



**COMPETITION COMMISSION OF INDIA**

**Case No. 43 of 2016**

**In Re:**

**Onicra Credit Rating Agency of India Limited**

**Informant**

**And**

**Indiabulls Housing Finance Limited**

**Opposite Party**

**CORAM**

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

**Mr. Augustine Peter  
Member**

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

**Appearances during the preliminary conference held on 17<sup>th</sup> August 2016:**

*For the Informant:*

Mr. Manoj Ohri, Sr. Advocate  
Mr. Amish Tandon, Advocate  
Mr. Ujjal Banerjee, Advocate  
Mr. Dev Panda, GM

*For the Opposite Party*

Mr. Karan S Chandhiok, Advocate  
Mr. Vikram Sobti, Advocate  
Mr. Ambanshu Sahni, Advocate  
Mr. Aroon Menon, Advocate



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

1. Onicra Credit Rating Agency of India Limited (“**Informant**”) has filed the present information under Section 19(1)(a) of the Competition Act, 2002 (“**Act**”) against Indiabulls Housing Finance Limited (“**Opposite Party**”), *inter-alia*, alleging contravention of the provisions of Section 3(1) of the Act.
2. As per the website of the Informant, it is a credit and performance rating agency in India. It provides ratings, risk assessment and analytical solutions to individuals, MSMEs and corporates.
3. As per the information, the Opposite Party is a private housing finance company in India, regulated by the National Housing Bank.
4. The primary concern of the Informant relates to imposition of prepayment penalty by the Opposite Party for pre-mature foreclosure of the mortgage loan. Brief details of the facts presented leading to the filing of the present information are as follows:
  - 4.1 The Informant had a bill discounting arrangement with HDFC Bank with a limit of INR 10,00,00,000/- (Indian Rupees Ten Crore). Pursuant to the assurance given by the Opposite Party regarding higher financial arrangement, the Informant foreclosed the loan facility with HDFC Bank and shifted to the services provided by the Opposite Party. HDFC Bank imposed no pre-payment penalty for such pre-mature foreclosure of the loan and migration to the services offered by the Opposite Party.



- 4.2 In connection with the loan from the Opposite Party, the Informant executed documents, including a loan agreement, on 6<sup>th</sup> January 2015 (hereinafter referred to as the '**Loan Agreement**'). Further, the promoter of the Informant mortgaged a residential property owned by him as a security for the loan.
- 4.3 One of the conditions of the Loan Agreement entered into between the Informant and the Opposite Party is that the Informant has to pay a penal pre-payment/ foreclosure charge at the rate of 5.7 percent in case of pre-mature closure of the loan facility. The Informant objected to such provision in the Loan Agreement. In response, the Opposite Party assured to reduce the pre-payment penalty rate to 2 percent. However, the Opposite Party took no efforts later to reduce the said charges despite repeated follow-up by the Informant.
- 4.4 In the meantime, the Informant asked the Opposite Party for an additional loan of INR 5,00,00,000/- (Indian Rupees Five Crore) on an urgent basis but the top-up request was refused by the Opposite Party. As a result, the Informant had to reach out to IIFL Holdings Limited, which agreed to provide higher loan facility to the Informant provided the Informant rendered adequate security.
- 4.5 The Informant, *vide* e-mails dated 13<sup>th</sup> May 2015, 14<sup>th</sup> May 2015 and 15<sup>th</sup> May 2015, asked the Opposite Party to foreclose the loan with it. Allegedly, after taking excessive time, purportedly to harass the Informant, the Opposite Party allowed foreclosure of the loan subject to the payment of INR 84,29,275/- (Indian Rupees Eighty Four Lakh Twenty Nine Thousand Two Hundred



and Seventy Five) as pre-payment penalty at the rate of 5.7 percent. The Informant made the payment under duress and coercion as it had to release the mortgaged residential property and provide the same as security to IIFL Holdings Limited.

4.6 Subsequently, the Informant followed up with the Opposite Party for refund of the pre-payment penalty it had paid but the Opposite Party did nothing in that regard. Instead, the Opposite Party charged an additional instalment of INR 13,43,797/- (Indian Rupees Thirteen Lakh Forty Three Thousand Seven Hundred and Ninety Seven) on 5<sup>th</sup> June 2015, which was later refunded after much follow-up.

5. The Informant has alleged the levy of pre-payment penalty by the Opposite Party to be illegal, unjustified and an unfair trade practice. The Informant has further alleged that (a) the pre-payment penalty at the rate of 5.7 percent; (b) refusal by the Opposite Party to sanction additional loan of INR 5,00,00,000/- (Indian Rupees Five Crore) even though the value of the property mortgaged by the Informant far exceeded the loan sanctioned and the additional loan sought; and (c) the levy of hefty foreclosure rate, amounts to imposition of unfair conditions by the Opposite Party. The Informant has also provided the details of pre-payment penalty rate charged by certain banks and other financial institutions to suggest that the rate charged by the Opposite Party was unreasonable.

6. The Informant has contended that the pre-payment penalty increases switching cost for borrowers and results in increased market power to the banks/ financial institutions, which in-turn restricts competitors and new entrants who might be offering better terms or interest rate. In view



of these, the Informant has contended that its Loan Agreement envisaging pre-payment penalty in case of switching to another lender is anti-competitive and attracts Section 3(1) of the Act and the said condition causes appreciable adverse effect on competition amongst lenders within India. Citing reference to the decision of the Supreme Court of United States of America in *Eastman Kodak Co. vs Image Tech.* SVCS 504 US. 451 (1992), the Informant has also alleged that imposition of pre-payment penalty amount to an aftermarket abuse by the Opposite Party.

7. The Commission considered the information in its Ordinary Meeting held on 14<sup>th</sup> June 2016 and decided to have a preliminary conference with the Parties on 17<sup>th</sup> August 2016. Accordingly, the Commission heard the parties on 17<sup>th</sup> August 2016. During the preliminary conference, the Informant reiterated the facts and allegations presented in the information. On the other hand, the Opposite Party *inter alia* submitted that HDFC is the most prominent player in the mortgage loan business in India and the Opposite Party does not enjoy dominant position. Placing reliance on the order dated 2<sup>nd</sup> December 2010 of the Commission in Case No. 5/2009 titled *Neeraj Malhotra vs Deutsche Post Bank Home Finance Limited & Ors.*, the Opposite Party further contended that imposition of pre-payment penalty does not amount to contravention of the provisions of the Act.
8. The Commission has carefully considered the Information and other material available on record. It has also heard the parties during the preliminary conference.



9. Based on the allegations levelled in the information, the Commission will examine the facts of the case under the provisions relating to abuse of dominant position (Section 4) as well as anti-competitive agreements (Section 3). For the purposes of examining the allegations of the Informant under the provisions of Section 4 of the Act, it is necessary to determine the relevant market at the first instance. Thereafter, it is required to assess whether the Opposite Party enjoys a position of strength required to operate independently of the market forces in the relevant market. Only when the Opposite Party enjoys such a position, it is imperative to examine whether the impugned conduct amounts to an abuse.
  
10. The gravamen of the allegations in the instant case relate to imposition of pre-payment penalty levied by the Opposite Party on the Informant for premature closure of the mortgage loan. The Informant has alluded that the pre-payment penalty clause in the mortgage Loan Agreement locks-in a borrower with the lender and its imposition amounts to an aftermarket abuse. However, the Informant has not taken any effort to define the relevant market whether primary or secondary or an aftermarket. The Commission notes that the arguments of the Informant regarding the purported aftermarket and the abuse therein are misplaced as the loan services of the nature impugned herein do not involve any aftermarket as alleged by the Informant. Availing additional loan or migration of a loan from one lender to another are independent services and availing additional loan or migration from one lender to another cannot be considered as an aftermarket. An aftermarket is a special kind of antitrust market consisting of unique replacement parts, post warranty service or other consumables specific to some primary product. The term, therefore, refers to markets for complementary goods and services such as maintenance, upgrades, and replacement parts that may be



needed after the consumer has purchased a durable good. Further, an independent secondary aftermarket would generally exist if consumers are not able to ascertain the life time cost of the primary product/ service at the time of its purchase, there is a high switching cost to shift to substitutes and the manufacturer/ service provider of the primary product/ service has the ability to substantially hike the price of the good/service offered in the secondary market (*i.e.* aftermarket) in spite of reputational concerns. The Informant has not shown the presence of any of above factors in the instant case and those are also not discernible from the facts presented in the information. By contrast, the terms and conditions of the loan including the rate of interest, term of repayment, rate of pre-payment penalty, *etc.* were made certain to the Informant at the time of availing the loan itself, which enables the Informant to ascertain the life time cost of the loan facility including the cost of migration of the loan to other lenders. In view of the above, the Commission notes that facts of the case do not involve any aftermarket.

11. The Commission notes that the loan service against property is the focal service in the instant case. In the property loan market, the Informant being a borrower is on the demand side and OP is on the supply side. The Commission observes that there exist various types of loans such as personal loan, property loan, home loan, auto loan, appliances loan, education loan *etc.* in the market. Each of these categories of loan can be distinguished based on intended use, rate of interest, terms of repayment *etc.* Thus, loan against property, which is the product/service under consideration in the instant case, is a distinct product/service. The Commission does not find it relevant to distinguish between the loan services offered by the banks and other financial institutions as all of them compete with each other and serve the same purpose. The fact that the Informant could switch its loan from a bank to the Opposite Party



further supports the substitutability/ similarity in the loan services offered by banks and other financial institutions. Thus, the Commission finds '*provision of loan against property*' as the relevant product market. As regards the relevant geographic market, the Commission notes that many lenders are present and compete, across India. Further, with the advent of technology and internet banking, the nature of loan services offered by these lenders appears to be increasingly uniform across the nation. The aforementioned facts suggest that the relevant geographic market in the instant case is the '*whole of India*'. Although the relevant geographic market could be narrowed to the region where the Informant is located *i.e.* NCR region, considering the presence of a number of lenders and uniformity in the nature of their services across India, a narrower geographic market is not likely to affect the analysis or outcome in the instant matter. Accordingly, the relevant market in the instant case is taken as '*provision of loan against property in India*'.

12. The Commission finds the relevant market to be competitive and fragmented with the presence of a large number of banks, non-banking financial institutions, housing finance companies and other financial institutions competing with each other. Neither in the information nor during the preliminary conference has any submission been made by the Informant to suggest that the Opposite Party enjoys market power. On the contrary, the information presents the rate of prepayment penalty charged by fifteen banks/ financial institutions, which itself is suggestive of the presence of various players in the relevant market. These include Indian Overseas Bank, Punjab National Bank, Corporation Bank, ICICI Bank, Canara Bank, State Bank of India and Indian Bank. Compared to the Opposite Party, these banks are relatively larger in size, reach and economic resources, which suggest that that there exists sufficient



rivalry in the relevant market and the Opposite Party does not possess the ability to operate independently of the competitive forces. Accordingly, no *prima facie* case of contravention of the provisions of Section 4 of the Act is made out against the Opposite Party.

13. Coming to the examination of the facts under Section 3 of the Act, the Commission notes that neither the Informant has made any submission/allegation nor do the facts presented suggest existence of any horizontal agreement or vertical restraints of the nature culpable under Section 3(3) or Section 3(4) of the Act. The Informant claims that the pre-payment penalty clause under the mortgage Loan Agreement is anti-competitive and amounts to contravention of Section 3(1) of the Act. It has been submitted that pre-payment penalty restricts migration of loans from one bank/ financial institution to another, which in-turn discourages competition and innovation. This according to the Informant causes appreciable adverse effect on competition. As noted earlier, the market for loan against property is competitive and fragmented with the presence of several players including prominent players like State Bank of India, Punjab National Bank, HDFC Bank and ICICI Bank. In such a market scenario, the Commission does not see any appreciable adverse effect on competition caused by the pre-payment penalty clause in the mortgage Loan Agreement. Consequently, no *prima facie* case of contravention of the provisions of Section 3 of the Act is made out against the Opposite Party.
14. In view of the foregoing, the Commission is of the view that there exists no *prima facie* case of contravention of the provisions of Sections 3 or 4 of the Act. Accordingly, the matter is ordered to be closed in terms of the provisions of Section 26(2) of the Act.



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

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

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

**New Delhi**  
**Date: 03/02/2017**

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