



COMPETITION COMMISSION OF INDIA

Case No. 23 of 2017

In Re:

Kush Kalra

2/16B, Jangpura-A,
New Delhi-110014.

Informant

And

Reserve Bank of India

6, Sansad Marg,
New Delhi-110001.

Opposite Party No. 1

State Bank of India

State Bank Bhawan,
11th Floor,
Madam Cama Road,
Mumbai-400021, Maharashtra.

Opposite Party No. 2

Syndicate Bank

Head Office,
Manipal-576104,
Karnataka.

Opposite Party No. 3

Punjab National Bank

7, PNB House,
Bhikaji Cama Place,
Delhi-110066.

Opposite Party No. 4

Bank of Maharashtra

Central Office,
Lokmangal,
1501, Shiva Ji Nagar,
Pune-411005,
Maharashtra.

Opposite Party No. 5



Canara Bank
Head Office,
112, J.C. Road,
Bengaluru – 560002, Karnataka.

Opposite Party No. 6

UCO Bank
HO-3/4, DD Block,
Sector-1, Salt Lake,
Kolkata-700064, West Bengal.

Opposite Party No. 7

Bank of India
Star House, C-5, G-Block,
Bandra Kurla Complex,
Bandra East,
Mumbai-400051, Maharashtra.

Opposite Party No. 8

Punjab & Sind Bank
4th Floor, 21, Rajendra Place,
New Delhi-110008.

Opposite Party No. 9

Union Bank of India
14th Floor,
239, Vidhan Bhavan Marg,
Nariman Point,
Mumbai-400021, Maharashtra.

Opposite Party No. 10

Vijaya Bank
41/2, M.G. Road,
Bengaluru-560001, Karnataka.

Opposite Party No. 11

Bank of Baroda
Suraj Plaza-1,
Sayajigunj,
Baroda-390005, Gujarat.

Opposite Party No. 12



Corporation Bank
P.B. No. 88, Mangaladevi Temple Road,
Pandeshwar,
Mangalore-575001, Karnataka.

Opposite Party No. 13

Dena Bank
C-10, G-Block,
Bandra Kurla Complex,
Bandra East,
Mumbai-400051, Maharashtra.

Opposite Party No. 14

Andhra Bank
Dr. Pattabhi Bhavan,
Saifabad, Hyderabad-500004, Telangana.

Opposite Party No. 15

Oriental Bank of Commerce
Plot No. 5, Ground Floor,
Sector-32, Institutional Area,
Gurgaon-122001, Haryana.

Opposite Party No. 16

IDBI Bank
IDBI Tower, WTC Complex,
Cuffe Parade, Colaba,
Mumbai-400005, Maharashtra.

Opposite Party No. 17

Allahabad Bank
2, Netaji Subhash Road,
Kolkata-700001, West Bengal.

Opposite Party No. 18

Bharatiya Mahila Bank
9th Floor, IFCI Tower,
61, Nehru Place,
New Delhi-110019.

Opposite Party No. 19

Indian Overseas Bank
P.B. NO. 3765,
Anna Salai, Chennai-600002, Tamil
Nadu.

Opposite Party No. 20



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. Mr. Kush Kalra (hereinafter referred to as the '**Informant**') has filed the instant information under Section 19(1)(a) of the Competition Act, 2002 (hereinafter referred to as the '**Act**') against Reserve Bank of India; State Bank of India; Syndicate Bank; Punjab National Bank; Bank of Maharashtra; Canara Bank; UCO Bank; Bank of India; Punjab & Sind Bank; Union Bank of India; Vijaya Bank; Bank of Baroda; Corporation Bank; Dena Bank; Andhra Bank; Oriental Bank of Commerce; IDBI Bank; Allahabad Bank; Bharatiya Mahila Bank; and Indian Overseas Bank (hereinafter all these banks together shall be referred to as the '**Opposite Parties**') alleging cartelisation amongst them to limit or control the safe deposit locker services offered by them.
2. Brief details of the facts and allegations contained in the information are as follows:



- 2.1. As a consumer, the Informant tried to avail a bank locker in India to keep his articles safe. During the process of applying for a locker, he came to know that banks charge rent for providing safety deposit locker services. The Informant was shocked to know that banks also get an agreement signed from the customers availing the safety locker services that banks will not be liable for any loss whatsoever sustained to the articles placed in the lockers, which means that the articles kept in banks lockers are as unsafe as in one's house.
- 2.2. Pursuant to the applications filed by the Informant under the Right to Information Act, 2005 (RTI Act) with the Opposite Parties, they have confirmed that, as per the agreement entered into with customers hiring/leasing lockers, banks have no liability for the loss or damage to the articles placed in their lockers. The Informant has averred that the banks in India till date have no mechanism to compensate the customers for the loss/damage to the articles kept in the lockers.
- 2.3. The Informant has alleged that banks in India have formed a monopoly over the system and they do not compensate for any loss of articles kept in their bank lockers indicating that they are engaged in a cartel.
- 2.4. It has also been alleged that the cartelisation is occurring because the banks are not following the principle of bailment under the provisions of the Indian Contract Act, 1872. The said legislation defines the concept of bailment as follows: *"A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to*



the direction of the person delivering them the goods is called the bailor. The person to whom they are delivered is called the bailee." The Informant has also pointed that the guidelines issued by the Reserve Bank of India (RBI), *vide* its Circular DBOD No. Leg. BC. 78/09.07.2002/2006-07 regarding extension of Safe Deposit Locker/ Safe Custody/Article Facility and Access to Safe Deposit Lockers/ Return of Safe Custody Articles by banks, stipulate that "3.5. Banks are advised to be guided also by the provisions of Sections 45 ZC to 45 ZF of the Banking Regulation Act, 1949 and the Banking Companies (Nomination) Rules, 1985 and the relevant provisions of Indian Contract Act and Indian Succession Act."The forms prescribed by the RBI under Sections 45 ZC(3) and 45 ZE(4) of the Banking Regulation Act, 1949 has the option to fill the description of articles kept in safety locker.

- 2.5. The Informant has contended that the purported agreement amongst the Opposite Parties making it mandatory for every person who wants to avail bank locker services to sign an agreement which declares that the bank shall not be liable for any loss or damage caused to the articles placed in the locker arising from any reason whatsoever, is anti-competitive and prohibited under Section 3 of the Act.
- 2.6. The Informant has admitted that there is no documentary evidence of existence of any such agreement amongst the Opposite Parties. However, it has been stated that it is appropriate and logical to inquire into cases of anti-competitive agreements on the basis of material, which establish that the impugned conduct cannot be explained but for some sort of anti-competitive agreement and action in concert amongst the Opposite Parties. The Informant has further alleged that the Opposite Parties have



formed an association so as to limit the improvement of services, which is directly affecting competition in the market and interests of consumers.

- 2.7. Hence, the Informant has sought probe/investigation under the Act as all the Opposite Parties have allegedly formed a cartel to limit and control the services of Safe Deposit Lockers. Such conduct is allegedly prohibited under Section 3 of the Act. It has been further alleged that by limiting and controlling safe deposit locker services, the Opposite Parties are trying to inhibit the competition with respect to Bank lockers in India.
3. The Commission considered the information in its ordinary meeting held on 26th June, 2017. The Commission has also given careful consideration to the information and material available on record.
4. The primary concern of the Informant relates to the Opposite Parties not undertaking any responsibility/ liability for any loss of articles/ valuables/ content kept in their safety lockers by customers availing safe deposit locker facility from the Opposite Party banks and a clause to this effect being included in the agreement entered into between respective bank providing the locker facility and the customer availing the same at the time of opening the locker. In support of his contention, the Informant has enclosed various replies/ responses obtained by him under the RTI Act to suggest that the Opposite Parties are not undertaking any responsibility for loss of valuables kept in their safety lockers. However, admittedly, there is no evidence, documentary or otherwise, to suggest any such anti-competitive agreement amongst the Opposite Parties. Thus, though the Informant has raised suspicion of cartel amongst the Opposite Parties since they allegedly follow the same practice of not undertaking liability for any loss of valuables kept by



customer availing safety locker facility from them, there is no evidence as such given by him in regard.

5. Accordingly, the relevant question for consideration before the Commission is whether the above allegation *per se* is sufficient enough to form a *prima facie* opinion as to the existence of any such agreement in contravention of Section 3 of the Act against the Opposite Parties. The Commission notes that contravention of Section 3(3) of the Act by competitors requires establishment of the following elements: (i) the competitors have entered into an agreement as defined under Section 2 (b) of the Act inclusively as any arrangement or understanding or action in concert, whether or not, such arrangement, understanding or action is formal or in writing; or whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings; and (ii) the object of such agreement is covered under Section 3(3) of the Act *i.e.*, (a) to directly or indirectly determine purchase or sale prices; (b) to limit or control the production, supply, markets, technical development, investment or provision of services; (c) to share the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way; or (d) to directly or indirectly result in bid rigging or collusive bidding.
6. While the above mentioned elements need not be established in great detail at the preliminary stage to order investigation under Section 26(1) of the Act, the material before the Commission should be at least such that *prima facie* establish a case of contravention of Section 3 of the Act.
7. In the instant case, there is no such material to suggest any understanding /consensus /arrangement amongst the Opposite Parties to have pursued any of the aforesaid prohibited activities. Suspicion of a cartel has been raised in the information as all the Opposite Parties allegedly do not take responsibility for any loss of valuables kept by customers availing safety deposit locker facility



from them. However, the RTI replies of some of the Opposite Parties suggest that they are not completely absolved for loss of valuables kept in their locker. For instance, the reply dated 7th October, 2015 of Bank of Baroda *inter alia* states that in case of loss suffered by the lessee due to theft or burglary *etc.* of safe custody locker, the liability of the bank will depend upon the facts and circumstances surrounding the burglary. Further, the reply dated 13th October, 2015 of Dena Bank states that the responsibility of the bank shall be governed by the terms and conditions laid down in the memorandum of hiring of locker and the guidelines issued by RBI from time to time. Reply dated 19th October, 2015 of Andhra Bank states that the relationship between the bank and its customer, in case of safe deposit locker, is that of 'lessor and lessee' and the particulars of the articles kept in safe deposit locker will not be disclosed by the customer to the bank and hence, the bank cannot take responsibility for compensating any loss as the extent of such loss cannot be assessed. It has been further stated that the bank, however, takes all necessary measures and precautions to safeguard the lockers provided to the customers. Similarly, the reply dated 30th October, 2015 of Corporation Bank states that its liability in case of theft/ loss of valuables kept in its safety lockers depends upon the parameters on which the bank takes insurance on the lockers and the same parameters will be adopted while settlement of claims in case of theft. Taking into consideration all these replies and in the absence of any material suggesting collusion amongst the Opposite Parties, it cannot be said that a uniform practice is followed by all the Opposite Parties to avoid responsibility/ liability for loss of valuables kept by customers availing their safety deposit locker facility.

8. In any case, the Commission notes that mere common practice by all the market players emanating from their independent decision making at most indicates an industry practice and not collusion amongst them. Such common practice cannot be a subject-matter of intervention by the Commission unless there is material that shows that *prima facie*, the impugned conduct



arises out of an agreement amongst competitors for pursuing any of the activities prohibited under Section 3(3) of the Act.

9. The Commission notes that the Informant has failed to furnish any material that could suggest that *prima facie* there is an agreement amongst the Opposite Parties, in contravention of the provisions of Section 3(1) read with Section 3(3) of the Act. No such material is otherwise also discernible from the records of the matter. Thus, no *prima facie* case of contravention of the provisions of the Act is made out against the Opposite Parties in the present case. Accordingly, the matter is ordered to be closed in terms of the provisions of Section 26(2) of the Act.
10. The Secretary is directed to forward a copy of this order to the Informant.

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
Date: 23/08/2017