

COMPETITION COMMISSION OF INDIA**Case No. 12/2010**

22.03.2011

**Yashoda Hospital and Research Centre Ltd.
H-1, Kaushambi, East of Delhi
Near Anand Vihar ISBT
Ghaziabad – 201001
Uttar Pradesh**

Informant

**Indiabulls Financial Services Limited (IFSL)
F-60, Malhotra Building, IIInd Floor,
Connaught Place, New Delhi -110001**

Opposite Party**FINAL ORDER**

[Majority decision by Chairperson, Member (G),(P),(GG),(AG) and (T)]

The information in the present case has been filed by Yashoda Hospital and Research Centre Ltd (hereinafter referred to as "Informant") under Section 19 of the Competition Act, 2002 (hereinafter referred to as "the Act") against the Indiabulls Financial Services Limited (hereinafter referred to as 'IFSL') for its alleged anti-competitive activities.

2. The facts as stated in the information, in brief, are as under:

2.1 The IFSL is a company registered under the Companies Act, 1956 engaged in provision of financial services like consumer finance, housing finance, commercial loans, life insurance, asset management and advising services, etc. The informant is a company registered under Companies Act, 1956 engaged in the business of running Super Specialty Hospitals and Research Institutions in India.

2.2 A loan amount of Rs. 18, 30, 00,000/- (Rupees eighteen crores thirty lakhs only) against mortgage of property in Supertex Rameswar Complex on Plot No.1, Kaushambi, Ghaziabad was taken by the informant from the IFSL with an agreed rate of interest @ 16% per annum. The repayment schedule of the said loan was fixed on the basis of Equated Monthly Installment (EMI) through Post Dated Cheques (PDC)/Electronics Clearance System (ECS) in 120 months. Before expiry of the loan maturity date, the

informant requested the IFSL to foreclose the loan account citing the reason of high interest rate. The IFSL agreed to foreclose the loan account on the condition that informant will pay foreclosure charges at the rate of 5.52% on the outstanding principal and pre-payment penalty of Rs.24, 729/-. The request of the informant to waive the foreclosure charges and pre-payment penalty was turned down by IFSL.

3. The allegations of the informant are:

- 3.1 The IFSL is abusing its dominant position by demanding foreclosure charges at the rate of 5.52% on the outstanding principal of the loan amount and pre-penalty of Rs. 24, 729/- for the unexpired period of loan.
- 3.2 This act of IFSL is detrimental to competition amongst the banks in the mortgage loan market and also to the interest of the borrower as it prevents the borrower from switching over to other banks and other financial institutions who are offering lower rates of interest.
- 3.3 The IFSL is not allowing the borrower to opt out without payment of foreclosure charges and pre-payment penalty. The above activities/practice of IFSL violates provisions of Section 3(1), 3(2), 3(3) (a), 3(3) (b), 4(1) and, 4(2) (a) (i) of the Act.
4. The Commission in its meeting held on 05.04.2010 considered the information submitted by informant and formed an opinion under Section 26 (1) of the Act that, *prima facie*, there exists a case and referred the matter to the Director General (hereinafter referred to as "DG") for investigation.

5. Findings of the DG Report

The DG submitted his investigation report to the Commission on 30/07/2010 in accordance with the provisions of Section 26 (3) of the Act. The gist of the DG report is as follows:

- 5.1 The issues identified in the DG for the purpose of investigation were as to whether the pre-payment penalty and foreclosure charges levied by IFSL on informant on closure of the said loan account prior to the date of maturity are anti-competitive. If so, whether by levying foreclosure charges and pre-payment penalty IFSL has violated any of the provisions of Section 3 and/or Section 4 of the Act.
- 5.2 DG has duly considered the information and reply submitted by the IFSL. The information collected during investigation in a related Case No.05/2009, from the Reserve Bank of India (RBI), various judgments of the Supreme Court of India, judgment of different consumer fora and prevalent international practices have been also taken into consideration to arrive at the conclusion in the matter.

5.3 The DG has stated in the report that levying of pre-payment penalty and foreclosure charges is a widespread practice among banks and other financial institutions in India. These charges differ from institution to institution depending on their internal business policy. The DG has noted that during the course of investigation in case No. 05/2009, majority of the banks and financial institutions had given the following rationale for levying of pre-payment penalty:

- (i) For better Asset Liability Management (hereinafter referred to as "ALM").
- (ii) To protect future interest earnings and to maintain interest spread.
- (iii) Recovery of the initial cost of sanction.
- (iv) Processing and maintaining the loan account.
- (v) To enhance fee based income.

5.4 The DG has referred to guidelines issued by RBI in this respect wherein it is stated that banks and other housing finance companies are at liberty to impose pre-payment charges with the caveat that they should not be usurious. However the DG has concluded that since RBI never recommended the plea of the banks and financial institutions that the pre-payment penalty and foreclosure charges are being imposed on account of ALM factor has no substance.

5.5 The DG has also concluded that the foreclosure charges and pre-payment penalty by the banks and other financial institutions hinders free movement of borrowers from one bank/financial institution to another and act as a barrier to new entrants in the mortgage/housing /home loan market who are providing loans at a competitive interest rates and better services to the borrowers. Thus, levying of the foreclosure charges and pre payment penalty makes the exit expensive for the borrowers and resultantly acts as a deterrent in availing the lower competitive interest rates offered by other and financial institutions.

5.6 On examination of the internal circulars/operating guidelines of the banks/ financial institutions, DG has drawn the conclusion that the real motive behind levying pre-payment penalty or foreclosure charges are:

- (i) To deter or limit competition among banks/financial institutions.
- (ii) To create a barrier for the existing customers who wish to switch over.
- (iii) To enhance their fee based income.

5.7 It is submitted in the DG report that practice of levying of pre-payment penalty and foreclosure charges by the banks and financial institutions acts as an exit load which restricts or limits the borrower in availing the best market rate of interest which in turn impedes competition among the lending institutions, DG has further submitted that the existing borrowers have to incur additional cost in the form of pre-payment penalty and

foreclosure charges which act as a deterrence in early repayment or refinancing of loan and thus is anti competitive and violates provisions of the Section 3(3) (b) read with Section 19 (3) (a), (c) and (d) of the Act.

- 5.8 In order to investigate the allegations of the informant under Section 4 of the Act in the matter, the DG delineated the relevant market as the market of mortgage/ housing /home loans in India.
- 5.9 The DG has noted that in the relevant market the share of IFSL is around 4.88% which shows that IFSL is not in a dominant position in the market of mortgage/ housing /home loans. Hence, allegation of abuse of dominant position by IFSL under Section 4(1), 4(2) (a) (i) of the Act doesn't stand substantiated.
- 5.10 Lastly the DG has come to the conclusion that by imposing pre-payment penalty and foreclosure charges on informant, the IFSL has violated Section 3(3) (b) of the Act. However, since IFSL is not in a dominant position in the relevant market, it has not contravened the provisions of Section 4 of the Act.
6. The Commission considered the investigation report submitted by the DG on 09/11/2010 and decided to send a copy of the investigation report to both the parties. The Commission also afforded an opportunity of oral hearing to IFSL. Shri Manohar Singh Sahi, Advocate appeared on behalf of the IFSL on 21/12/2010 and requested the Commission for a copy of investigation report submitted by the DG in the Case No. 05/2009. The Commission allowed the request and directed the Secretary to supply a copy of the requisite report.

7. Reply of IFSL

The IFSL submitted its reply to the DG report on 18/01/2011. The gist of submissions made in the reply of IFSL is as under:

- 7.1 In the Case No 05/2009, the Commission has held that imposition penalty for pre-closure of home loans by banks and financial companies including Non Banking Financial Companies (NBFC) does not violate any provision of the Act. Therefore the findings of the DG report in the present matter should be dismissed.
- 7.2 DG investigation report does not have any evidence which even remotely suggests that the IFSL imposed pre-penalty charges in pursuance of any agreement with other banks or financial institutions. The DG has also not produced any evidence to establish that the IFSL was part of any agreement with other banks and financial institutions or with Indian Bank Association (IBA) relating to levy pre-payment charges.
- 7.3 The IFSL has stated that there is healthy competition in the mortgage loans market. The interest rate charged by the banks and other financial institutions are decided by

competitive forces of demand and supply in the market of mortgage loans implying, no individual bank or financial institutions have a say in deciding the rates of interest. Therefore, it is not possible on the part of an individual bank or financial institution to possess the economic strength to be considered as a dominant enterprise as per Section 4 of the Act. So, the question of abuse of dominance on the part of IFSL does not arise.

8. Decision

- 8.1 The Commission has carefully gone through the entire material submitted by the informant, the submissions made by the IFSL before the DG, the Report of the DG, the submissions filed by the IFSL before the Commission and all other relevant materials and evidence available on record.
- 8.2 It is noted that the IFSL is a company registered under the Companies Act, 1956 and is engaged in provision of financial services like, consumer finance, housing finance, commercial loans, life insurance, asset management and advising services, etc. The activities being performed by the IFSL is covered in the definition of 'enterprise' under section 2 (h) of the Act. In the present case, the service in question is the service of retail mortgage loan provided by IFSL to the informant.
- 8.3 From the facts of the case the issue which emerges for consideration before the Commission is whether by levying foreclosure charges and pre-payment penalty the IFSL has violated the provisions of Section 3 and/or Section 4 of the Act.
- 8.4 Although the DG has drawn the conclusion in his report that the practice of imposing prepayment penalty charges on borrower is anti competitive and is hit by the provisions of Section 3(3)(b) of the Act but from the plain reading of the provisions of Section 3(3)(b) it is amply clear that for application of this provision there must be two or more enterprises engaged in identical or similar trade of goods or provision of services whereas in the present matter the impugned practice of imposing foreclosure charges has been imputed to a single enterprise i.e. IFSL. Even the DG has nowhere said in his report that IFSL was carrying on such practice in concert with any other enterprise engaged in similar business of providing loans against mortgage of property. Furthermore there is absolutely nothing on record which can show that IFSL has been imposing pre-payment penalty and foreclosure charges in pursuance of some agreement entered into by it with any enterprise engaged in similar trade or business. For an agreement to exist there has to be an act in the nature of an arrangement, understanding or action in concert including existence of an identifiable practice or decision taken by an association of enterprises or persons. In the light of foregoing analysis the commission is of the view that as the provisions of Section 3(3) cannot be made applicable in the instant matter the conclusion drawn by the DG is erroneous and cannot be accepted.

8.5 Even when the alleged conduct of IFSL of imposing prepayment penalty or foreclosure charges is examined in the context of Section 4 of the Act it is noted that on taking into consideration 4.88% market share of IFSL the DG has concluded that IFSL is not dominant in the relevant market and therefore it cannot be said to have violated any provisions of Section 4 of the Act. In the absence of any evidence to the contrary there is no reason to disagree with the conclusion drawn by the DG.

9. Therefore after analyzing the entire material available on record the commission comes to the conclusion that no violation of either Section 3 or Section 4 of the Act is established against IFSL. In view of the above findings the matter relating to this information is disposed off accordingly and the proceedings are closed forthwith.

10. Secretary is directed to inform the parties accordingly.

Sd-
Member (G)

Sd-
Member (R)

Sd-
Member (P)

Sd-
Member (GG)

Sd-
Member (AG)

Sd-
Member (T)

Chairman