

COMPETITION COMMISSION OF INDIA

Case No.45/2011

Dated: 28.09.2011

Informant:

M/s Savitri Leasing and Finance Ltd.
D-91, Ambabari, Jaipur, Rajasthan.

Opposite Parties:

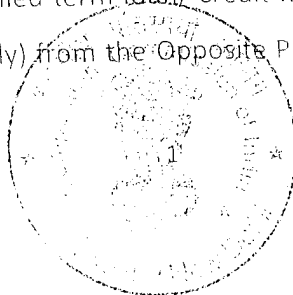
1. Punjab National Bank,
Head Office at 7, Bhikhaji Cama Place, New Delhi-66
2. Punjab National Bank,
2, Nehru Place, Tonk Road, Jaipur-302015
3. Punjab National Bank,
Raja Park Branch at Jaipur, Rajasthan.

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

The present information has been filed on 17.08.2011 by M/s Savitri Leasing and Finance Ltd, Jaipur (hereinafter referred to as the 'Informant'), alleging contravention of the provisions of Section 3 and 4 of the Competition Act, 2002 (hereinafter referred to as the 'the Act') by Punjab National Bank, having its head office at Delhi and its two other branch offices at Jaipur (hereinafter collectively referred to as the 'Opposite Party' or 'PNB').

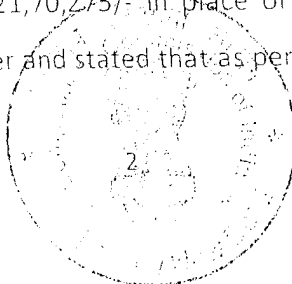
2. As per the information, facts of the case, in brief, are as under:

- 2.1 The Informant is engaged in the business of purchasing, selling, developing and leasing of immovable properties and has been banking with PNB since December 2004.
- 2.2 In the year 2005, the Informant commenced the construction of a commercial complex at Jaipur and availed term loan/ credit facilities of Rs.8,70,00,000/- (Rupees Eight Crore Seventy Lac only) from the Opposite Party for the said construction. It has



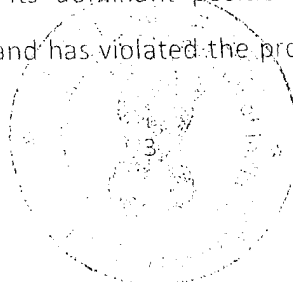
been alleged by the Informant that the rate of interest on the said Loan was based on Benchmark Prime Lending Rate ("BPLR") + 0.50% term premia - 2.50% i.e. 8.75% with monthly rests subject to reset clause after 3 years.

- 2.3 The construction for the substantial portion of the aforesaid commercial complex was completed in October 2006. The Informant vide its letter dated 19.01.2007 approached the Opposite Party for sanctioning of an overdraft facility of Rs. 20,00,00,000/- (Rupees twenty crore) against lease rent receivable in the next 10 years from one M/s Piramyd Retail Ltd., a tenant of a complex. The Informant proposed to substitute the term loan by the overdraft facility and also to square off the term loan.
- 2.4 In response to the proposal of the Informant, the Opposite Party squared off the term loan and vide its sanction letter dated 12.04.2007 sanctioned a credit facility of Rs.14,25,00,000/- (Rupees Fourteen Crore Twenty Five Lac only) to the Informant in the form of an overdraft facility against future lease rentals.
- 2.5 The overdraft facility was granted against the primary security of lease rentals as per lease agreement dated 05.10.2006 entered into between the Informant and M/s Piramyd Retail Limited for 12 Years along with collateral security in form of equitable mortgage of the immovable property of the Informant. It has been submitted by the Informant that the rate of interest as per the stipulation of second sanction was BPLR + 0.50 term premia % - 2.25% i.e. 10.50% p.a. linked to BPLR. The BPLR was subject to change as per bank/RBI guidelines to be circulated from time to time and the Informant accepted the terms and conditions as prescribed in the second sanction letter dated 12.04.2007.
- 2.6 The Informant has further submitted that after one year, PNB sent a letter dated 15.02.2008 stating that due to hike in the cost of funds, the Bank has decided to raise the interest rate to 13.25% in respect of its overdraft and accordingly EMI w.e.f March 2008 would be fixed at Rs. 21,70,275/- in place of Rs. 19,83,600/-. The Informant objected to the aforesaid letter and stated that as per the second sanction, the interest



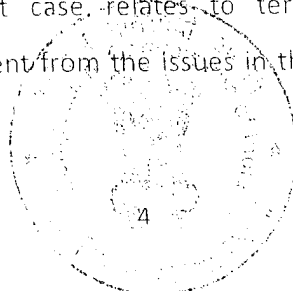
rate was agreed upon to BPLR+ 0.50 term premia % - 2.25% and therefore it would not be able to pay interest at more than the agreed rate of interest.

- 2.7 The Informant has alleged that from 21.03.2008 onwards, PNB started charging interest at the rate of 13% and beyond 13% in subsequent months, even when the rate of interest calculated as per the agreed contractual terms i.e. on the basis of BPLR during the same period was much below. The Informant, thereafter, vide its letter dated 25.06.2008 objected to the hike in the rate of interest by the PNB terming it as unjust and illegal and asked the PNB to charge interest at the sanctioned rate only and credit the account of the Informant with the excess interest charged till date.
- 2.8 The Informant has submitted that the Opposite Party completely ignored the request of the Informant and continued to charge the alleged arbitrarily hiked rate of interest from it and never gave the benefit of downward revision even when the BPLR was actually reduced by the Opposite Party.
- 2.9 The informant has alleged that in the process, the Opposite Party has made discrimination between its old customers and new customers.
- 2.10 The Informant has further alleged that he could not switch to any other Bank or Financial Institution which may be offering better services, product or loan facilities to the Informant as the Opposite Party has a penalty clause whereby the Informant has to pay pre-payment penalty in the event the loan is being switched to any other Bank or Financial Institution. As per the Informant, the said conduct of the Opposite Party falls within the purview of Section 3(1) of the Act. It has also been alleged by the Informant that its agreement with the Opposite is void under Section 3(2) of the Act.
- 2.11 The Informant has submitted that the Opposite Party has unilaterally hiked the interest rate and has been charging higher rate of interest than the rate stipulated in the agreement without any kind of its consent/ approval. It has been alleged that the Opposite Party has abused its dominant position by way of imposing unfair and discriminatory interest rate and has violated the provisions of Section 4 (1) of the Act.



Further, the Opposite Party, by imposing pre-penalty charges on switching over of the loans to any other bank, has indulged in denial of market access to the Informant and abused its dominant position as per Section 4(2) (c) of the Act.

3. The Commission considered the matter in its meeting held on 01.09.2011 and directed that the Informant be called to explain its case. Accordingly, on 28.09.2011, the counsel for the Informant appeared before the Commission and explained the case.
4. The Commission has carefully perused the information, the relevant documents annexed with the information, the contention of the counsel for the Informant and other relevant materials available on record.
5. The Commission notes that the Information is basically centered on the issue(s) that the Opposite Party is charging different rate of interest from the old and new customers, is not giving the benefits of reduction in the interest rates and is levying pre-payment penalty on the re-finance of the loan from the other Banks or Financial Institutions.
6. The Commission observes that the 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.
7. The Commission also observes that the informant has relied upon the minority view of the Commission in Case Nos. 7/28, 25/28, 8/28, 9/28, 10/28 to substantiate its argument. However, the Informant has not considered the majority decision of the Commission, wherein no contravention of provisions of either Section 3 or Section 4 of the Act has been found to be established. In Case No. 05/2009, in which PNB was also a party, the issues of prepayment penalty and abuse of dominance have been dealt in detail. Although the instant case relates to term loans, the basic issues for determination are not different from the issues in the cases which have earlier been decided by the Commission.



8. The Commission finds that all the issues involved in the instant case have already been determined and decided in detail in the cases referred to in the preceding paras of this order. The Commission also finds that since no Bank has more than about 17% market share in the Indian mortgage finance market, the Opposite Party cannot be said to be dominant in the relevant market and as such there is no question of abuse of its position of dominance in violation of provisions of Section 4 of the Act in the case. Further, there is no case of any horizontal or vertical agreement within the meaning of provisions of Section 3(3) or Section 3(4) of the Act to substantiate the allegations of any anti-competitive agreement in violation of Section 3 of the Act.
9. In view of the foregoing discussion, 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.
10. The Commission holds that the information filed by the informant do not provide basis for forming a, *prima facie*, opinion for referring the matter to the Director General (DG) for conducting investigation and the case deserves to be closed forthwith.
11. In view of the above discussion, the matter relating to the information is hereby closed under Section 26 (2) of the Act.
12. Secretary is directed to inform the Informant accordingly.

Sd/-
Member (R)

Sd/-
Member (GG)

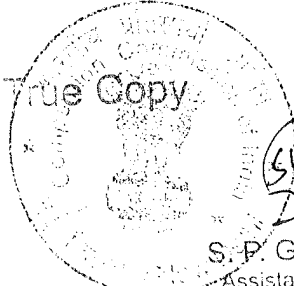
Sd/-
Member (AC)

Sd/-
Member (T)

Sd/-
Chairperson

5

Certified True Copy



S. P. GAHLAUT
Assistant Director
Competition Commission of India
New Delhi

12/X/2011