

COMPETITION COMMISSION OF INDIA

17th September, 2010

Case No. 38/2010

Informant: Transpole Logistics Pvt. Ltd.,
Mahipalpur, New Delhi 110037

Opposite Party: Barclays Bank PLC,
Nehru Place, New Delhi

Order Under Section 26(2) of Competition Act, 2002.

This information has been filed under section 19 of the Competition Act by the informant M/s Transpole Logistics Pvt. Ltd. on 05.08.2010 against Barclays Bank PLC alleging non disbursement of credit facility despite agreeing for the same and collecting the processing fees and thus abusing its dominant position as per the provisions of section 4 of the Competition Act.

2. The relevant facts of the case as stated by the Informant are summarized as under:-

- 2.1 The Informant M/s. Transpole Logistic Pvt. Ltd. had applied for a loan of Rs. 100 million with Barclays Bank PLC. It has been alleged that the bank demanded Rs. 19,66,300/- including Rs. 17,50,000/- on account of processing fee and Rs.2,16,300/- on account of service tax on 24.11.2008 before sanctioning the loan amount to the informant. The informant duly paid this amount of Rs.19,66,300/- on 24.11.2008. The bank vide letter dated 21.11.2008 sanctioned credit facility for working capital of Rs.70 millions including working capital and overdraft limit.
- 2.2 The informant has further alleged that the bank did not disburse the said loan to the informant and informant was compelled to approach other banks for sanction of credit facility. The informant on non disbursement of the loan by the bank demanded the refund of 19,66,300/- paid towards processing fee with interest @ 18% per annum and Rs.15,00,000/- towards damages in view of the circular DBOD No.BC-13/13.3.2009-10 dated 1.7.2009 issued by the Reserve Bank of India wherein the amount of processing fee paid for availing any credit facility is made refundable in case of non-acceptance of application of the borrower.

- 2.3 The informant also requested the opposite party for the adjustments of Rs.19,66,300/- paid as processing fee in respect of sanction of credit facility for 70 million against another loan of Rs.35 lacks, already availed by him on which an EMI of Rs.1,79,850/- was payable per month .
 - 2.4 The informant issued a legal notice dated 23.07.2009 to the bank asking for the refund of the processing fee by adjustment of said amount against the balance EMIs of above mentioned loan.
 - 2.5 The bank in its reply dated 07.08.2009 to the legal notice contended that the informant has not furnished/executed the required documents for processing the loan, as per terms and conditions of sanction letter of the bank. The bank in it's reply also contended that one of the surety Ms. Shalini Chaudhary had earlier mortgaged her property with the ICICI Bank towards the Home Loan which was not cleared on the date of the sanction of the credit facility. The informant failed to get security released from ICICI Bank, thereby failed to furnish security (Original property papers) for the credit facility sanctioned by the bank and because of the said reason the bank has not disbursed the sanctioned loan in favour of the informant.
3. The informant aggrieved by the above reply of the bank filed information to the Competition Commission of India seeking following reliefs :-
- I. Direct the opposite party to discontinue, cease and desist from abusing its dominant position by refunding the illegally withheld processing fee of Rs.19,66,300/- in accordance of Fair Practice Code of Reserve Bank of India as contained in Master Circular dated 01.07.2009 and/or.
 - II. Impose penalty on opposite party in terms of Section 27 (b) of the Act and/or.
 - III. Direct the opposite party to refund a balance amount of Rs.5,27,500/- with interest @ 18% p.a. and/or.
 - IV. Award compensation of Rs.15 Lacks in terms of Section 53 (N) of the said Competition Act and/or.
 - V. Pass any other order in view of the above facts and circumstances which this Hon'ble Forum may deem fit.
 - VI. The informant has also sought interim relief directing opposite party not to charge any amount under Loan Account No.3068939 without adjusting amount of Rs.19,66,300/-,.
4. The Commission considered all the material placed on record in its Ordinary Meeting held on 01.09.2010 and decided to hear the informant by fixing the hearing on 15.09.2010. Accordingly notice dated 01.09.2010 was issued by the Commission which was duly served upon the informant and his counsel. On the date of hearing, Mr. Rajiv Talwar and Mr. Tarun Rana, Advocate appeared on behalf of the informant and made oral submissions.

5. The Commission has carefully considered the entire material on record and submission made on behalf of the informant with regard to the facts of the case and alleged abuse of dominance. The Commission inter alia examined following issues :


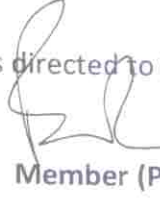
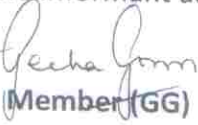


- i. Whether Barclays Bank PLC enjoys a dominant position in the relevant product market?
- ii. Whether the allegations leveled by the informant attracts the provisions of Competition Act laid down in section 3 or 4?

6. The informant has alleged that the respondent bank is in a position of strength which enables it to operate independently and affect the consumers like petitioners. The informant however provided no evidence or information in support of this claim. The Commission analysed the market position of relevant product marketing & Collateralized banking business working capital loans offered by banks to small and medium enterprises in India. The information available in public domain regarding market share of various banking companies and non banking finance companies clearly shows that the market share of Barclays Bank PLC is very small or insignificant in comparison to various other public sector and private banks. Therefore it is not in a position of strength to operate independently of competitive forces prevailing the relevant market or affect consumers in its favour. The Commission has also considered the provisions of section 19(4) and is of opinion that the opposite party is not enjoying a dominant position in the relevant market.

7. So far as the allegations levelled by the informant regarding practices of banks are concerned this issue is in the nature of individual consumer dispute in contradistinction to the grievance of a class of consumers, and no provision of the Competition Act is applicable to the facts of the present case. Therefore, in view of the above the case does not fall in the ambit of the Competition Act and it lies within the jurisdiction of Consumers Disputes Redressal Commission.

8. On the basis of the discussion in the foregoing paras, the Commission is of the view that there exists no, prima facie, case for making a reference to the Director General for investigation into the matter. Hence, the matter relating to this information is hereby closed under Section 26(2) of Competition Act, 2002.

9. Secretary is directed to inform the Informant accordingly.

 Member (G)  Member (P)  Member (GG)  Member (AG)  Member (T)


Chairperson