(Case No. 79/2013)

Mr. Anay Choksey
29-A, French Road,
Opp. Merchants Club,
Chowpatty,
Mumbai 400007 ....Informant

And

Religare Securities Limited
D3, P3B,
District Centre, Saket,
New Delhi- 110017 ...Opposite Party No.1

Religare Finvest Limited
D3, P3B,
District Centre, Saket,
New Delhi- 110017 ...Opposite Party No.2

Religare Enterprises Limited
D3, P3B,
District Centre, Saket,
New Delhi- 110017 ...Opposite Party No.3

CORAM:

Mr. Ashok Chawla
Chairperson

Dr. Geeta Gouri
Member

Mr. Anurag Goel
Member

Mr. M. L. Tayal
Member

Mr. Justice S. N. Dhingra (Retd.)
Member

Mr. S. L. Bunker
Member

Present: Mr. Vikram Mehta, Mr. Sean Wassoodew and Mr. Gaurang Panandiker advocates for the Informant

<u>Order under Section 26(2) of the Competition Act, 2002</u>

The information in the present case was filed by the Informant under Section 19(1)(a) of the Competition Act, 2002, (ñ**Act**ò) alleging violation of the provisions of Sections 3 and 4 of the Act by the Opposite Party No. 1 (ñ**OP1**ò), Opposite Party No. 2 (ñ**OP2**ò) and Opposite Party No. 3 (ñ**OP3**ò) with regard to margin funding/loan against securities.

2. The Informant is a businessman and an investor/trader in shares and securities. OP1 is a stockbroker registered with the Securities Exchange Board of India (ñ**SEBI**ò). OP2 is a non-banking financial company (ñ**NBFC**ò) registered with the Reserve Bank of India (ñ**RBI**ò). OP3 is the holding company of OP1 and OP2.

3. It is averred that the Informant began trading in shares by opening a trading account with OP1. OP1, without opening a margin funding account, started charging interest @ 18% per annum on alleged delayed payments for trades done by the Informant at the instance of OP1. According to the Informant, for a broker to charge interest on the outstanding amounts due from a client, the broker had to open a ómargin fundingô account in the name of concerned client.

4. It is submitted that at the instance of OP1, the Informant used to avail loan against securities/margin funding facilities from OP2 (ñ**Loan**ò) on the assurance that the Informant would be liable to pay interest @ 16% per annum as compared to 18%. When the Informant requested OP1 to allow him to avail the margin funding from a third party, OP1 categorically refused. The Informant alleged that all broking companies and NBFCs had a tie-in arrangement and they did business of margin funding only if both the broking and margin fund businesses were availed from companies with whom they had their tie-in arrangement. The Informant alleged that OPs 1 and 2 were acting in concert to generate brokerage on one hand and also to generate revenue by

charging interest on margin funding. One of the terms of a form got signed from the Informant stipulated a condition that the Informant was liable to generate overall revenue of a certain percentage with the group companies of OP2 and any shortfall would be charged to the Informantôs loan account.

5. Vide letter dated 07.11.12, OP2 informed the Informant that the Loan was due for repayment in December, 2012. Thereafter, the Loan was renewed on 22.02.2013 with effect from December 2012 for a period of one year. Within two months of renewal, vide letter dated 16.04.2013, the Loan was arbitrarily and abruptly withdrawn by OP2 without giving any reason whatsoever, whereas, as per the Informant, the margin available with OP2 was more than 30% of the Loan availed and was therefore adequate. As per the Informant, at the time of recall of the Loan, the Informant had sufficient stock as margin and the Informant had provided a cheque of INR 5 lakhs to meet the margin shortfall. It was also alleged that OP2 transferred the securities held by the Informant to its own name and subsequently liquidated them by not following the procedure prescribed in SEBI (Depositories and Participants) Regulations, 1996.

6. The Informant averred that the market of investing in securities through margin funding was extremely narrow due to limitations imposed by RBI which restricted banks to give loan only upto INR 20 lakhs for margin funding and that too for selective stocks; whereas NBFCs were in a position to give loans upto INR 50 crores. According to the Informant, the OPs enjoyed a dominant position by virtue of the narrow and confined market of margin funding in excess of INR 20 lakhs and in respect of certain stocks which were not dealt with by either banks or other financiers. The Informant alleged that the OPs, on account of this narrow market, were able to operate independently of competitive forces prevailing in the relevant market and thereby dictated terms to consumers by imposing unreasonable and discriminatory conditions upon them. Further, the agreement entered into by the OPs with the Informant was an anti-competitive agreement in the nature of a tie-in arrangement and/or refusal to deal, requiring the client, as a condition for availing margin finance,

to trade only through OP1. The Informant submitted that virtually all the NBFCs have entered into an alliance and have an understanding *inter se* that they would make available the margin financing facility only to a client who does the business of buying and selling of shares only through their designated broking company which invariably was their own sister company.

7. The Commission considered the information, facts and data placed on record by the Informant. The Informant alleged that the OPs were dominant in the restricted and narrow market of financing ó*certain securities of a value in excess of INR 20 lakhs*ô due to which they have been able to dictate terms and impose unfair and discriminatory conditions on the Informant. The Loan facility availed by the Informant from OP2 appears to be a loan against securities. Such loans are provided in the form of an overdraft for a fixed tenure and facilitate immediate liquidity without selling the securities. Banks as well as the NBFCs provide such a facility; while banks follow strict norms for selecting securities against which the loans are provided, NBFCs may take a liberal approach. Therefore the relevant product market in the instant case would be ñ*market for services of loan against shares provided by NBFCs*ò. As NBFCs can operate across the country, the relevant geographical market will be whole of India. Therefore, the relevant market in this case will be ñ*market for services of loan against shares provided by NBFCs in India*.ò No substantial information relating to the dominance of OPs in the relevant market has been provided by the Informant. Further, a number of NBFCs appear to be operating in the market, making the market highly competitive. In view of the above, the OPs *prima facie* do not appear to be in a dominant position in the relevant market. When OPs are not dominant in the relevant market, the question of abuse of dominant position in that relevant market does not arise.

8. The Informant alleged that agreement between the OPs is in the nature of a ótie-in arrangementô and/or órefusal to dealô for the benefit of the group companies, which *prima facie* appears to be a vertical agreement falling under Section 3(4) of the Act. However, there are a large number of brokers and

NBFCs operating in the market. Some of them are a part of large financial conglomerates providing an array of financial services under one roof and many of them operate as independent establishments providing limited services of only broking or financing. The Informantøs grievance was against the practice of ótie-inô adopted by large brokerage firms and NBFCs. There are a large number of independent financial service providers in the market which can be approached for availing the services of loan against shares and share trading. Due to the presence of a large number of NBFCs and SEBI registered brokers and a highly competitive market, the factors mentioned in Section 19(3) for appreciable adverse effect on competition in India, *prima facie*, do not appear to be fulfilled. Further, the agreement between the Informant and OPs is not in the nature of an agreement prohibited under Section 3(3) of the Act.

9. The main grievance of the Informant appears to be the Loan facility being withdrawn without giving him sufficient notice and high rate of interest being charged for alleged delayed payments. Clause 13 of the agreement executed by the Informant for the Loan (õ**Loan Agreement**ö) provides that the lender (OP2) could at its discretion recall the Loan provided to the borrower. Further, Clause 14 provides for the termination of the Loan Agreement at the sole discretion of the lender without assigning any reason and recall of the entire loan balance. OP2 in their response dated 14.06.2013 to Informantøs notice (Exhibit O to the information) stated that in terms of the Loan Agreement, OP2 sent a loan recall letter dated 16.04.2013 demanding full payment of the outstanding amount of INR 10,38,761.71. However the Informant made a payment of INR 5 lakhs, which was insufficient to repay the entire loan outstanding, and hence the securities furnished by him were liquidated. On the day of liquidation of securities, a prior call was made to the Informant intimating him of the liquidation and no objections were raised by the Informant. In view of the above, the conduct of OP2 appears to be in accordance with the Loan Agreement. Even if the OP1 as a broker has charged some interest, which according to the Informant it cannot charge without providing a margin trading facility, it may form a violation of provisions of

rules/regulations of SEBI, if any, and not a violation of the provisions of competition law.

10. For the reasons mentioned above, the Commission is of the opinion that there arises no competition concern actionable under Sections 3 or 4 of the Act and the case deserves to be closed under Section 26(2) of the Act. The case is therefore, hereby closed under Section 26(2) the Act.

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

New Delhi
Date: 05/02/2014

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(Geeta Gouri)
Member

Sd/-
(Anurag Goel)
Member

Sd/-
(M.L. Tayal)
Member

Sd/-
(Justice (Retd.) S.N. Dhingra)
Member

Sd/-
(S.L. Bunker)
Member