



COMPETITION COMMISSION OF INDIA

Case No. 52 of 2020

In Re:

**Pramod Mahajan
10/37, Punjabi Bagh
New Delhi- 110026**

Informant

And

**ICICI Bank
ICICI HFC Tower
Andheri Kurla Road
Andheri East
Mumbai- 400059**

Opposite Party

CORAM

**Mr. Ashok Kumar Gupta
Chairperson**

**Ms. Sangeeta Verma
Member**

**Mr. Bhagwant Singh Bishnoi
Member**

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

1. The present Information has been filed by Shri Pramod Mahajan ('**Informant**') under Section 19(1)(a) of the Competition Act, 2002 ('**Act**') against ICICI Bank ('**Opposite Party**'/ '**OP**') alleging violation of the provisions of Sections 3 and 4 of the Act.
2. The Informant has stated that he alongwith his wife had availed a Home Equity Loan Facility from the OP for an amount of Rs. 30,00,000/- and mortgaged his Property at 10/37, Ground floor, West Punjabi Bagh, Delhi-110091 by way of equitable mortgage with the OP. As per the loan document handed over to him, the said loan facility availed by him was



for a period of 10 years *i.e.* 120 EMIs at a specified floating interest rate and monthly installment of Rs. 38,410/-.

3. It is stated that as per the loan document, the floating reference rate was 8.75% p.a. and adjustable interest rate was permitted upto the extent +/- 0.5 % p. a. However, during the loan tenure, the OP adjusted the interest rate on monthly basis and that too in excess of 0.5 % p.a. at several instances. It is alleged that the OP neither notified the Informant about these changes nor demanded any further or increased amount of EMI from him. In fact, the OP continued to deposit the EMI cheques as handed over by the Informant at the time when loan was availed.
4. The Informant has submitted that it was only when he had paid 114 installments out of the 120 and approached the OP for closure of Loan account on prepayment of remaining 6 installments that he came to know about the increase in tenure of loan from 10 to 20 years and increase in rate of interest to 16.25% p.a. against the agreed terms. It is averred that the OP never sent any communication to the Informant with regard to increase in interest or tenure of EMI. Also, no favourable response was received from the OP by the Informant regarding request to close the loan account after payment of balance installment as per the initial loan agreement.
5. Rather, it is averred, the OP justified its action of unilateral increase in EMI on the basis of Clause (D) (a) of Schedule B of the said loan agreement which reads as under:

“(b) Save and except as provided under (b)below, for administrative convenience the EMI amount is intended to be kept constant irrespective of variations in the Adjustable Interest Rate and therefore the number of EMI's is likely to vary. No intimation shall be given by ICICI Bank as to further or other or reduced number of EMIs required to be paid by the borrower upon each any change in Adjustable Interest Rate. Provided however that the Borrower shall be intimated of the information as to the applicable/applied



Adjustable Interest Rate during the preceding Financial Year on an annual basis within such time at the end of the financial Year as ICICI Bank may determine.”

6. The Informant has alleged that this unilateral one sided clause is used by all banks providing housing loans including the OP, without taking consent of the borrower, to increase the EMI when the interest is increased by them in order to increase their earnings. It is also alleged that all the housing finance banks have cartelized to use the same clause which leaves the borrower with no choice but to agree with these one sided terms and conditions. It is further alleged that the banks abuse their dominant position by having such similar one sided clauses in the loan agreement which, have an adverse effect on competition in market and are against the interest of consumers
7. In view of above, the Informant has *inter alia* prayed the Commission to:
(i) declare the provisions in home loan agreement of banks which provide for arbitrary increase in EMI without consent of borrower as discriminatory or prejudicial to consumer interest and against fair competition; (ii) direct that banks providing housing loans including the OP to discontinue and not to re-enter such agreement or discontinue such abuse of dominant position and (iii) impose penalty, up to ten percent of the average of the turnover for the last three preceding financial years, upon each of these banks including the OP which are parties to such agreements and abuse.
8. On perusal of the Information, it is noted that the Informant is primarily aggrieved by the increase in rate of interest charged by the OP on the home loan facility availed by him without any prior notice and is also aggrieved with the terms and conditions of the loan agreement, which are alleged to be one-sided and discriminatory in nature and purportedly included by all banks in their loan agreement including the OP. Accordingly, the Informant has alleged contravention of Section 4 as well as Section 3 of the Act.



9. Based on the allegations made by the Informant, the Commission decides to examine the facts of the case under the provisions of abuse of dominance (Section 4) as well as anticompetitive agreements (Section 3).
10. The Commission observes that the allegations of abuse of dominance made by the Informant, specifically relate to arbitrary increase in interest rate on home loan and increase in tenure of home loan by the OP based on one sided conditions in the loan agreement. For the purposes of ascertaining whether such conduct amounts to abuse under Section 4 of the Act, first the relevant market needs to be delineated followed by an assessment of whether the OP enjoys a position of strength required to operate independently of the market forces in the relevant market. If OP is found to be in such a position, then it is to be examined whether the impugned conduct of the OP can be considered an abuse of dominant position under the Act.
11. In this regard, for the purposes of determination of the relevant market reference is made to a similar case earlier decided by the Commission i.e. Case No. 11 of 2019 (*Mr. Kanhaiya Singhal vs Indiabulls Housing Finance Limited & Ors.*), wherein it was observed that:

“... home loan is distinct from other types of loans such as personal loan, property loan, vehicle loan, etc. Further, home loan can be distinguished from other types of loans based on the factors such as intended use, rate of interest charged, term of payment, etc. That banks and home finance companies extend home loans and compete with each other for providing home loan services; therefore, the Commission does not deem it necessary to distinguish between home loans offered by various lending entities. Based on the above, home loan can be considered as a distinct product or service.”
12. Considering that the grievance in the present case also relates to home loan services, the relevant product market in this case is also delineated as the ‘market for provision of home loans’. As regards relevant geographic



market, reference is again made to the observations in the case wherein it was noted that the home loan services within India are not differentiated based on the region; therefore, the relevant geographic market in the case of 'provision of home loans' was considered as "India". Accordingly, the relevant market in the present case is also delineated as '*market for provision of home loans in India*'.

13. In order to assess the dominance, the Commission noted that there are several public and private sector banks, Non-banking Finance Companies (NBFCs) and Housing Finance Companies (HFCs) operating in the home loan market in India providing various options to consumers for availing home loans such as SBI Home Loans, PNB Housing Finance, HDFC Housing Finance, LIC Housing Finance, L&T Housing Finance, Indiabulls Housing Finance, DHFL, ICICI Housing Finance, amongst others. Existence of large number of players in the home loan market shows that the OP cannot operate independently in the market and, hence cannot be considered to be in a position of dominance in the relevant market as identified above. Therefore, in absence of dominance, the issue of abuse of dominance does not arise. Hence, the Commission is of the opinion that no case of contravention of the provisions of Section 4 of the Act is made out against the OP.
14. Further, the Commission observes that the Informant has made allegations of cartelisation in terms of Section 3(3) of the Act against all banks providing home loans based on inclusion of a similar clause (as mentioned above) in their loan agreement. However, he has not identified any bank/ entity which might be involved in cartelisation with the OP or provided any material which shows that the inclusion of similar clause, if so, by a bank/ entity other than OP is an outcome of collusion. Thus, in absence of any information/ material showing collusion amongst any bank(s)/ entity(s) with the OP, the Commission is of the opinion that no case of contravention of the provisions of Section 3 of the Act is made out against the OP.



15. Based on above, the Commission is of the opinion that there is nothing on record to form even a *prima facie* view that the provisions of either Section 3 or 4 of the Act have been contravened by the OP.
16. In view of the foregoing, the Commission is of the opinion that in the instant matter, there exists no *prima facie* case and the matter is ordered to be closed forthwith in terms of the provisions of Section 26(2) of the Act.
17. It is, however, made clear that though the contravention of the provisions of the Act is not made out, yet the Informant shall be at liberty to avail such other remedies as available under the law and the observations made herein should not be construed as an expression of opinion in respect of such other remedies.
18. The Secretary is directed to communicate to the Informant, accordingly.



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BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi

Date: 27/01/2021