



**COMPETITION COMMISSION OF INDIA**

**Case No. 103 of 2016**

**In re:**

- 1. Aditya Automobile Spares Private Limited**  
9/435, Cross Cut Road,  
Coimbatore - 641012, Tamil Nadu **Informant No. 1**
  
- 2. Rajkrishna Aditya Auto Store Private Limited**  
99-100, Srikant Extension,  
Grey Town,  
Coimbatore – 641018, Tamil Nadu **Informant No. 2**
  
- 3. Aditya Auto Store**  
406, Dr. Nanjappa Road,  
Coimbatore – 641018, Tamil Nadu **Informant No. 3**
  
- 4. Aditya Global Trading**  
9/431, Cross Cut Road,  
Coimbatore – 641012, Tamil Nadu **Informant No. 4**

**And**

**Kotak Mahindra Bank Ltd.**  
27 BKC, C 27, G Block,  
Bandra-Kurla Complex, Bandra (E),  
Mumbai – 400051, Maharashtra **Opposite Party**



**CORAM**

**Mr. Devender Kumar Sikri**  
**Chairperson**

**Mr. S. L. Bunker**  
**Member**

**Mr. Sudhir Mital**  
**Member**

**Mr. Augustine Peter**  
**Member**

**Mr. U. C. Nahta**  
**Member**

**Justice G. P. Mittal**  
**Member**

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

1. The information in the instant matter has been filed by Aditya Automobile Spares Private Limited and three others (**‘Informants’**) under Section 19(1) (a) of the Competition Act, 2002 (the **‘Act’**) against Kotak Mahindra Bank Ltd. (**‘OP’**) alleging contravention of the provisions of Section 4 of the Act.
2. As stated, the Informants belong to Aditya Group. Informant No. 1 is an original equipment manufacturer (OEM) of Bajaj, Hero Honda and TVS and also an authorised dealer for Kinetic, LML and Yamaha. Informant No. 2, an authorised stockist of Maruti Udyog Limited, is engaged in the sale and marketing of Maruti Suzuki’s spare parts in Tamil Nadu and Puducherry. The Informant No. 3 is engaged in the sale of spare parts of 4-wheeler and light



commercial vehicles and Informant No. 4 is engaged in the sale of lubricant oil.

3. As per the information, the Informants were customers of ING Vysya Bank Ltd. since 2008 and were availing various banking services/ facilities such as cash credit (CC), bank guarantee and term loan from it for their business operations and the said services/ facilities were successively renewed by ING Vysya Bank with enhancements as per the requirements of the Informants. It is stated that ING Vysya Bank Ltd. was taken over by the OP with all its assets and liabilities with effect from 01.04.2015. The OP introduced itself to the Informants as a dedicated and punctilious bank in providing the above said banking services/ facilities and believing the same, the Informants decided to avail the services of the OP. It is stated that the OP had provided various banking facilities/ services to the Informants and had sanctioned various credit limits with subsequent renewal and enhancement and that there was no dispute between the Informants and the OP till 2013.
4. It is stated that in 2013, the Informants approached the OP for reduction in interest rates and enhancement of various credit and bank guarantee limits. The Informants approached Mr. R. Senthil, the local relationship manager of the OP and Mr. N. Rajendran, the regional business head of the OP for the same. However, no commitment was given by him. Rather, without intimating the Informants renewal charges were debited from the accounts of the Informants. Hence, the Informants met Mr. Prabakar Rao, Zonal Head of the OP and Mr. N. Rajendran, regional business head of the OP for the same. However, again no commitments were given and the Informants were informed that their request could not be considered before March, 2014. It is averred that due to such actions of the OP, the business reputation of the Informants suffered and prospects for expansion of business became gloomy.
5. It is stated that being discontented with the aforesaid conduct of the OP, the Informants decided not to continue with the OP for the aforesaid banking



services and rather approached Syndicate Bank for the same. It was agreed that Syndicate Bank would forthwith take over all the facilities/ liabilities of the Informants from the OP and clear the same and relieve the OP of all liabilities, both present and contingent as the case may be, and stipulated that all the existing mortgage securities lying with the OP should be transferred forthwith in favour of Syndicate Bank by creating equitable mortgages to cover all the present and future limits to be sanctioned by it. It is submitted that Syndicate Bank had cleared all the liabilities of the Informants with the OP on 31.12.2013.

6. The Informants have alleged that despite Syndicate Bank clearing all the dues of the Informant, the OP unfairly delayed the handing over of the title deeds of the mortgaged properties. It is alleged that the Informants approached the OP several times for return of the title deeds but of no avail. It is averred that by not releasing the title deeds, the OP was exerting pressure on the Informants to come back to its fold which *per-se* is an act of unprofessional and unethical business practice and amounts to unfair trade practice. It is further alleged that the aforesaid conduct of the OP amounts to abuse of dominant position by virtue of its strength in compelling the Informants to stick with the OP and denying market access to the Informants.
7. It is alleged that the OP wanted to delay the return of the title deeds as long as possible thereby creating a miserable and embarrassing situation causing undue mental agony for the Informants and damaging their goodwill with important business associates/ major suppliers like Maruti Suzuki India Ltd. It is submitted that the title deeds were finally handed over to the Informants on 26.02.2014 after a delay of nearly 3 months. The Informants have alleged that the OP has abused its dominant position by prohibiting the Informants from switching over to another bank which may be offering better services.
8. Further, it is alleged that the OP has arbitrarily debited a sum of Rs. 32,41,750/- as 'take over charges' from the Informants' accounts and that too



after one month of clearing all its dues. It is averred that the aforesaid amount was debited without any prior notice to the Informants and no explanation whatsoever has been given for the same. It is averred that the levy of such charges is contrary to the Reserve Bank of India Regulations. It is stated that the Informants had instructed the OP to pre-close all their fixed deposit receipts given for bank guarantee and transfer the same to their accounts so as to clear all the illegal claims of the OP and to return the balance amounts to them by way of demand drafts. It is averred that the expansion plans of the Informants to start new branches at Salem and Cuddalore suffered due to the non-renewal of limits and delay in handing over the title deeds to Syndicate Bank by the OP. It is alleged that the aforesaid conduct of the OP resulted in business stagnation for the Informants. It is also alleged that the aforesaid illegal debit of renewal charges and penal charges is clear abuse of dominant position by the OP.

9. Aggrieved by the above said conduct of the OP, the Informants issued a legal notice to the OP on 09.07.2014 calling upon it to pay a sum of Rs.1,49,26,210/- with interest @ 18% per annum till date of payment and also to pay a sum of Rs. 15,000/- towards charges for the aforesaid legal notice. To the same, the OP sent an interim reply on 25.07.2014 barely denying the contentions made therein. In addition, the OP sent a belated reply on 04.08.2014 making false, baseless and vexatious allegations against the Informants without an iota of truth in them much less any proof to substantiate the allegations made in the aforesaid notice.
10. The Informants have alleged the OP of abusing its dominant position by way of imposing unfair and discriminatory interest rate in violation of the provisions of Section 4(2)(a)(ii) of the Act. Further, it is alleged that the OP denied market access by levying 'take over charges' as penalty for switching over to an other bank and thus abused its dominant position in violation of Section 4(2)(c) of the Act.



11. It is submitted that the Informants have also filed a consumer complaint (No. 1512 of 2015) before the National Consumer Disputes Redressal Commission (NCDRC) against the OP which is pending.
12. It is submitted that the Informants have suffered a loss of Rs. 1,66,63,669/- till date and the OP should pay the same and such other sum to the Informants as the Commission shall deem fit and proper taking into account the facts and circumstances of the present case. The Informants have also prayed the Commission to pass such other order(s) as deemed fit and proper under the facts and circumstance of the case.
13. The Commission has perused the information and material available on record.
14. The Commission observes that the Informants are primarily aggrieved by the conduct of the OP in denying enhancement of various credit limits, reduction in interest rates and delay in the handing over of the documents/ title deeds mortgaged with it back to the Informants for making a switch over to the Syndicate Bank for availing various banking services/ facilities. The Informants are also aggrieved with the conduct of the OP in debiting Rs. 32,41,750/- as penal interest in an arbitrary manner without informing them. The Informants have alleged contravention of the provisions of Section 4(2)(a)(ii) and 4(2)(c) of the Act in the matter.
15. The Commission observes that the allegations raised in the instant matter relates to various types of banking services/ facilities *viz.* cash credit, bank guarantee and term loan facility availed by the Informants from the OP. It is observed that the allegations in the instant case do not relate to any specific banking facilities availed by the Informants from the OP, but rather to a broader spectrum of banking services/ facilities offered by the OP. Thus, the relevant product market in this case cannot be narrowed down to a specific banking service/ facility such as term loan, bank guarantee, cash credit *etc.*



Rather, it should be the broader market of banking services. Further, it is pertinent to note that the impugned banking services are provided by the OP not only to the Informants but also to different corporate entities for their business operations. It may be noted that the banking services provided to corporate entities cannot be considered as a substitute with the banking services available for the retail/ general customers. Even though the nomenclature of the banking services/ facilities provided to the retail/ general customers and corporate entities are same, the characteristics of the banking services/ facilities differ between the two groups. It may be noted that banks on the basis of various verticals or indicators like demand requirements, credit worthiness, expected profitability of the proposed business venture *etc.* make a clear-cut distinction between corporate customers and general customers. Even if two entities are operating a similar class of account, say current account, the facilities offered to such accounts differ from customer to customer. Further, the accounts used for business purposes/ corporate entities also differ from the accounts used by normal customers. In view of the above, the relevant product market in the present case may be considered as the market for the “*provision of banking services for corporate entities*”.

16. With regard to the relevant geographic market, the Commission is of the view that the conditions of competition for availing banking services by the corporate entities throughout India are homogenous. A corporate entity can avail the banking services/ facilities from any bank operating anywhere in India. Further, core banking facility enables the bank customers to operate their accounts from any place in India without any hurdle. Therefore, the Commission is of the view that the relevant geographic market in this case may be taken as ‘*India*’.
17. Based on the above, the Commission defines the relevant market in this case as the market for the “*provision of banking services for corporate entities in India*”.



18. With regard to assessment of the position of dominance of the OP in the relevant market as defined above, the Commission observes that banking services for corporate entities is a sub-segment of the larger market of banking services. It is observed that the Informants have not provided any information relating to the allegation of dominance of the OP in the relevant market. Also, no information is available in the public domain with regard to the position of dominance of the OP in the market of banking services for corporate entities. However, Commission deems it appropriate to examine the information available in the public domain to assess the position of the OP in the larger market of banking services in India and to draw a conclusion regarding the position of dominance of OP in the relevant market defined above.

19. The Commission observes that in terms of net-worth value for the year 2015-16, the OP had a very small and insignificant market share of nearly 3% in banking services. Further, players like State Bank of India (with a market share of 15.21% in terms of net-worth value for 2015-16), Bank of Baroda (with a market share of 3.80% in terms of net-worth value for 2015-16), Punjab National Bank (with a market share of 3.74% in terms of net-worth value for 2015-16), Bank of India (with a market share of 2.77% in terms of net-worth value for 2015-16) and others are providing banking services on a larger scale in comparison to the OP. Also, in terms of total assets for the financial year 2015-16, the asset portfolio of the OP is much smaller as compared to State Bank of India (SBI) and other banks. Furthermore, in terms of net sales, net profit and market capitalisation also the OP is lagging behind other banks like SBI and Punjab National Bank. In view of the above, the OP does not appear to be dominant in the banking services market, which makes it highly unlikely for it to be in a dominant position in the market of provision of banking services to corporate entities in India. Accordingly, the Commission is of the view that the OP is not in a dominant position in the relevant market as defined in para 17 above. Since the OP is not in a dominant position in the relevant market, its conduct need not be examined in terms of the provisions of Section 4 of the Act.





20. Based on the above analysis, the Commission is of the view that no *prima facie* case of contravention of the provisions of Section 4 of the Act is made out against the OP in the present case and the matter is hence, ordered to be closed under the provisions of Section 26(2) of the Act.

21. The Secretary is directed to inform all concerned accordingly.

**Sd/-**  
**(Devender Kumar Sikri)**  
**Chairperson**

**Sd/-**  
**(S. L. Bunker)**  
**Member**

**Sd/-**  
**(Sudhir Mital)**  
**Member**

**Sd/-**  
**(Augustine Peter)**  
**Member**

**Sd/-**  
**(U. C. Nahta)**  
**Member**

**Sd/-**  
**(Justice G. P. Mittal)**  
**Member**

**New Delhi**

**Dated: 15.03.2017**