

COMPETITION COMMISSION OF INDIA

[Case No. 35/2011]

Dated: November 21, 2011

Mr. Mir Jawwad Ali
41222, Malcolmson Street,
Apartment No. 3, Freemont,
California, 94538, USA

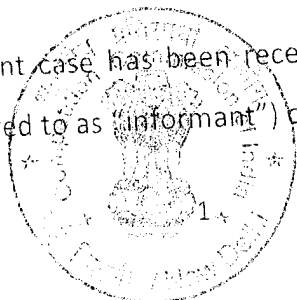
Informant

1. Standard Chartered Bank Ltd.
90, M. G. Road, Mumbai
2. Hongkong & Shanghai Banking Corporation Ltd.
52/60, M.G. Road, Mumbai
3. Citibank, S.D., Begumpet, Hyderabad
4. HDFC Bank Ltd. 6-1-73
Lakdi- Ka-Pul, Hyderabad
5. ICICI Bank Ltd., Bandra (East), Mumbai
6. Royal Bank of Scotland, Chetpet, Chennai
7. Kotak Mahindra Bank Ltd.
227, Nariman Point, Mumbai
8. Barclays Bank Plc., Worli, Mumbai
9. HDFC Ltd., Churchgate, Mumbai
10. India Bulls Financial Services Ltd.
Lower Parel (west), Mumbai
11. Fullerton India Credit Company Ltd.
Chakala, Andheri (East), Mumbai
12. Indo Pacific Housing Finance Ltd.
Dist. Centre, Saket, New Delhi
13. The Indian Banks Association
Cuffe Parade, Mumbai

Opposite Parties

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

1. The information in the present case has been received by the Commission from Mr. Mir Jawwad Ali (hereinafter referred to as "informant") on 13.07.2011 under Section 19 (1) (a) of



the Competition Act, 2002 (hereinafter referred to as "the Act"). The case relates to the alleged cartelization and abuse of dominant position by M/s Standard Chartered Banks (SCB) and others (hereinafter referred to as "Opposite Parties") in the retail mortgage/home loan market in India.

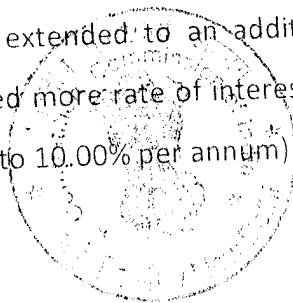
2. The facts and allegations as stated in the information, in brief, are as under:

2.1 As per the information, the informant is a Non-Resident Indian (NRI) having his residence at 41222, Malcolmson Street, Apartment No. 3, Fremont, California, USA. The Opposite Parties are the banking and non-banking financial companies registered under the Companies Act, 1956 and, inter alia, are engaged in the provision of various banking and other financial services in India.

2.2 As per the information, a home loan amount of Rs. 20, 00,000/- (Rupees Twenty Lakh only) was sanctioned by SCB in favour of the informant during 2005 with the agreed floating rate of interest of 8.25% per annum. The said loan amount was disbursed to the informant in two tranches; Rs. 14, 68,500/- (Rupees Fourteen Lakh Sixty Eight Thousand Five Hundred) on 01.09.2005 and Rs. 5, 31,500/- (Rupees Five Lakh Thirty One Thousand Five Hundred) on 28.01.2006. The repayment schedule of the said loan amount was fixed on the basis of Equated Monthly Installment (EMI) in 240 months.

2.3 With a view to foreclose the aforesaid loan account, the informant had written a letter to SCB regarding his outstanding principal amount. The SCB in its letter dated 16.09.2010 replied that the informant had to pay an outstanding principal amount of Rs. 18, 41, 331.23 (Rupees Eighteen Lakh Forty One Thousand Three Hundred Thirty One and Twenty Three Paise only) along with the foreclosure charges of Rs. 50820.74/- (Rupees Fifty Thousand Eight Hundred Twenty and Seventy Four Paise only) to foreclose the loan account.

2.4 According to the informant, SCB has adopted the flat method of accounting for the interest component of EMI instead of diminishing balance method because of which its loan repayment period has been extended to an additional 3 to 4 years. It has also been submitted that SCB has charged more rate of interest (around 20.5% per annum) than the agreed rate of interest (8.25% to 10.00% per annum)



2.5 It has also been submitted by the informant that he along with other Opposite Parties have formed a cartel in the home loan market so as to levy pre-closure charges, excess rate of interest and other bank charges from the customers. As per the informant all the Opposite Parties are adopting following illegal and anti-competitive practices:

- i. All the Opposite Parties are charging higher rate of interest than the contractual rate of interest from the customer.
- ii. All the Opposite Parties are uniformly charging interest on penal interest in the name of bounce charges.
- iii. All the Opposite Parties are following the illegal front end method of accounting.
- iv. All the Opposite Parties are compounding Interest on monthly basis.
- v. All the Opposite Parties are debiting the interest tax components on to their loanee's accounts.

2.6 The informant has further submitted that the Opposite Parties have major presence in the Grade- I metropolitan cities in India and together command over 60% to 70% of the housing loan market. Thus, the Opposite Parties enjoy dominant position in the housing loan market in the Grade - I metropolitan cities in India.

2.7 It has also been submitted that the Opposite Parties are abusing their dominant position by charging exorbitant rate of interest, holding the properties of the loanee's by way of security, signing blank cheques etc. As per the informant, the said conduct of the Opposite Parties amounts to abuse of dominant position which is anti-competitive as per the provisions of Section 4 of the Act.

3. The Commission considered the present information in its meetings held on 26.07.2011 and 24.08.2011. On a careful consideration of all the relevant materials and evidences available on record, the Commission notes that activities being performed by the Opposite Parties are covered in the definition of 'enterprise' under section 2 (h) of the Act. In the present case, the service in question provided by the Banks is the service of retail mortgage loan provided by the Opposite Parties and other banking and non-banking financial companies in India.

4. The Commission notes that based upon facts of the case, the issue which emerges for consideration is whether by levying foreclosure charges, higher rate of interest than the

contractual rate of interest and other charges the Opposite Parties have violated the provisions of Section 3 and/or Section 4 of the Act.

5. The Commission observes that for an agreement to exist there has to be an act in the nature of an arrangement, understanding or action in concert including existence of an identifiable practice or decision taken by an association of enterprises or persons. There is nothing on record which shows that SCB has been imposing pre-payment penalty and other charges in pursuance of some agreement entered into by it with other banks or non-banking financial institutions. In the light of these facts, the commission is of the opinion that the provisions of Section 3(3) are not applicable in the instant matter. Further, there is no case of any vertical agreement either which may be said to be violative of provisions of Section 3(4) of the Act in the whole matter.
6. With regards to applicability of Section 4 of the Act in the matter, the Commission is of the opinion that the alleged conduct of SCB and other Opposite Parties does not fall within the ambit of Section 4 since none of the Opposite Parties individually is in a dominant position in the relevant market. The provisions of Section 4(1) prescribe that no enterprise or group shall abuse its dominant position. 'Group' for the purposes of Section 4 as per explanation (c) to the said Section 4 has been assigned the same meaning as given in Clause (b) of Explanation to Section 5. The Commission notes that the Opposite Parties in this case do not qualify to be called as enterprise falling in same group within the meaning of the said provisions. Since there is no case of dominance either individually or in group by these banks, any question of abuse within the meaning of provisions of Section 4 does not arise in the matter.
7. The Commission also observes that issues involved in the instant information have been dealt in a number of cases decided by it earlier, viz; MRTP Case no. DGIR/2007/IP/104-RTPE Case No. 33/2007, Case Nos. 15/28, 16/28, 13/28, 12/28, 2/28, Case Nos. 7/28, 25/28, 8/28, 9/28, 10/28, Case No. 05/2009, Case No 15/2009, Case No. 12/2010 and Case No. 28/2010 wherein no contravention of either Section 3 or Section 4 has been found to be established.
8. In view of the foregoing, the Commission is of the considered view that the allegations made in the information do not fall within the mischief of either Section 3 or Section 4 of the Act

and *prima facie* no case is made out for making a reference to the Director General (DG) for conducting investigation into this matter under Section 26 (1) of the Act.

9. Accordingly, the Commission deems it fit to close the proceedings of the case under Section 26(2) of the Act.

10. The Secretary is directed to communicate the decision of the Commission to the informant accordingly.

Sd/-
Member (F)

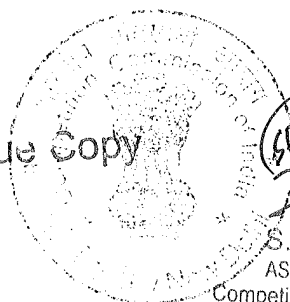
Sd/-
Member (GG)

Sd/-
Member (L)

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Member (D)

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Member (J)

Certified True Copy



(Sd/-)
S. P. GAHLAUT
ASSISTANT DIRECTOR
Competition Commission of India
New Delhi
24/XI/2011