

**COMPETITION COMMISSION OF INDIA****[Case No. 28/2010]*****Dated : May 23<sup>rd</sup> , 2011*****1. M/s Metalrod Ltd.  
B-97, Wazirpur Industrial Area,  
Delhi - 110052*****Informant*****2. M/s. RCI Industries & Technology Ltd.  
B-97, Wazirpur Industrial Area,  
Delhi - 110052****M/s. Religare Finvest Ltd.  
IIIrd Floor, Right Wing,  
6 Devika Tower, Nehru Place,  
New Delhi - 110019*****Opposite Party*****FINAL ORDER**

The information in the present case has been filed by M/s Metalrod Ltd and its associated company M/s. RCI Industries & Technology Ltd (hereinafter collectively referred to as “informant”) under Section 19 of the Competition Act, 2002 (hereinafter referred to as “the Act”) against M/s. Religare Finvest Ltd (hereinafter referred to as ‘RFL’) for its alleged anti-competitive agreement and abuse of dominant position in the mortgage loan market in India.

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

2.1 It is stated in the information that the informant, M/s Metalrod Ltd and its associate M/s. RCI Industries & Technology Ltd, are companies incorporated under the Companies Act, 1956 and are, *inter-alia*, engaged in trading of ferrous and non-ferrous metals in India. The Opposite Party, RFL, is a Non-Banking Financial Company (hereinafter referred to as “NBFC”) in terms of the provisions of the Reserve Bank of India Act, 1934 and carries on the business, *inter-alia*, of granting loans and advances and provides other financial services to the public in India.

2.2 The informant in order to meet its business requirement applied for grant of term loan against its property bearing Plot No. B-97, Wazirpur Industrial Area, Delhi. A loan amount of Rs. 3,05,00,000/- (Rupees three crore and five lacs only) against mortgage of property was sanctioned in favor of the informant by the RFL on 20.01.2009 with an agreed floating rate of interest @ 18% per annum which was 1.5% above the Religare Floating Reference Rate

(hereinafter referred to as "RFRR") of 16.5% The repayment schedule of the said loan amount was fixed on the basis of Equated Monthly Installment (EMI) of Rs. 5,49,565/- (Rupees five lacs forty nine thousand five hundred sixty five only) in 120 months through Electronics Clearance System (ECS).

2.3 It has been alleged by the informant that RFL charged exorbitant processing fee of Rs. 6,75,396/- (Rupees six lakh seventy five thousand three hundred ninety six only) for sanction of the said loan amount and sum of Rs. 5,00,000/- (Rupees five lacs only) towards insurance premium charges for the property to be mortgaged.

2.4 Subsequent to disbursement of loan amount, as the rate of interest on all kinds of loan in the market started falling, the informant requested the RFL to reduce the rate of interest on its loan amount. The RFL, in turn, informed that since the informant had opted for RFRR and there is no change in the RFRR, which continues to be pegged at 16.5%, the rate of interest cannot be reduced in case of informant. However, it was communicated to the informant that the RFL is considering change in the RFRR and the decision in this regard would be communicated to the informant.

2.5 As per the averments, since the interest rates were falling in the market and RFL was not reducing its rate of interest, the informant requested RFL on 23.10.2009 to foreclose its loan account and also sent a reminder E-Mail in this regard on 24.10.2010. RFL agreed to foreclose the loan account subject to payment of foreclosure charges at the rate of 5.52% on the outstanding principal which came to the tune of Rs. 16,35,019.58/- (Rupees sixteen lacs thirty five thousand nineteen and fifty eight paise only). On 09.11.2009 the informant again requested RFL to waive off the foreclosure charges. The request of the informant to completely waive off the foreclosure charges was turned down by RFL, however, RFL reduced the foreclosure charges by a meager percentage from 5.52% to 5%. Feeling aggrieved by the conduct of RFL the informant got the loan facility transferred to Yes Bank Ltd. which refinanced the loan at only 12.5% interest rate at same point of time when the RFL was charging 18% interest.

2.6 The informant have alleged that the RFL enjoys a dominant position vis-à-vis its customers in the market of provision of financial services in India as it holds superior financial position and status and its customers have no bargaining power at the time of availing any financial service. It has also been submitted that customers are compelled to sign the standard form of agreements containing discriminatory and unfair and arbitrary terms & conditions which are loaded in favour of RFL and are detrimental to the customers.

- 2.7 The informant has also alleged that although, as per RBI notification dated 02.01.2009, the rate of interest, approach for gradation of risk and rationale for charging of different rate of interest to different categories of borrowers should be disclosed by the concerned financial institution to the borrower in the application form and also to communicate the borrower explicitly in the sanctioned later, but no such information has been made available by RFL to the informant.
- 2.8 It has been alleged that, it is unfair and discriminatory on the part of the RFL not to pass on the benefits of declining rate of interest in the market to the borrowers and at the same time RFL is not allowing the borrowers to opt out without payment of foreclosure charges. This act of RFL is detrimental to competition amongst the banks in the mortgage loan market and also to the interest of the borrowers as it prevents them from switching over to other banks and other financial institutions who are offering lower rates of interest.
3. The Commission in its meeting held on 22.07.2010 considered the information submitted by informant and formed an opinion that, *prima facie*, there exists a case and referred the matter to the Director General (hereinafter referred to as "DG") for investigation under Section 26 (1) of the Act.
4. The DG after receiving the direction from the Commission got the matter investigated and submitted his report dated 20.10.2010 to the Commission.

## 5. **Findings of the DG Report**

The DG has considered the allegations made in the information, the submissions made in the reply filed by RFL before him and the loan agreement entered into between the informant and RFL. The DG has also taken into account DG report filed in Case No.5/2009 in which the issue of prepayment charges levied by banks and housing finance companies was dealt with. The gist of the DG report is as below:-

- 5.1 With regard to the allegation of foreclosure charges levied by RFL on prepayment of loan the DG has noted 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 stated that during the course of investigation in Case No. 05/2009, majority of the banks and NBFCs had given the following rationale for levying of foreclosure charges/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.

- 5.2 After having referred to the guidelines issued by RBI in this respect the DG has observed that RBI never proposed or recommended levying of prepayment charges as one of the parameter or tool. The various risk associated with landing are factored in by the banks/ financial institutions at the time of working of the cost of funds and supposed losses suffered by the banks in a declining interest rate scenario are offset when the interest rate are moving upwards. The DG has, therefore, come to the conclusion that plea of the banks and financial institutions that the pre-payment penalty and foreclosure charges are being imposed on account of better management of asset and liability factor has no substance.
- 5.3 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.
- 5.4 On examination of the internal circulars, operating guidelines of the banks and other financial institutions, the DG has observed that the banks and other financial institutions are levying pre-payment penalty/foreclosure charges with intention to:
- (i) Deter or limit competition among banks/financial institutions.
  - (ii) Create a barrier for the existing customers who wish to switch over.
  - (iii) Enhance their fee based income.
- 5.5 The DG report concludes that levying of foreclosure charges and one year lock-in period by RFL is similar to the above mentioned motive of preventing switch over, make exit expensive etc. Thus by levying of these charges by RFL is restricting the borrowers from availing the option of making early repayment so as to clear of the loan prior to the loan tenure. The DG has come to the conclusion that such conduct of RFL is similar to what was observed for other banks and financial institutions investigated in Case No.5/2009 and is thus violative of section 3(3)(b) of the Act.
- 5.6 For the purpose of investigation of allegations of abuse of dominance by RFL, the DG has delineated the relevant market as the "market of retail mortgage/housing/home loans in India". On the basis of information furnished by RFL the DG has concluded that with market share of only 0.2% in year 2009-10 the RFL does not enjoy dominant position in the relevant market. In that scenario the allegation in respect of contravention of section 4 of the act is not established.

6. The Commission considered the investigation report submitted by DG on 10/11/2010 and 23/11/2010 and decided to send a copy of the investigation report to the informant and RFL to seek their comments / objections .

7. **REPLY OF RFL**

The RFL submitted its objection to DG report to the Commission on 23/02/2011. The brief of the submissions made by RFL is as under:

- 7.1 Since in Case No 05/2009 (like that of the present case, related to pre-payment penalty and foreclosure charges by the banks and other financial institutions) 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 section 3 and section 4 of the Act, the findings of the DG that levying of foreclosure charges by RFL is in violation of the provisions of the section 3(3)(b) of the Act has no relevance. The RFL has submitted that since the DG findings are in contrary to the view taken by the Commission on pre-payment penalty and foreclosure charges it is liable to be rejected.
- 7.2 It has been submitted that the terms and condition of contract between RFL and the informant were clearly stated in the application form and the informant was aware of and understood the terms and condition of the agreement. Therefore, the allegations raised by the informant in this regard do not require intervention of the Commission.
- 7.3 The DG report is bereft of evidence, logical reasoning, assessment of laws and application of fundamental principles of the Act.
- 7.4 The DG has failed to assess the facts of the case and the allegations are totally insufficient to invoke Section 3 of the Act.
- 7.5 In view of the legal requirement of 'agreement between enterprises, engaged in identical or similar trade' for application of Section 3 (3) of the Act, the underlying principle of the Act and the objective of the legislature in enacting the law, the DG has made an error by applying Section 3 (3) of the Act in the matter without testing the said requirements and honoring the intent of the legislature.
- 7.6 The RFL has submitted that the conclusion of the DG investigation is contrary to the aims and objectives of the Competition Act as it is based on micro aspect i.e. individual consumer complaint which falls within the ambit of Consumer Protection Act, 1986.
- 7.7 The RFL has also contended that the practice of levying pre-payment charges does not deter a consumer from shifting its loan from one institution to another.
- 7.8 Regarding the lock-in period of one year, RFL has submitted that it was part of the contract and as an exception it was relaxed for the informant.

8. The Commission in its meeting dated 18.01.2011 allowed an opportunity to both informant and RFL to appear for oral hearing. Both the parties appeared before the Commission on 03.03.2011 and made oral submissions. The parties were also allowed to file written submissions.
9. The informant has submitted its written submission to the Commission on 08.04.2011. The brief of submissions, other than the submissions made in the information, are as follows:
  - 9.1 Relying on the conclusion drawn by DG, the informant has submitted that the conduct of RFL in regard to levy of exorbitant foreclosure charges and imposition of condition of 'one year lock in period' for repayment of loan amount is in violation of Section 3 (3) (b) of the Act.
  - 9.2 The loan agreement signed between the informant and RFL was based on the condition that the informant should insure the property, by the insurance company which is part of RFL's parent group, against which loan was to be disbursed by RFL. This clause amounts to "tie in arrangement" and therefore, violates provision of Section 3 (4) of the Act.
  - 9.3 The conditions of loan agreement with regards to lock in period of twelve months and exorbitant foreclosure charges of 5.52% of the outstanding principal amount by RFL are nothing but an exclusive supply agreement or an exclusive distribution agreement which is anti-competitive as per explanation (b) & (c) to Section 3(4) of the Act.
10. In response to the queries posed by the Commission on 03/03/2012<sup>1</sup> regarding the manner in which the floating rate of interest is decided, when does the customer get to know the effect of the change in case of floating rate of interest and how many customers availed the facility of insurance for their loans, the RFL submitted following replies:-
  - 10.1 RFRR is decided not only on the basis of the change in Repo Rate (RR) by the RBI but also taking into account fund availability in the market, liquidity, lending rates of the banks, tenure of facility of its lenders and cost of acquisition. Further, the prime lending rates are fixed by the banks, NBFCs and other financial institution and RBI does not interfere in such decision.
  - 10.2 With regard to the query on timing of intimation to the customers regarding change in the rate of interest the RFL has submitted that borrowers who have availed RFRR option are immediately informed after decision regarding any change in RFRR is taken.
  - 10.3 In response to query of the Commission regarding the number of customers who availed the facility of insuring their loans, the RFL has stated that during June, 2009 to March,

2011, out of 2106 mortgage loan customers only 739 have availed the facility of insurance. It has also been submitted that taking insurance policy for loans is left on the discretion of the borrowers and the only requirement prescribed by RFL is that the mortgaged property should be insured.

10.4 It is further submitted that the allegation of forceful purchase of insurance policy for the loan extended from the associate company of RFL is incorrect because as per the agreement signed by RFL and the informant it is the discretion of the informant to choose the insurance provider.

### **Decision**

11. The Commission has carefully pursued the entire material submitted by the informant, the report of the DG, the written submissions filed by the RFL and the informant before the Commission and all other relevant material and evidence available on record.
12. It is noted that RFL is a Non-Banking Financial Company and engaged in the business of granting loans and advances and provides other financial services to the public. Therefore, the activities being performed by the RFL are covered within the definition of 'enterprise' provided under section 2 (h) of the Act.
13. In context of the facts of the case the issue which emerges for consideration before the Commission is whether by levying foreclosure charges, prescribing lock-in period of one year in the agreement and by not passing on the benefits of declining rate of interest in the market to the informant the RFL has violated the provisions of section 3 or section 4 of the Act.
14. Although the DG, in his report, has drawn the conclusion that imposition of foreclosure charges by RFL on informant as well as providing lock-in period clause in the agreement 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. RFL. Even the DG has nowhere said in his report that RFL 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 RFL 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 opinion that the provisions of section 3(3) cannot be made applicable in the instant matter. The conclusion drawn by the DG in this regard is erroneous and cannot be accepted.

15. With regard to applicability of section 4 of the Act in the matter the Commission is of the opinion that the alleged conduct of RFL does not fall within the ambit of section 4 as the market share of RFL is meager and there are large numbers of banks and NBFCs in the retail mortgage/housing/home loans market in India. The DG has observed that the share of RFL in the relevant market during 2008-09 and 2009-10 was 0.03% and 0.22% respectively which shows that the RFL is not in dominant position 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.
16. In view of aforegoing discussion, the Commission comes to the conclusion that no violation of provisions of either Section 3 or Section 4 of the Act is established against RFL. Therefore, the matter relating to this information is disposed of accordingly and the proceedings are closed forthwith.
17. Secretary is directed to inform the parties accordingly.

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| <b>Sd/-</b>       | <b>Sd/-</b>       | <b>Sd/-</b>        | <b>Sd/-</b>        | <b>Sd/-</b>       |
| <b>Member (G)</b> | <b>Member (P)</b> | <b>Member (GG)</b> | <b>Member (AG)</b> | <b>Member (T)</b> |

**Sd/-**

**Chairman**