

COMPETITION COMMISSION OF INDIA

Case Nos. 2/28, 6/28, 11/28, 12/28, 13/28 & 15/28 (MRTP Cases)

June 07, 2011

In the matters of:

Case No. 2/28

Shri Govind Agarwal

Informant

v.

ICICI Bank Ltd.

Opposite Party

with

Case No.6/28

Shri Norbert Lobo

Informant

v.

Citibank N A

Opposite Party

with

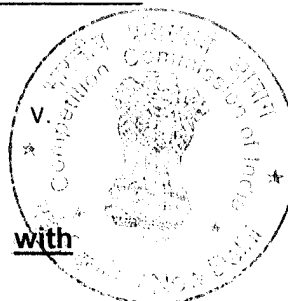
Case No. 11/28

Shri C.M.Gupta

Informant

ICICI Bank Ltd.

Opposite Party



Case No. 12/28

Shri Prakash Bajpai

Informant

v.

ICICI Bank Ltd.

Opposite Party

with

Case No. 13/28

Shri Madan Lal Ghai

Informant

v.

ICICI Bank Ltd.

Opposite Party

with

Case No. 15/28

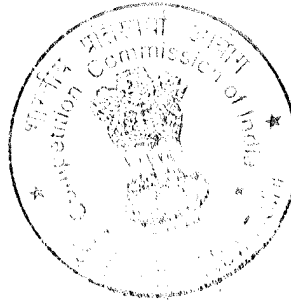
Shri Gulshan Kumar Gupta

Informant

v.

BHW Home Finance Ltd.

Opposite Party



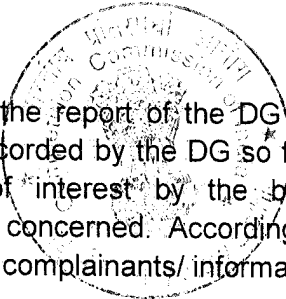
## ORDER

Per P N Parashar

I have gone through the order prepared by my learned brethren in these cases. While concurring with the learned members on the issues, I would like to add few points to clarify my views in this regard.

### Differential rate of interest imposed by the banks

2. As per the report of the Director General (DG), floating interest rate which is variable over the loan period is dependent on two factors (i) benchmark/reference rate and (ii) spread. The benchmark/ reference rate remains the same for the existing and new customers. The spread/ margin is a variable factor and is also negotiable and depends on the terms and conditions agreed upon between the lender and the borrower. Accordingly, the spread/ margin differs from customer to customer. The spread is calculated based on profits of the customer, credit history, repaying capability, tenure of the loan, nature of property etc. The DG has found that since all the customers have different requirements and characteristics and it is not feasible for the banks to have a uniform common spread for all the customers. The DG has further noted Since the spread varies from individual to individual, the interest rate offered to two individuals at a given point of time cannot be same although the benchmark remains constant and the floating rate offered to the customer remains unchanged.
3. The DG has also found that all the customers have different loan requirements and characteristics and it is not feasible for the banks to have a uniform/ common spread for all the customers.
4. Furthermore, according to report of the DG, it can be inferred from the movement of interest rates that the banks/ financial institutions have not arbitrarily increased the interest rate but this happened due to the prevalent market conditions.
5. As the DG has not found any agreement or arrangement or practice among the banks/ financial institutions regarding differential rate of interests by the banks and accordingly, the DG did not find any contravention of the provisions contained in section 3 of the Act.
6. I have carefully perused the report of the DG and I find myself in complete agreement with the conclusions recorded by the DG so far as the allegations regarding imposition of differential rates of interest by the banks/ financial institutions in contravention of section 3(3) are concerned. Accordingly, I do not find force in the submissions made on behalf of the complainants/ informants on this issue.



## **Imposition of Pre-payment Penalty by the banks**

7. On the issue of pre-payment penalty, the DG has referred to his findings in investigation in Case No. 5/ 2009. In this regard, the following observations of the DG may be quoted from the report:

*With regard to pre- payment penalty, it is concluded that the clause and the applicable charges were clearly disclosed by the banks/ financial institutions in their terms and conditions which include loan agreement, sanction letter etc. The borrowers have signed the relevant pre-payment clause in the said loan agreements thus the question of not informing about the pre-payment clause does not arise. Further, a reference may be made to the findings of investigation in Case No. 5/ 2009 wherein the issue with regard to the applicability of pre-payment charges is dealt in detail and is proposed that the Commission may consider removal of pre-payment charges/ penalties levied by the banks/ financial institutions. ICICI Bank and Deutsche PostBank Home Finance Limited have requested to club these MRTTP cases as they have also provided their views and explanations in Case No. 5/2009. Since the issue in these MRTTP cases is similar to that of Case No. 5/2009, it is requested that this report may be clubbed and read in reference to investigation report of Case No. 5/2009 for simplicity of procedure.*

8. In Case No. 5/2009, I have dissented with the majority view and have concurred with the findings of the DG, by holding that the practice of levying a pre-payment penalty by the banks/ HFCs is violative of section 3(1), 3(3)(a) and 3(3)(b) of the Act. In para 166 of the dissenting order in Case No. 5 /2009, the following findings have been recorded by me on this issue:

*In view of the above factual analysis and after considering the entire relevant material including the submissions of the opposite parties following order is passed:*

*'The practice/decision of the opposite parties of levying a PPP on foreclosure of home loans is anti-competitive and is squarely covered within the mischief of section 3(1), 3(3)(a) and 3(3)(b) of the Act and accordingly, I direct the opposite parties to discontinue such practice forthwith and further direct them not to re-enter, directly or indirectly, into such understanding, arrangement, agreement, decision or practice in future.'*

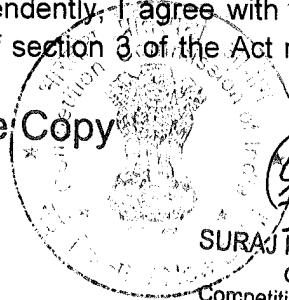
9. Thus, while recording my concurrence with the order proposed, I wish to clarify that if the pre-payment penalty or foreclosure charges are levied consequent upon any concerted action by way of agreement, practice or decision by the banks/ financial institutions, the same may fall within the ambit of section 3(3) of the Act and thus it may contravene the provisions contained in section 3 of the Act being anti-competitive in nature.

10. Further, I am unable to concur with the views expressed in para 19(5) of the proposed order wherein it has been noted that section 3(1) of the Act should not be invoked independently. I have reservations on this view and I am not able to lend my concurrence therewith.

11. On going through the facts of these cases, it may be noted that six separate complaints were filed against different banks/ financial institutions and there is no specific allegation regarding an agreement or common understanding amongst the banks/ financial institutions for levying the pre-payment penalty or for charging differential rates of interests for different sets of borrowers. In my dissenting order made in Case No. 5/2009 after examining the entire material collected by the DG, I had held that the common practice adopted by the opposite parties in that case was in furtherance of a common understanding amongst them. In view of the facts of that case it was found that there was a breach of section 3(1), 3(3)(a) and 3(3)(b) by the opposite parties therein. But on facts, these cases are distinguishable, as noted above, and hence the view about concerted common practice cannot be taken in the instant cases. It may also be pointed out that in these six cases, some of the banks/ financial institutions are different and the practice of levying pre-payment penalty by them was not subject matter of the investigation in Case No. 5/2009 referred to above. The issue of any agreement amongst the opposite parties in these six cases has not been presented and was neither considered nor investigated, hence the findings recorded in Case No.5 /2009 cannot be applied to these cases.

12. In view of the above and on the facts and circumstances of these cases and after recording my disagreement with the order proposed on the issue of applicability of section 3(1) of the Act independently, I agree with the conclusions with respect to the allegations of contravention of section 3 of the Act reached by the learned members in the order proposed.

Certified True Copy



*SP*  
*Gahlaut*  
*24/6/2011*  
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