field officer and opted to reschedule the previous loan taken by him in 2006. Accordingly, the informant entered into a fresh agreement with the OP on 30.03.2010 for a loan amount of Rs.11,62,453 with the interest rate of 15.89% per annum for the same vehicle with a fresh agreement. The fresh loan agreement at the revised rate of interest was executed as per the mutual understanding between the informant and the OP. The fresh loan agreement was agreed



upon by the informant and duly signed by him. Thus, there was no coercion or pressure on the informant by the OP.

5.7 DG has submitted that although the informant had been regularly paying Equated Monthly Installments (EMIs) of lorry per month since 2006 for the last four years and paid around Rs.12,40,000, an amount of Rs. 8,75,271 due and payable by the informant had remained as outstanding. To recover the aforesaid amount, the OP issued notices dated 28.02.2011 and 15.03.2011 to the informant and his guarantor. The OP also issued a legal notice through its advocate on 28.08.2011. However, the informant did not come forward to repay the outstanding EMIs. The OP as a result repossessed the vehicle from the informant on 14.03.2011 as per the terms and the condition of loan-cum-hypothecation agreement. Since the informant did not repay the old outstanding amount; the OP sold the vehicle on 15.05.2011 in an open auction.

5.8 DG has also reported that the informant filed his petition with the Commission in September 2011 after the seizure of his truck in March 2011 by the OP and after he received a legal notice from the OP to pay the balance amount of his loan after adjusting an amount of Rs.4,25,000 realized from the auction in May 2011. The informant preferred to remain silent till September 2011 though his lorry was seized and auctioned by the OP in March 2011 and May 2011 respectively.

5.9 According to DG, the fresh loan granted to the informant in 2010 was agreed and signed by both the parties. Hence, there appears to be no case



of any anti-competitive conduct with respect to grant of loans and charge of revised rate of interest on new loan in violation of section 4 of the Act.

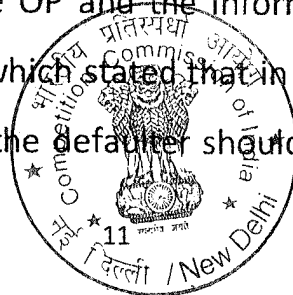
5.10 In respect of the allegations of the informant that the OP collected different charges in name of documentation, statement of accounts etc., DG has submitted that these are prevalent practices in the trade of commercial vehicle finance adopted by other players as well. Further, the RBI has issued Fair Practice Code guidelines from time to time for regulating the practices of NBFC companies in respect of financing commercial loans. The allegation levelled by the informant, therefore, has no merit.

5.11 According to DG, the rate of interest was charged by the Opposite Party on reducing balance method. Further, the OP furnished copy of the EMI schedule which was part of the Annexure of the loan agreement which clearly showed that the EMIs comprised of principal and interest. The schedule also showed that the quantum of rate of interest declined with every EMI as per schedule. The investigation did not find any evidence to show that the OP charged interest without considering the diminishing balance. The levy of overdue charges by the OP was as per normal business practice endorsed by RBI guidelines and Fair Practice Code for NBFC. DG concluded that inquiries did not find any merit in the allegation that OP had charged higher interest rate without adopting diminishing balance and there is no case of abuse of dominance under section 4 of the Act on this issue.



5.12 As regards other allegations of charging penal interest on delayed EMIs, DG has submitted that the informant had agreed upon the terms and conditions of the loan- cum- hypothecation which was duly entered into by him at the time of disbursement of commercial vehicle loan. Further, the schedule of loan-cum-hypothecation agreement describing detailed particulars of the amount payable with due dates along with the details like sanctioned loan amount, rate of interest per annum to be computed on monthly rest basis on the outstanding balance, annual service and processing fee, additional interest payable by way of liquidated damages and flat charges of cheque bounce etc. was duly acknowledged and signed by the informant in the presence of his guarantor.

5.13 DG has also submitted that during proceedings the informant stated that he had paid EMIs on seven occasions in cash after his cheques were bounced. Accordingly, OP in terms of the agreed terms and conditions of the loan agreement charged penal interest for each of the delayed EMIs on daily basis. The levy of penal interest was governed by the RBI circulars. According to DG, after considering the statement of loan accounts as also the various RBI circulars and guidelines, the penal interest in the form of overdue charges on account of defaulting payment of EMIs on due dates, was justified and in accordance with the RBI circulars on the subject. The loan agreement between the OP and the informant contained terms and conditions as per clause 1.6 which stated that in the event of default in the payment of EMI or Interest, the defaulter should pay additional interest at



the rate specified in the schedule. The informant agreed to such terms and conditions and therefore, levy of such overdue charges could not be held to be excessive and unfair.

5.14 According to OP, the practice of levying penal interest in the form of overdue charges is a normal business practice prevalent with all NBFCs and therefore, such levy of overdue charges by the OP did not constitute any conduct which might be said to be discriminatory or unfair in violation of section 4(2)(a) of the Competition Act, 2002.

5.15 DG has further submitted that the action of seizure and possession of assets has legal sanction from the "Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act , 2002 (SARFAESI Act) and the Security Interest (Enforcement Rules, 2002). The said Act provides for such powers of seizure and possession for recovery of outstanding dues as per laid down procedure. Therefore, all the NBFCs who are in the business of commercial vehicle finance are following the procedure for enforcing security interest as well as taking possession and auction of the movable and immovable property.

5.16 As per DG, the OP issued several notices before taking possession of the vehicles and had also given opportunity to the informant for settlement of loan dues to release the vehicle back to the owner. Practice of seizure of vehicle is uniformly practiced by all NBFCs. Considering in totality the facts of the case, DG has concluded that this act of the OP was not anti-competitive in nature and did not impose any unfair or discriminatory condition in service of financing of pre-owned commercial vehicle by the



OP. The conduct of the OP in seizure of vehicle in the case did not amount to violation of section 4 of the Act.

5.17 DG has found no evidence of any kind of coercion or undue influence exerted upon the Informant by the Opposite Party to enter into a rescheduled loan agreement/ new loan agreement. Further, according to DG, the copies of the loan account statements, clauses of loan agreement showed that the interest was charged in accordance with the RBI guidelines and fair practice code. The rate of interest was also charged on monthly rests basis which meant the diminishing balance of outstanding amount at the end of each month for the entire period of loan.

5.18 DG has concluded that his findings by stating that there was no contravention of provisions of section 4 of the Act even if the OP was a dominant player in the relevant market.

6. The Commission considered the investigation report submitted by DG and decided to send a copy of the report to the informant for his replies/objections, if any.

7. Informant's Reply/Objections to DG Report

7.1 The objections of informant to the findings of DG, in brief, are as under;

7.1.1 As per the Informant, there are fundamental flaws in the report as at one place of the impugned report, DG has erroneously recorded that an amount of Rs. 14, 47, 062 was disbursed by Opposite Party by way of 1st loan to the Informant on 05.10.2006. However, the said statement is factually incorrect since as per the agreement dated 05.10.2006, an amount of Rs. 10, 00, 000 only had been disbursed by way of loan.



7.1.2 According to the Informant, a perusal of the statement at Para No. 5.9 of the impugned report reveals that on the occasion of the 2nd agreement dated 30.03.2010, the amount financed / disbursed to him was shown as Rs. 11,62,453 inclusive of the outstanding amount of Rs. 7,64,726 for the 1st agreement, dated 05.10.2006. The Opposite Party added an additional amount of Rs. 3,97,727 to the outstanding amount of Rs. 7,64,726, and described the total loan amount as being Rs. 11,62,543 under the 2nd (re-scheduling) Agreement.

7.1.3 The informant has submitted that the Opposite Party had not disbursed even a single rupee to the Informant at the time of 2nd (re-scheduling) Agreement dated 30.03.2010. DG has entirely avoided examining the said issue of proof of payment of the loan amount of Rs. 11, 62,453 by the Opposite Party to the Informant. The Informant has contended that the outstanding under the 1st Loan Agreement dated 05.10.2006 was virtually brought forward in the 2nd loan agreement dated 30.03.2010 as a fresh loan and factually the Opposite Party had not disbursed even a single rupee to the him during the execution of the 2nd Loan agreement dated 03.03.2010.

7.1.4 It has further been submitted by the Informant that the account statements, submitted by the Opposite Party to the DG, do not conform to the description of a ledger and the same is in electronic form. The said statement ought to have been certified in the manner as contemplated under section 65B of the Indian Evidence Act, 1872. The statement is not even signed by the statutory auditors of Opposite Party and therefore, the said statements are not admissible in evidence. The consequence of the



aforsaid was that the duly certified copies of the ledger by the statutory auditors of the company were never produced before the DG, and as a result the Opposite Party suppressed its Ledger pertaining to the Informant's Loan w.e.f October, 2006 till the date of seizure of the Lorry, which was the most crucial document for determining the rate of interest being charged from the informant.

7.1.5 According to the Informant, the DG has made an incorrect conclusion that the statement of each of the loan amount was produced by the Opposite Party. The entire report is silent as regards the actual interest rate being charged by Opposite Party as calculated as per the mercantile method of accounting. Further, the DG has arrived at conflicting conclusions as while in one place of the impugned report, the DG has stated that the interest had been charged on flat rates based on monthly rests, at another place, the DG has submitted that the rate of interest was charged by Opposite Party on the reducing balance method. The finding of the DG in the report confirming that Opposite Party charged interest @ 10.2% P.A for the loan of 2006 and 15.89% for the loan of 2010 was also false and misleading.

7.1.6 As per the informant, the DG has wrongly concluded that clause No. 6 & 7 of the loan agreement empowered the Opposite Party to seize the vehicles of a defaulting loanee and was valid and binding upon the informant. Further, the DG erroneously concluded that Opposite Party was entitled to invoke the provisions contained in the Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 since he lost



sight of the fact that Opposite Party was a 'Non-Banking Financial Company' which was not a Financial Institution as notified by the Central Government under Section, 2 (m) of the said Act. Consequently, the Opposite Party could not have invoked the said enactment to seize the hypothecated lorries. Therefore, the seizure of the Informant's lorry by Opposite Party was illegal.

7.1.7 The informant has also argued that the DG has erroneously observed that the provisions contained in the Usurious Loans Act, 1918 do not have any application to this. As per the informant, the DG has relied upon various circulars issued by the Reserve Bank of India for justifying its conclusion without realizing that the R.B.I has never said that the Non Banking Financial Companies are free to charge whatever interest as may be required even if the said rate of interest is violative of the Usurious Loans Act, 1918.

7.1.8 The informant has also contended that various High Courts and also the Supreme Court has decided in a number of cases that arbitrary and whimsical seizure of hypothecated vehicles by Non-Banking Finance Companies without institution of Civil Proceedings and without a Court Order is illegal and violative of the law of the land. The Reserve Bank of India cannot issue any circular favoring the Non-Banking Finance Companies.

7.1.9 As per the Informant, he had requested the DG to direct Opposite Party to produce certain documents. However, the DG has deliberately removed the said application from the record for avoiding issuance of summons to Opposite Party seeking production of the aforesaid documents.



7.1.10 The Informant has in his objections also alleged that the DG has favored the Opposite Party and prepared a false and bogus report in collusion with the Opposite Party.

Decision of the Commission

8. The Commission has carefully gone through the information, the investigation report of DG, the objections filed by the informant before the Commission in response to the report of DG and all other relevant materials available on record.

8.1 The Commission observes that the issues for consideration before the Commission within the meaning of the Act in the matter are; a) whether the OP is a dominant player in the relevant market and b) whether by charging higher rate of interest on the re-scheduled loan amounts and by imposing other terms and conditions on the informant, the OP has abused its dominant position under the provisions of section 4 of the Act.

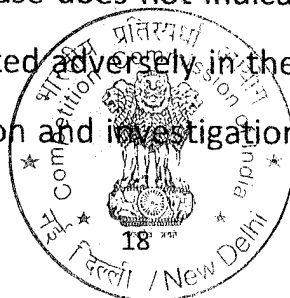
8.2 On the basis of the facts gathered and reported by DG in this case, the Commission observes that this is a case where the informant had obtained loans for purchase of lorry from the OP. Since he could not pay the entire loan amount, the informant requested to re-schedule the outstanding loan amount and for that entered into a fresh agreement with the OP. The Commission further notes that DG has not found the clauses of the loan agreement to be unilateral and unfair. The seizure of vehicles by the OP for non-repayment of dues has also not been found by the DG to be illegal.



8.3 The Commission notes that earlier in case no. 14 of 2011 wherein the Opposite Party happened to be the same as in the instant matter, similar issues had come up for determination. The facts and issues in case no. 14 of 2011 and the instant case are almost identical. In case no. 14 of 2011, the Commission had considered relevant market for the purpose of assessment of competition as 'provision of services for financing commercial vehicles in India'. The Commission had also observed that the OP did not enjoy a position of dominance in the relevant market as determined within the meaning of section 4 of the Act in the said relevant market. Further, since the OP was not in dominant position, there was no question of abuse of its position of dominance in the relevant market. Since the issues in the instant case are akin to case no. 14 of 2011 and the Opposite Party also is the same, the Commission observes there cannot be a different conclusion in the instant case. Accordingly, the Commission holds that there is no case of contravention of section 4 in the entire matter.

8.4 The Commission also observes that like in case no. 14 of 2011, neither the informant has alleged nor DG has reported any contravention under section 3 of the Act in the instant case. The facts of the case also do not suggest any violation of provisions of section 3 of the Act for any anti-competitive agreement within the meaning of section 3(3) or section 3 (4) on the part of the OP.

8.5 The Commission also observes that like in case no. 14 of 2011, the information in the instant case does not indicate in any manner as to how competition has been affected adversely in the relevant market. The facts mentioned in the information and investigation conducted by DG does not



establish any competitive harm in the relevant market and it appears basically to be a case of dispute between the informant and OP on the issue of re-payment of loans.

8.6 Taking into account the facts of the case and considering that the issues in the case no. 14 of 2011 and the instant case are identical and the Opposite Parties involved in the both the cases are also common, the Commission finds no reason to record a different finding in the instant case.

9. In view of the foregoing, as has earlier been held in case no. 14 of 2011, the Commission is of the considered opinion that no case of contravention of any provisions of the Act is made out in the instant matter.

10. The matter relating to this information is disposed off accordingly and the proceedings are closed forthwith.

11. The Secretary is directed to communicate the decision of the Commission to parties as per regulations.

Sd/-
Member (G)

Sd/-
Member (R)

Sd/-
Member (GG)

Sd/-
Member (AG)

Sd/-
Member (T)

Sd/-
Member (D)

Sd/-
Chairperson

Certified True Copy



SP Gahlaut
17/4/2012
F. GAHLAUT
Assistant Director
Competition Commission of India
New Delhi