

Competition Commission of India

Case No. 08 of 2012

April 17, 2012

In re:

1. Awaz, NGO for Ventilating Consumer Grievances

.....Informant No.1

2. Ramjilal Constructions Pvt. Ltd.

.....Informant No.2

v.

1. M/s Indiabulls

.....Opposite Party No.1

2. All India Association of Banking Companies

.....Opposite Party No.2

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

The present information has been filed by M/s Ramjilal Constructions Pvt. Ltd. (‘the informant’) under section 19(1)(a) of the Competition Act, 2002 (‘the Act’) against M/s Indiabulls (Indiabulls/‘the opposite party No.1’) and All India Association of Banking Companies (‘the opposite party No.2’) alleging *inter alia* contravention of the provisions of sections 3 and 4 of the Act.

2. It is averred in the information that the informant was a small scale building construction company providing housing complexes for middle class people in Delhi for many decades. For these activities, the informant earlier availed housing finance of more than Rs.1 crore from Oriental Bank of Commerce (OBC) at fixed rate of interest i.e. 15% p.a. One of the executive officers of the opposite party No.1 approached the informant and asked it orally to switch over its financing activities from Oriental Bank of Commerce to it at an attractive rate of interest i.e. 10% p.a. The informant was accordingly tempted to enter into contract for seeking re-finance from Indiabulls. Upon an assurance by Indiabulls, the informant agreed to enter into an arrangement for re-financing Rs. 1,50,00,000/- against security of four immovable units and readily signed all the documents as called upon by Indiabulls. It is alleged that material terms of this agreement were not determined and fixed. To the detriment of informant blank spaces in the documents were filled-up by Indiabulls on its own without obtaining counter signatures of the informant. It is alleged that such alterations amounted to forgery of documents and criminal breach of trust. This is described as an unfair practice on the part of Indiabulls and an abuse of its dominant position as financier. The act of taking signatures on contractual papers keeping a pre-determined space unfilled, to be

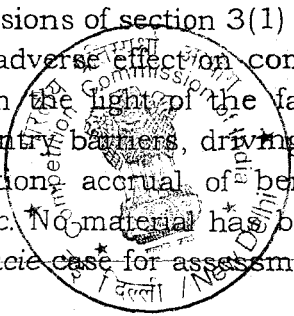
filled-up later on is stated to be a prevalent practice among all the banking and non-banking financial institutions. It is prayed that for such a prevalent activity, a strict action deserves to be initiated by the Commission to establish fairness in the commercial world and to sustain fair competition among the lenders and also among the borrowers.

3. Further, it is alleged that against the sanctioned loan amount of Rs. 1,50,00,000/-, only a sum of Rs.1,46,00,000/- was credited to the account of the borrower. However, interest was charged on the entire sanctioned loan amount i.e. Rs.1,50,00,000/-. Copy of the loan agreement was never furnished by Indiabulls to the informant and the same could be obtained only after a notice was served through an advocate. Allegations of charging of usurious rates of interest by Indiabulls in contravention of the provisions of the Punjab Relief of Indebtedness Act, 1934 as extended to the Union Territory of Delhi have also been made. Charging of pre-payment charges by Indiabulls is alleged as unfair and contrary to policy of the RBI.

4. On consideration of the information and submissions made, it is evident that the loan agreement containing clauses (by which informant is aggrieved) was executed between the informant and Indiabulls on 30.10.2007. The information was filed on February 08, 2012. The delay is sought to be explained by the informant by stating that upon receipt of advice, the Commission was approached at the earliest.

5. In the present matter, the provisions of section 3(3) of the Act have no application as an agreement envisaged thereunder has to be a horizontal agreement entered into between enterprises engaged in identical or similar trade or goods or provision of services with intent to control production, supply markets etc. No such horizontal agreement is alleged or otherwise can be gathered from the pleadings. The alleged practice of getting contract papers signed with unfilled blanks is not a competition issue at all. A party signing blank documents cannot complain of unfairness. In this case, the informant was already having loan facility from OBC and had shifted to Indiabulls. It was for him to ensure that terms of loan were clearly written in the contract.

6. So far as the contravention of provisions of section 3(1) read with section 3(4) of the Act is concerned, the appreciable adverse effect on competition due to such an agreement needs to be considered in the light of the factors enumerated in section 19(3) of the Act viz. creation of entry barriers, driving existing competitors out of market, foreclosure of competition, accrual of benefits to consumers, improvements in provision of services etc. No material has been placed before the Commission to even make out a *prima facie* case for assessment of the appreciable



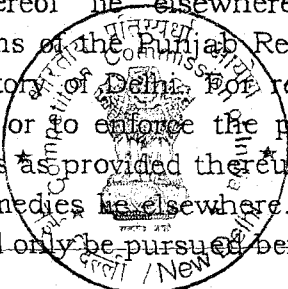
adverse effect on competition due to such clauses. Hence, no contravention of section 3(1) read with section 3(4) of the Act is also made out.

7. The allegations of contraventions of section 4 are equally misplaced. The informants have claimed Indiabulls as a dominant enterprise but no averment has been laid to show as to how it was in a dominant position. No averment has been made to show that Indiabulls enjoyed a position of strength in the relevant market of providing finances which enabled it to operate independently of competitive forces prevailing in the market or to affect its competitors or consumers or the relevant market in its favour. Moreover, no material has been placed before the Commission as required under section 19(4) of the Act to enable the Commission to determine the dominance of the opposite party in the light of the factors mentioned therein *viz.* market share of enterprise, size and resources of the enterprises, size and importance of the competitors, economic power of the enterprises including commercial advantages over competitors, dependence of consumers on the enterprise etc. The documents filed along with the application seeking interim relief to show the dominance of Indiabulls are the documents of Indiabulls alone and no material has been placed about the market share, size and importance *etc.* of the competitors.

8. The counsel appearing for the informants has vehemently contended that while inquiring whether an enterprise enjoys a dominant position or not, the market share of the enterprise alone is not decisive and the same may be established in the light of any of the factors enumerated in section 19(4) of the Act. The informant, however, has failed to bring its case within *any* of these factors, except making a vain plea to argue that dependence of consumers on the enterprise put the opposite party in a dominant position. The informant has failed to show as to how the consumers were depended upon the opposite party alone for housing finance. The plea is misconceived.

9. As the dominance of the Indiabulls is not established, the issue of abuse thereof does not arise for consideration.

10. From a perusal of the prayers made by the informants, it is clear that the instant matter concerns contractual disputes under the loan agreement. The remedies for redressal thereof lie elsewhere. The informant has alleged contravention of the provisions of the Punjab Relief of Indebtedness Act, 1934 as extended to the Union Territory of Delhi. For redressal of grievances relating to infringement of the said Act or to enforce the provisions thereof, the informants have to pursue their remedies as provided thereunder. For alleged contravention of the policy of the RBI, the remedies lie elsewhere. Similarly, charges of forgery and criminal breach of trust could only be pursued before the appropriate forum.



11. In the result, there exists no *prima facie* case to direct the Director General to cause an investigation to be made into the matter and the matter deserves to be closed forthwith. The informants have also moved an application under section 33 of the Act seeking interim relief. As there exists no *prima facie* case, the application does not survive and the same merits dismissal accordingly.

Sd/-
Member (G)

Sd/-
Member (R)

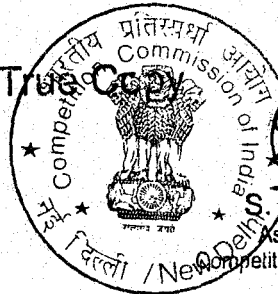
Sd/-
Member (GG)

Sd/-
Member (AG)

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Member (T)

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Member (D)

Certified True Copy



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07/05/2012
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Assistant Director
Competition Commission of India
New Delhi
07.05.2012