



COMPETITION COMMISSION OF INDIA

Case Nos. 62 of 2014

In Re:

**Ohm Forex Services Ltd.(OFSL),
through its Director Nikhil Saraf,
Corporate office at D-178, Phase 8B,
Sector 74, Mohali.**

Informant

And

**ICICI Bank Limited,
ICICI Bank Towers,
BandraKurla Complex,
Mumbai-400051**

Opposite Party No. 1

**ICICI Bank Limited,
Regional Office,
SCO 36, Pocket 1,
Manimajra, U.T. Chandigarh.**

Opposite Party No. 2

CORAM

**Mr. Ashok Chawla
Chairperson**

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



Mr. Sudhir Mittal

(Member)

Mr. Augustine Peter

(Member)

Mr. U. C. Nahta

(Member)

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

1. The present information has been filed under section 19(1)(a) of the Competition Act, 2002 („the **Act**’) by Ohm Forex Services Ltd. (hereinafter referred to as „the **Informant**’) against ICICI Bank Ltd. and its regional office situated in Chandigarh, (hereinafter referred to as the „**Opposite Parties**”) alleging, *inter alia* contravention of the provisions of sections 3 and 4 of the Act.
2. Facts, as gathered from the information, may be briefly noted:
 - 2.2 The Informant was incorporated under the Companies Act, 1956 with Registrar of Companies Jalandhar in the year 1995 as a public limited company. It possesses Full Fledged Money Changers License (FFMC) from Reserve bank of India and is engaged in Foreign Exchange and Remittance business under Money Transfer Service Scheme. They have around 34 branches, providing forex and remittance products, and are spread all over India catering to retail and corporate clients. They have also appointed agents by issuing them Restricted Money Changers License (RMC) as per RBI guidelines at various locations. It is engaged in the business of money transfer services in collaboration with First Remit, a



company based in Ireland having its office at Suite 404, 22/23 Pembroke Street, Dublin 2, Ireland (hereinafter referred to as the “First Remit”), as Limited Liability Company registered in the Republic of Ireland.

2.3 It is submitted that the Opposite Parties are the largest private sector bank in India. As per the information available in the public domain, the Opposite Parties are engaged in the business of- Retail Banking, International Banking, Rural & Inclusive Banking, Banking products and solutions to Small & Medium Enterprises, Wholesale Banking etc. They cater to the cross-border needs of clients and leveraging the domestic banking strengths to offer products internationally.

2.4 As per the information, the Informant started money transfer service under Money Transfer Service Scheme (MTSS) in India in collaboration with First Remit from 21/11/2002. The business process of the Informant is that First Remit through its partners/agents/offices collects money throughout the world (countries where they have authorization/permission by the country’s financial regulator) from the clients who want to send money to their relatives/friends in India for personal expenses. The money collected by the First Remit is stated to be distributed by the Informant throughout India through its partners/agents/offices. The entire transaction process is stated to be web based. The sent request of client’s transaction gets registered in the software. After receipt of money from the client through the First Remit and fulfilment of mandatory Know Your Customer norms /Anti-Money Laundering standards (KYC/AML norms), the said amount is paid to the relatives/friends of the client by unlocking the transaction within minutes, after due fulfilment of KYC/AML norms. The channel of transfer of funds from First Remit to the Informant and from the Informant to the relatives/friends of the clients is through the bank, which receives money in GBP (British Pound)/USD (US Dollar), converts it in INR and credits the money to the account of the Informant.



2.5 The Opposite Parties alleged to have stated in their offer letter (26/09/2003) that “... *The exchange margin for forex transactions of First Remit or its Ohm forex shall be charged at 7 paisa per dollar, on the basis of inflow of GBP 20000 daily. In case the inflow is lower than as mentioned above, we shall review the exchange margin to be charged...*” . As regards the said condition of “...*in flow of GBP 20000 daily..*”, when objected orally by the Informant, the Opposite Parties assured the Informant orally that irrespective of the transaction amount, 0.07 paise would be charged as commission by them. With this assurance from the Opposite Parties, the Informant alleged to have agreed to start the operations with the Opposite Parties through its current account No. 001305000900.

2.6 In normal course, by the end of every month, the Opposite Parties were required to give a statement of conversion of GBP/USD to the Informant and the same was to be forwarded to First Remit for reconciliation. Everything went on smoothly as the Opposite Parties was charging 0.07 paise commission on all the inward remittances irrespective of the amount of transactions. It is stated that the amounts sent by First Remit to the Informant were all less than 20000 GBP on daily basis.

2.7 In 2005-06, the Informant alleged to have faced lot of reconciliation/funding issues with First Remit on account of underfunding i.e. the funds sent by First Remit were far less than the amount of transaction paid by the Informant. After much effort, the Informant stated to have found that there were some serious gaps in the Opposite Parties’ operations. It was found that funds sent by the First Remit were not credited to the Informant’s Account on the same day by the Opposite Parties which was in violation of Foreign Exchange Dealer's Association of India(FEDAI) guidelines and banking norms. The Opposite Parties started withholding huge amounts of funds without the consent of the Informant or any intimation to the



Informant. There were 11 such alleged transactions involving an amount of Rs.8880509.82 where the funds were credited to the Informant's account by the Opposite Parties after a delay of 79 to 224 days.

2.8 The Opposite Parties, after constant effort for over 2 months, stated to have provided the details of the transactions to the Informant on 18/05/2007 for the period from 23/10/2003 to 09/04/2007. It is thus, alleged that the conduct of the Opposite Parties was abusive.

2.9 It has further been alleged that during the period 20/07/2005 to 08/04/2007, the Opposite Parties embezzled the funds by charging commission ranging up to 0.99 paisa per dollar on all the transactions, without the consent /approval of the Informant. As such, the Opposite Parties alleged to have managed siphoning off a total sum of Rs.2594517.66 from the account of the Informant. The Informant is stated to have filed Criminal and Civil suits against the Opposite Parties, which are pending in the Court of Civil Judge, Chandigarh.

2.10 It is alleged that such unilateral, arbitrary and illegal action of the Opposite Parties is unfair trade practice and had also grossly abused their position of dominance by cheating their clients. The Informant has prayed for, *inter alia*, the issuance of direction to the Opposite Parties to pay adequate compensation.

2.11 The Informant, in its additional information submitted on 18/09/2014, has stated that it entered into a remittance arrangement with Opposite Parties because it was a leading player with wide presence across India. Further Opposite Parties enjoyed the technology to facilitate quick transfer of funds. The Informant has also placed reliance on few previous decisions of the Commission to stress that the dominance is not dependant on the size of the market player but the position of strength it enjoys in the market.



3. Based on the above and the allegations which have been detailed in the information, the Opposite Parties have been alleged to have contravened the provisions of sections 3 and 4 of the Act.
4. The Commission has perused the information.
5. Facts of the case reveal that the all the transactions/ events resulting in the alleged contravention of provisions of section 3 &4 of the Act, have taken place prior to the date of enforcement of the provisions of the section 3 & 4 of the Act which was notified in May 2009. As per the Informant the Opposite Parties embezzled the funds during the period from 20/07/2005 to 08/04/2007 by charging commission ranging up to 0.99 paisa per dollar on all the transactions, without the consent of the Informant and siphoned-off a total sum of Rs.2594517.66 from the account of the Informant. All these above said events are prior to the enforcement of provision of Section 3 &4 of the Act. The alleged conduct being prior to the date of enforcement of section 3 or 4 cannot be examined by the Commission.
6. As such, no *prima facie* case of contravention of the provisions of Sections 3 and 4 of the Act is made out against the Opposite Parties.
7. In the light of the above analysis, the Commission finds that no *prima facie* case of contravention of the provisions of section 3 & 4 of the Act is made out against the Opposite Parties in the instant matter. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.
8. The Secretary is directed to inform the parties accordingly.

Sd/-
(Ashok Chawla)
Chairperson



Sd/-

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

Sd/-

**(Augustine Peter)
Member**

Sd/-

**(Sudhir Mittal)
Member**

Sd/-

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

New Delhi

Dated: 21/11/2014