

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

Complaint Case No. 51 of 2007

1. "Awaz",
Punita Society, Ambawadi,
Ahmedabad – 381 006
(Also at:
16, Satyadeep Apartments,
9/300, Amritpuri-B,
East of Kailash,
New Delhi – 110 065)

2. "Jagrut Nagrik",
Regd. Office: Gendi Gate,
Baroda, Gujarat

Complainants

3. Pradeep Kumar Thakur
13, Satyadeep Apartments,
9/300, Amritpuri-B,
East of Kailash,
New Delhi – 110 065

Versus

1. Reserve Bank of India,
Central Office Building,
Shaheed Bhagat Singh Marg,
Mumbai – 400 001
2. Hong Kong and Shanghai
Banking Corporation Ltd. (HSBC),
52/60, Mahatma Gandhi Road,
Mumbai – 400 001

3. American Express Bank Ltd.,
A-A1-A2, Enkay Centre,
Udyog Vihar, Phase V,
Gurgaon – 122 016

Opposite Parties

4. Citibank, N.A.,
Citibank Card Centre,
766, Anna Salai,
Chennai – 600 002

5. Standard Chartered Bank,
Credit Card Division,
3rd Floor, Express Building,
9/10, Bahadur Shah Zafar Marg,
New Delhi – 110 002

Revision Petition No.1913 of 2004

(From the order dated 06. 05. 2004 of the State Commission,
Madhya Pradesh in Appeal No.1706/03)

DCM Financial Services Ltd.,
75, Amrit Nagar, NDSE Part I,
New Delhi-110 003

Petitioner

Versus

1. Mukesh Rajput,
Ganeshpura, District – Morena,
At Present – Vijay Nagar,
Gadaipura, Gwalior, M.P.
2. Chhabiram Singh Dhakad,
Prop. Vikram Financial Services,
Ashish Bhawan, Jayendraganj Laskar,
D-4, Vikram Villa, Chetakpuri,
Gwalior M.P.

Respondents

BEFORE:

HON'BLE MR. JUSTICE M. B. SHAH, PRESIDENT
HON'BLE MRS. RAJYALAKSHMI RAO, MEMBER
HON'BLE MR. ANUPAM DASGUPTA, MEMBER

C.C. No. 51 of 2007

Ms. Indu Malhotra, Senior Advocate as
Amicus Curiae with Mr. Abhinav Agnihotri,
Advocate
Mr. J. K. Mittal, Advocate as Amicus Curiae

For the Complainant:

Mr. Mayur R. Shah, Advocate

For Opp. Party No.1:
(RBI) Mr. Jaideep Gupta, Senior Advocate with
Mr. H. S. Parihar and Mr. K. S. Parihar,
Advocates

For Opp. Party No.2:
(HSBC) Mr. Sanjeev Puri, Senior Advocate
with Mr. Sanjeev Malhotra & Pranav
Vyas, Advocates

For Opp. Party No.3:
(American Express
Bank) NEMO

For Opp. Party No.4:
(Citibank) Mr. Altaf Ahmed, Senior Advocate
with Mr. R.S. Suri, Mr. Rahul Malhotra,
and Mr. Gurinder Suri, Advocates

For Opp. Party No.5:
(Standard Chartered
Bank) Mr. Sanjay Gupta, Advocate with
Mr. Ajay Monga and Mr. Ateev Kumar,
Advocates

R.P. No. 1913 of 2004

Ms. Indu Malhotra, Senior Advocate as
Amicus Curiae with Mr. Abhinav Agnihotri,
Advocate
Mr. J. K. Mittal, Advocate as Amicus Curiae

For the Petitioner: Mr. Sachin Chopra, Advocate and Mr. Hari
Kishan, Advocate

For the RBI: Mr. Jaideep Gupta, Sr. Advocate with
Mr. H. S. Parihar and Mr. K. S. Parihar,
Advocates

For Respondent
No.1: Mr. Prem Kumar Chugh, Advocate

Dated the 7th July 2008

M. B. SHAH, J., PRESIDENT

In the aforesaid complaint and revision petition, the questions, which require consideration are:

(1) Whether the Reserve Bank of India (hereinafter referred to as the RBI) is required to issue any circular or guidelines prohibiting the Banks / Non-Banking Financial Institutions / money lenders from charging interest above a specific rate?

At this stage itself, it needs to be noted that, on the one hand, the rapid expansion of banking facilities and of access to credit facilities and on the other hand, it has led, as a result of the aggressive marketing practices adopted, especially, by the banks, which induce the unsuspecting customers to take loans, in one form or the other, for purchasing consumer goods and durables even when they are not quite needed. This makes these consumers debtors forever. Such indebtedness results in constant tension to repay the loans and the “EMIs” – at times well beyond the borrowers’ / debtors’ repaying capacity. The ill effects of unaffordable EMIs are now being highlighted in the print and other media almost daily. In the case of motor vehicle loans, for example, the debtor / borrower is under constant tension that if he fails to pay one or two instalments, he would receive threats from the so-called “recovery agents” of the banks. The RBI has permitted the banks to appoint “recovery agents” on contract, without perhaps fully appreciating the implications that these “recovery agents” are usually musclemen, employing whom increases nothing but goondaism.

(2)(a) Whether banks can charge the credit card users interest at rates ranging from 36% to 49% per annum if there is any delay or default in payment within the time specified?

(b) Whether interest at the above-stated rates amounts to charging usurious rates of interest?

In our view, prima facie, charging of interest at rates ranging from 36% to 49% p.a. is exorbitant and amounts to exploitation of the borrowers / debtors and is usurious.

Oral Submissions

Whether the RBI can issue any directions?

(a) Ms. Indu Malhotra, learned senior counsel appearing on behalf of the complainants as amicus curiae, has submitted that charging the credit card holders interest at the rates of 36% to 49% p.a. for their default in payment is, on the face of it, usurious. She has referred to various circulars issued by the RBI wherein it is acknowledged that the RBI has been receiving many complaints with regard to banks charging excessive rates of interest and that by these circulars the RBI has directed the banks not to charge such high rates of interest. She has further submitted that considering the prime lending rates fixed by various banks, it is the duty of the RBI to issue a circular directing that interest should not be charged at rates far beyond a reasonable limit.

(b) As against this, Mr. Jaideep Gupta, learned senior counsel appearing on behalf of the RBI has submitted that the RBI has already directed the banks not to

charge excessive rates of interest. He has, however, clarified that at present the policy of the RBI is not to directly regulate the rates of interest charged by the banks and, therefore, the RBI has left this matter, subject to the aforesaid advisory, to the Boards of Directors of the banks. Hence, the RBI cannot be directed to issue any further instruction as it is a discretionary power conferred under the Banking Regulation Act, 1949.

(c) Mr. Altaf Ahmed, learned senior counsel appearing for the Citibank (Opposite Party No.4) has submitted that it is the function of the RBI to prescribe the maximum rate of interest by exercising its powers under section 35-A of the Banking Regulation Act, 1949. If there is failure on the part of the RBI to do so, banks cannot be held liable. He has further submitted that if the RBI is satisfied that in public interest or in the interest of banking policy or to prevent the affairs of the banking companies being conducted in a manner detrimental to the interest of the depositors it is necessary to do so, it can issue such directions. If that is not done, the Citibank, Opposite Party No.4 cannot be held responsible for charging allegedly excessive rate of interest. He has also submitted that the rate of interest on defaulted or partial payments of credit card dues is determined by taking into consideration various factors, including the risks of default, and, therefore, this Commission may not determine the issue, as to whether the interest at the rates of 36% to 49% p.a. is excessive. It is his contention that as the RBI has prescribed no standards, the market forces would generate the standards for the rates of interest and that is the stand of the RBI. He has further submitted that the RBI is the monetary and banking policy watchdog, and hence it has to check whether the interest charged by the banks is excessive or not. If any standard is prescribed, then there

would not be any difficulty in enforcing the same because the RBI, as a delegate of Parliament, can issue directions, which are like subordinate legislation.

Written Submissions

In addition to the oral submissions, the RBI as well as some banks have furnished their exhaustive written submissions, which are as under:

Written Submissions of the RBI

(1) Consumer Fora Have No Jurisdiction Over the RBI

- (a) Complainants are not consumers, as the RBI is not rendering any service.
- (b) The functions exercised by the RBI in relation to credit cards is only regulatory in nature.

(2) However, the Consumer Fora would be entitled to adjudicate upon the question whether the rate of interest charged by any specific bank amounts to unfair trade practice, as defined in the Consumer Protection Act, 1986, and, issue consequential directions based on such finding can be given.

(3)(a) The RBI has cautioned the banks not to charge usurious rates of interest but in accordance with its specific policy not to impose or recommend any ceiling on the rate of interest that can be charged in respect of credit card transactions, the RBI has not issued any directions fixing the maximum rate of interest.

(b) It is also not possible for the RBI to determine whether a particular rate of interest would be ipso facto excessive or usurious. That would depend upon the facts and circumstances of each transaction, the nature and profile of the customer to whom

the credit card has been issued as well as other factors which cannot be monitored by the RBI.

(c) Even under the Usurious Loans Act, 1918 the phrase 'excessive interest' has been defined as follows:

"Excessive means in excess of what which the Court deems to be reasonable having regard to the risk incurred as it appeared, or must be taken to have appeared, to the creditor on the date of the loan."

(d) The RBI has been receiving complaints regarding charging interest at excessive rates and has, in turn, been advising the banks through its various circulars not to do so. All these circulars have been placed on the record of this Commission. However, for the non-priority sector personal loans such as those against credit cards, the banks are free to determine the rate of interest, without reference to their "benchmark prime lending rates" (BPLR).

(4) The actions taken by the RBI in relation to the credit cards is only regulatory in nature and such actions cannot be made subject matter of proceedings before this Commission, as this Commission has no jurisdiction to declare the guidelines and instructions issued by the RBI under its powers conferred by the Banking Regulation Act, 1949, as arbitrary, irrational or amounting to unfair trade practice.

(5) Further, a policy decision has been taken by the RBI after liberalization of the economy not to regulate rates of interest charged by the banks.

Written Submissions of the HSBC

(1) The complainants have no locus standi to file this complaint. Complainants No.1 and 2 are not voluntary consumer organizations registered under the provisions of the Companies Act, 1956.

(2) By virtue of section 21A of the Banking Regulation Act, 1949, this complaint is not maintainable because the rates of interest charged by the banking companies cannot be subjected to scrutiny by the courts. [Re: State Bank of Hyderabad vs. Advath Sakru & Anr., AIR 1994 AP 170; Syndicate Bank's case; Central Bank of India vs. Ravindra & Others (2002) 1 SCC 367].

(3) The Circulars issued by the RBI have the sanctity of being statutory circulars for all banking and non-banking companies. But the question whether a particular rate of interest is excessive or not depends or is to be determined on the basis of evidence and materials placed before the court in that particular dispute.

(4) The RBI, as the regulator and supervisor of the financial system of the country, has the authority to deal with interest rates fixed by credit card issuers. In the event a credit card issuer fails to comply with the requirements of the RBI, the same may be brought to the notice of the RBI for taking appropriate action.

(5) But the deregulation by the regulator which holds the domain of the interest rate as a matter of economic policy clearly recognizes that the setting of interest rates is governed by an array of factors that have moving parts and an artificial ceiling on interest rates cannot be justified as charging of interest rate depends upon various factors.

(6) HSBC has further referred to Circular DBOD. Dir. BC. 5/13.03.00/2007-08 dated July 1, 2007, in particular paragraphs 2.4 and 2.4.1, and contended that the HSBC is complying with the aforesaid directions.

(7) HSBC has also submitted 'A General Note on Pricing of Credit Cards' to show how and to what extent interest is charged by the banks on credit cards. This is summarised below.

"General Note on Pricing of Credit Cards"

Credit cards generally carry interest rate, which is quoted both on a monthly basis and on an annualized basis (Annual Interest Rate – APR).

Who and what gets an Interest Rate Billed?

The interest due is calculated only on unpaid balances. A customer who pays in full is not charged any interest. A credit card customer who undertakes transactions on his credit in a month and pays the entire amount being the value of those transaction within the payment due date in the succeeding month, pays no interest and no late payment charges, and has between 18 and 52 days to make the payment.

Determining factors for the setting of an interest rate

Banks seek to obtain a reasonable and fair return for the credit provided by them to credit card customers. The costs that a bank takes into account in providing such credit card are, briefly, the following:

Bank's costs of funds

- Each credit card issuing bank's costs of funds is different from that of another bank and is dependent on a number of factors, including the capital and the number of

branches it has (and, therefore, correspondingly the number and size of the deposits that it can garner for its business of lending).

- A substantial portion of credit card customers do avail of the interest-free credit period to the maximum limit.
- Cost to the bank of non-performing loans (i.e., bad debts on account of non-payment of dues).
- Credit card issuing banks have credit card customers who default on their dues, and have to factor in the cost of write offs and losses incurred on account of delinquency.
- The bank's account acquisition costs and costs related to the maintenance, and the bank's costs of marketing promotions, offers and rewards.
- In a competitive market like India, acquisition costs are inevitable and substantial. Services include 24 hours – 7 days a week call centers, 'phone banking' customer care assistance, ATM cash withdrawal facility, free statement renditions, free e-mail and mobile alerts, and costs of a host of value added features for the benefit of customers.

Interest rates can be charged in two ways

- Variable: These are interest rates, which are assessed based on a "market" index. For such interest rates, banks adopt an index rate, and then include a constant factor to the index rate. E.g., in the United States of America, in general, the credit card interest rate is set at "Prime" index (or "LIBOR"), e.g., Prime + 6.99%. The index is market linked and disclosed in all major publications. The interest rate then moves each time the index move.

- Fixed: These interest rates are typically constant over time and the customer enjoys a “known” interest. Each time the rate needs to change, the customer is informed.”

(8) Thereafter, HSBC has submitted as to how the rate of interest is being charged on credit cards in various countries, which we would reproduce in the subsequent paragraphs.

Written Submissions of the American Express Bank

(1) Under the Consumer Protection Act, 1986, the Consumer Fora have no jurisdiction to determine the fixing of rates of interest on credit cards by the banks contrary to the directives of the RBI under the statutory provisions.

(2) The Consumer Protection Act, 1986 does not provide for interference by the National Commission in the functioning of the regulator (RBI).

(3) In any case, appropriate remedy for the consumers would be to approach the High Court under Art.226.

(4) As long as the banks are functioning within the four corners of the statutory guidelines under the Banking Regulation Act, 1949, there is no cause of action available to even assert a plea of ‘unfair trade practice’ or ‘any deficiency in service’.

(5) The credit card operations are in the nature of high risk unsecured lending and hence there is justification of a higher rate of interest.

(6) It is incorrect to state that by virtue of the Credit Bureau the credit card operations have now become safe. In fact the credit history of customers is not easily identifiable or assessable thus the risk from non-performing assets is higher. The market in India is still at a developing stage and there are slim chances of recovery against defaulters in view of the legal complexities involved. Emerging markets like

India also have a high cost of acquisition and high cost of servicing an account as compared to other mature markets.

The **Written Submissions of the Citibank, N. A.** and the **Standard Chartered Bank** are on the same lines as those of the HSBC.

Findings

I. Whether a complaint under the Consumer Protection Act, 1986, alleging deficiency in service as contemplated under the Banking Regulation Act, 1949, is maintainable against the RBI?

(1) At the outset it is made clear that a complaint under the Consumer Protection Act, 1986 to curb unfair trade practice(s) adopted by the banks is maintainable.

One of the objects and reasons of the Consumer Protection Act, 1986 is, “the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practice”.

Similarly, section 6(b) of this Act provides that functions of the Central Council shall be, inter alia, to promote and protect the rights of the consumers against unfair trade practice. Thereafter, sec.14(1)(f), inter alia, empowers the Consumer Fora to direct traders or service providers to discontinue an unfair or restrictive trade practice or not to repeat them.

Further, unfair trade practice is defined very widely under section 2(1)(r), which reads as under:

“2(1) (r) “**unfair trade practice**” means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the

provision of any service, **adopts any unfair method or unfair or deceptive practice** including any of the following practices, namely,

We are not concerned with the inclusive part of the definition.

Thereafter, section 2(1)(o) reads as under:

“2(1)(o) "service" means service of any description which is made available to potential users and includes, but not limited to, **the provision of facilities in connection with banking**, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;”

The aforesaid sub-section would establish beyond doubt that if the service provided by the bank in connection with banking facilities is deficient, then it would be ‘service’ as contemplated under the Act and any dispute pertaining to such service would be governed under the Consumer Protection Act, 1986.

Hence, if there is any unfair trade practice on the part of banks, the provisions of the Consumer Protection Act, 1986 would be applicable and the banks can be directed, as provided under sec.14(1)(f), to discontinue such unfair trade practice and not to repeat them. Hence, to contend that a complaint under Consumer Protection Act, 1986 against the banks is not maintainable, is of no substance.

(2) Further, section 2(1)(b) provides who can be a complainant. It reads as under:

“(2)(1)(b) "complainant" means—

- (i) a consumer; or
- (ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or **under any other law for the time being in force**; or
- (iii) the Central Government or any State Government; or
- (iv) **one or more consumers**, where **there are numerous consumers having the same interest**;
- (v) in case of death of a consumer, his legal heir or representative; who or which makes a complaint;”

Similarly, the word ‘complaint’ as defined under section 2(1)(c) reads as under:

“(c) "complaint" means any **allegation in writing made by a complainant that—**

- (i) an **unfair trade practice** or a restrictive trade **practice has been adopted by any trader or service provider**;
- (ii) the goods bought by him or agreed to be bought by him; suffer from one or more defects;
- (iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;

.....

.....

In this connection, the meaning of the word ‘deficiency’ as defined in section 2(1)(g) is also relevant:

“2(1)(g) "deficiency" means **any fault, imperfection, shortcoming** or inadequacy in the quality, nature and **manner of performance which is required to be maintained by or under any law for the time being** in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;”

(3) All these provisions read together would establish beyond doubt that the present complaint is maintainable, if unfair trade practice is adopted by the banks. Further, complainant no.1 is a registered public trust; complainant No.2 is a consumer organization; and complainant No.3 is a consumer. Therefore, the complaint filed by them for the alleged unfair trade practice of the banks is maintainable under the Consumer Protection Act, 1986. Not only this, the word ‘deficiency’ as defined would mean any shortcoming or inadequacy in the manner of performance which is required to be maintained by or under any law for the time being in force. Therefore, if the Banking Regulation Act, 1949 requires that the RBI shall discharge certain functions in the public interest and the RBI does not discharge such functions, it would amount to unfair trade practice. But that question is not required to be dealt with finally in this matter.

II. Whether interest at rates ranging from 36% to 49% p.a. amounts to usurious rate of interest?

(1) Article in the Financial Express.

At this stage, we would quote a lead editorial published on 14th May, 2008 in the Financial Express wherein it has been stated as under:

“Rates on credit cards are very high. Why?

Prime lending rates haven't gone up following RBI's squeeze through CRR, but sub-PLR rates are being hiked by banks and these include rates on credit cards. **Indian card users pay some of the highest rates in the world.** On average, card issuers charge around 36% interest annually, topped by other charges. So, as banks raise credit card rates further, the question always relevant becomes sharper: why do Indians pay close **to 40% annually when Americans pay around 13%**? American banks settled for this rate in the early years of this decade. No simple explanation suffices to rationalize the difference. **Cost of funds, lower in America, can't by itself explain it.** Again, while it is true that strict laws against "usury" used to operate in many American states and they capped interest rates, this legacy has been shaken off by the banking industry, which now charges interest rates the market can bear.

What about India's credit card industry? Does it have something peculiar that explains high interest rates? There are no detailed studies in the public domain on the profitability of credit card operations in India. **But available evidence suggests costs of operations are high because rates of default are high. Apparently, one in every ten cardholder in India defaults while one in 25 does in the US.** This does represent a significant cost and Indian credit card issuers have to factor this in while calculating rates. Issuers also point out that the presence of a nationwide credit reporting system that makes assessment of credit worthiness easier, more certain and less costly can improve their business. **However, all this still doesn't fully explain the high rates. In 2005, RBI's working group on credit card business had reported that globally**

credit cards were regulated not by central banks *per se*, but by consumer/fair trade regulators and laws. These institutions, unfortunately, are weak in India. The central bank did send out a guideline on credit card operations that resulted in higher levels of disclosure of transaction details to consumers. It also asked for rates to be rationalized. But the RBI cannot and should not – and, in this case, does not seem to want to – fix credit card interest rates. Only more competition, better information system and lower defaults can bring rates down. **That sounds like a long-term solution. Sadly, it is”.**

The comment in the aforesaid editorial is that globally credit cards are regulated not by central banks *per se*, but by consumer/fair trade regulators and laws. This institution is unfortunately weak in India.

In our view, the aforesaid comments are justified to some extent because the Central Consumer Protection Council constituted under section 6 of the Act has not taken notice of the banks charging excessive rate of interest from the credit card holders.

(2) Rate of interest charged from credit card holders in other countries

We would now refer to some examples of the credit card interest rates in various countries and the defence for charging interest at rates of 32% to 42%, as stated by the HSBC in its written submissions. These are as under:

“Examples of rate scenario

The **United States of America** and the **United Kingdom**, both of which are considered **mature markets**.

Mostly, credit card interest in the United States of America / United Kingdom, is “variable”. Only a very small segment of the credit cards in these markets today carry a “fixed” rate. The typical range currently of the variable rates in the United States of America is between Prime + 4.99% to Prime + 12.99% (annual) and with a current prime rate of 5%, the **interest rate ranges from 9.99% to 17.99%.**

The reasons that credit card issuers in the United States of America (or in the United Kingdom) can charge such interest rates are as follows:

- (a) The United States of America and the United Kingdom, have a 50-year history of development and building of the credit cards business. These are, therefore, mature markets. Customers are willing to pay ‘variable’ rates, which can move several times in each year.
- (b) With established credit bureaus in these countries, banks are in a position to more effectively deal with the credit card risks and the costs associated with customers, and these risks and costs are therefore a relatively small component, in these countries, of the total costs for credit cards incurred by issuers as opposed to the situation that prevails for issuers in comparatively less mature markets for credit cards.
- (c) In mature markets, credit card issuers are in a better position to assess, from a customer’s prior behaviour patterns, his ability as well

as willingness to pay and hence accordingly incorporate the relatively lower cost element for non-performance risk.

- (d) Given a developed securitization of assets market in the United States of America and effective balance-sheet management, banks issuing credit cards are also able to achieve a lower funding cost, which reflects in the form of the interest rates for customers.
- (e) It may also be noted that when customers default in mature markets, or miss payments, the interest rate on defaulted payments can be as high as Prime + 24.99%.

Hong Kong SAR, which is also considered a **mature market**.

The Hong Kong SAR credit card market today operates on a “fixed” rate basis. Typical rates currently vary from 24% to 32% to 36% to 40%.

Australia, which is a **mature market**

The Australian credit card market today operates on a “fixed” rate basis. Typical rates currently vary from 18% to 24% (Annualised Percentage Rate -APR).

The Philippines, Indonesia, Mexico, all of which are **emerging markets**

The credit card market today operates on a “fixed” rate basis. Typical rates currently vary from 36% to 50% (APR).

India, which is an **emerging market**

In India, the credit card market operates on a “fixed” rate basis. Typically, rates currently vary from 35% to 42% annualized (APR).

India faces most of the same challenges as mentioned in the above emerging market scenario examples of the Philippines, Indonesia, and Mexico.

In this background, the Respondent No.2 in India has adopted a dynamic interest rate programme whereby its credit card customers are charged interest by it, in line with the risk profile, the repayment record, and vintage of the customer.

For the first 12 months, customers are charged a fixed rate of interest. Subsequent thereto, the customer interest rate can either increase or reduce depending on the risk the Respondent No.2 has experienced, and how long the customer has been a credit card customer of the Respondent No.2.

Accordingly, a customer may initially (illustratively) pay a rate of 5% on balances if he opts for the minimum amount due payment or roll-overs otherwise, and in the event of defaults, the rate of interest may increase to 3.2% p.m. (38.4% p.a.) over a period of time, and in the event of no defaults or subsequent regularization of defaults, the rate of interest may reduce.

It would therefore be erroneous to assume that at all times, and all the time, the Respondent No.2 charges, or can afford to charge, its customers a set rate of interest on credit card dues. Further, interest on credit card

dues, and late payment charges, are levied only after a customer fails to pay the dues, or opts to pay only a certain amount of his dues, within the stipulated, interest free credit, period. Again based on the customer's usage pattern, history of defaults (or otherwise) and the period of time for which he has been a credit card customer, the rate of interest applicable would vary. Thus a compliant customer stands on a far better footing than does a defaulter and also has the option, in any event, of availing of the interest free period by paying the entire amount due within the stipulated time frame.

It would be further erroneous to assume that the rate of interest levied by the Respondent No.2 is "profit" in the hands of the Respondent No.2. at the expense of credit card customers. As illustrated above, the rate of interest is dependent upon several factors, including the cost of funds to the credit card issuer, and the risks to the credit card issuer and the costs associated with the business of credit cards and the stage at which a particular market is. The element of profit in the interest rate at present, on average, ranges between 2% to 3%, which, it is submitted, is by no stretch of imagination either usurious, excessive or constitutes an unfair trade practice.

The Respondent No.2 further submits that as a matter of fact, on an average, merely 30-35% of its credit card customers pay into on dues.

A brief illustrative snap-shot of the key components of the interest rate in relation to the credit card business, is provided below:

Interest rate payable (for example)	37%
Less: cost of the card issuer associated with the interest free period	11%
Less: Cost of funds for the issuer	9-10%
Less: Credit costs, including bad debt provisioning for the issuer	7%
Less: Issuer's expenses	7%
Profit before tax	2-3%

An indicative synopsis of the elements of the supporting infrastructure and associated costs that the Respondent No.2 as a prudential banking company bears with regard to its credit cards business, is as follows:

- (a) Customer call centers to address prospect and customer queries, receive, on an average 5 lakh calls per month in relation to credit cards.
- (b) On an average, the Respondent No.2 receives and deals with 40,000 e-mails and 60,000 letters per month in relation to credit cards.
- (c) The Respondent No.2 requires approximately 7500 in terms of head count with regard to credit card customer acquisition, customer support and maintenance and servicing, and requires the proportionate infrastructure in terms of office space, amenities, infrastructure and equipment.
- (d) Costs associated with approximately 13 – 14% of credit card dues which are defaulted upon an average.”

(3) Justification by HSBC cannot be accepted

The foregoing detailed written submissions of the HSBC seek to make out a case (on behalf of all private sector banks involved here, as it were) that given the credit information asymmetry in India and the resultant comparatively higher costs of

ascertaining the creditworthiness of individuals availing of the facility of credit cards as well as other costs of operation, the rates of interest charged by such banks on defaulted / partial payment of credit card dues are fully justified.

The HSBC has also hinted at the application of lower rates of interest to compliant credit card users. It is, however, of interest to note that there is not even a whisper of any specific lower rates of interest charged from such compliant credit card users. Secondly, there is no mechanism available in the public domain of enforcing disclosure by any bank as to what its best-case scenario of the credit card interest rates is. Had there been an indication of such rates as well as of the broad outlines of any mechanism set up by a bank like the HSBC for determining such “good behaviour” and had these details been available in the public domain, some evaluation of the tortuously lengthy justifications given by the HSBC for the excessive rates of interest charged by the banks in most cases may have been feasible. In short, even from these detailed contentions, purporting to be discerning, global and fair, in the face of comparative “immaturity” of the Indian credit card market, there is no way of assuring ourselves (or, any independent observer) as to whether the debtor/ borrower is, in the ultimate analysis, left at the mercy of the bank / money lenders. The important question, therefore, is: “whether the consumer - customer (credit card borrower / debtor) requires any protection?”

(4) Further, till the credit card market becomes competitive and mature, banks cannot be permitted to exploit the situation. If this contention is accepted, then no law for protection against unfair trade practice is required.

It is to be stated in this context that a “free market economy” is not an “unregulated” economy – in fact, the “freer” the economy, the stronger is the institutional “regulatory” framework and prompter and more effective the enforcement of the independently administered regulatory practices by the regulator(s). “De-regulation” in the context of a so-called “emerging market economy” like India essentially means withdrawal of the ‘State’ and its “instrumentalities” from directly prescribing the market regulations and also their enforcement by the same “State” and its “instrumentalities”. If the credit card market in India is not “mature” it is so because this market has so far been mostly created, driven and operated by the banks and for the banks – with unsolicited and alluring offers of credit card facilities at the marketing front-end and undisclosed, fine-printed sets of one-sided conditions of credit at the back-end, couched in jargon and phraseology which even erudite scholars of the English language, law and finance would find rather obtuse and opaque.

5. Whether Consumer debtors should be left at the mercy of the bank indulging in money lending business.

From the aforesaid contentions, the question to be considered by this Commission is whether the debtor/borrower should be left at the mercy of the money lender/Bank? Or, Whether he requires any protection?

Firstly, as noted above, even in any free economy/deregulated economy exploitation of the borrower/debtor is prohibited and is considered to be unfair trade

practice. Free economy would not mean licence to exploit the borrowers / debtors by taking advantage of their basic needs for their livelihood. This cannot be permitted in any civilized society – maybe a de-regulated free market economy. Even in a de-regulated free market economy, such as America, the maximum rate of interest charged on credit cards is 13% p.a. Is there any justification to exploit the situation in India?

Secondly, the Benchmark Prime Lending Rate (BPLR) declared by various banks even in after de-regulation in India, varies from 10% p.a. to 15.50% p.a. In that set of circumstances, to contend that banks can charge interest at the rate of 36% to 49% cannot be justified.

Thirdly, is there any justification in treating moneylenders differently from the banks or non-banking financial institutions, which are also doing the business of money lending?

Prima facie, there cannot be much distinction between money lending business carried out by the banks or the non-banking financial institutions or the moneylenders. Undisputedly, in this country, various money lending Acts are in existence and moneylenders are prohibited from charging interest beyond a particular limit. Further, the learned Counsel for the parties were not in a position to point out that they are permitted by any money lending Act to charge interest beyond 20% p.a.

Fourthly, the Consumer Protection Act, 1986, inter alia, provides that the Consumer Fora would have jurisdiction to direct a service provider or trader not to indulge in unfair trade practice. The phrase, 'any unfair trade practice' as used in section 2(1)(r) is very wide to include such trade practices adopted by the banks.

(6) Unfair trade practice as considered in the U.K.

(a) To some extent, 'unfair trade practice' has been codified in the U.K. This has been dealt with in Halsbury's Laws of England, Vol.9(1), page 547, para. 793, 4th Edition (Reissue), which reads as under:

"793. Unfair terms; in general: For the purposes of the Unfair Terms in Consumer Contracts Regulations 1994, and subject as follows, 'unfair term' means any term which contrary to the requirement of good faith causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer. An assessment of the unfair nature of a term must be made taking into account the nature of the goods or **services for which** the contract was concluded and referring, as at the time of the conclusion of the contract, to all circumstances attending the conclusion of the contract and to all the other terms of the contract or of another contract on which it is dependent.

In determining whether a term satisfies the requirement of good faith, regard must be had in particular to the following matters:

- (1) the **strength of the bargaining positions of the parties;**
- (2) whether the consumer **had an inducement to agree to the term;**
- (3) whether the goods or services were sold or supplied to the special order of the consumer; and
- (4) the extent to which the seller or supplier has dealt fairly and equitably with the consumer.

The 1994 regulations contain an indicative list of unfair terms. In so far, however, as it is in plain, intelligible language, no assessment is to be made of the fairness of any term which defines the main subject matter of the contract or

concerns the adequacy of the price or remuneration, as against the goods or services sold or supplied.”

Thereafter, para. 794 of the said Volume deals with ‘Indicative and illustrative list of terms which may be regarded as unfair’ are given. One of the unfair terms, as given in sub-para. (5), is: **‘requiring any consumer who fails to fulfill his obligation to pay a disproportionately high sum in compensation’**.

(b) It is to be stated that even in the free market, mature economy of the U.K., the Director General of Fair Trading considers every year what would be considered to be unfair trade practice and prepares a list for disseminating in such form and such manner, as he considers appropriate. Unfortunately, in our country, the regulator who is empowered under section 35-A of the Banking Regulation Act has left it to the absolute discretion of the banks.

7. Role of the RBI

For this purpose, it is pertinent to refer to section 35-A of the Banking Regulation Act, 1949 which provides as under:

“35-A. Power of Reserve Bank to give directions.—(1) Where the Reserve Bank is satisfied that –

- (a) in the **public interest**; or
- (aa) in the interest of banking policy; or
- (b) to prevent the affairs of any banking company being conducted in a manner **detrimental** to the **interests of the depositors** or in a manner prejudicial to the interests of the banking company; or

(c) to secure the proper management of any banking company generally,

it is **necessary to issue directions** to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.

(2) The Reserve Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or canceling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect.”

The aforesaid provision has been interpreted by the Apex Court and the learned Counsel for the parties have relied upon the decision of the Apex Court in the case of Central Bank of India Vs. Ravindra & Ors. (2002) 1 SCC 367. For the purpose of deciding the question involved, we would refer to a few notes of caution sounded by the Apex Court in paragraphs 50 and 51, which are as under:

“**50.** Though we have answered the question of law before us, but we cannot leave the matter at that alone without sounding notes of caution, **lest our view of the law should be misconstrued and misapplied.** Before we do so, it would be appropriate to refer to the decision of this Court in *Corporation Bank v. D.S. Gowda* in some detail.

51. The Banking Regulation Act, 1949 empowers the Reserve Bank, on it being satisfied that it is necessary or expedient in the public interest or in the interest of depositors or banking policy so to do, to determine the policy in relation to

advances to be followed by banking companies generally or by any banking company in particular and when the policy has been so determined it has a binding effect. In particular, the **Reserve Bank of India may give directions as to the rate of interest** and other **terms and conditions on which advances** or other **financial accommodation may be made**. Such directions are also binding on every banking company. Section 35-A also empowers the Reserve Bank of India in the public interest or in the interest of banking policy or in the interests of depositors (and so on) to issue directions generally or in particular, which shall be binding. With effect from 15-2-1984. Section 21-A has been inserted in the Act, which takes away power of the court to reopen a transaction between a banking company and its debtor on the ground that the rate of interest charged is excessive. The provision has been given an overriding effect over the Usury Loans Act, 1918 and any other provincial law in force relating to indebtedness.”

And, thereafter, in para. 55, it is held as under:

55. During the course of hearing it was brought to our notice that in **view of several usury laws and debt relief laws** in force in several States private money-lending has almost come to an end and **needy borrowers by and large depend on banking institutions for financial facilities. Several unhealthy practices having slowly penetrated into prevalence were pointed out. Banking is an organised institution** and most **of the banks press into service long-running documents wherein the borrowers** fill in the blanks, at times without **caring to read what has been** provided therein, and bind themselves by the stipulations articulated by the best of legal brains. **Borrowers**

other than those belonging to the corporate sector, **find themselves having unwittingly fallen into a trap and rendered themselves liable and obliged to pay interest the quantum whereof may at the end prove to be ruinous.** At times the interest charged and capitalised is manifold than the amount actually advanced. Rule of damdupat does not apply. **Penal interest, service charges and other overheads are debited in the account of the** borrower and capitalised of which debits the borrower may not even be aware. If the practice of charging interest on quarterly rests is upheld and given a judicial recognition, **unscrupulous banks may resort to charging interest even on monthly rests** and capitalising the same. Statements of accounts supplied by banks to borrowers many a time do not contain particulars or details of debit entries and when written in hand are worse than medical prescriptions putting to test the eyes and wits of the borrowers. **Instances of unscrupulous, unfair and unhealthy dealings can be multiplied though they cannot** be generalised. Suffice it to observe **that such issues shall have to be left open** to be adjudicated **upon in appropriate cases as and when actually arising for decision and** we cannot venture into laying down law on such issues as do not arise for determination before us.

In the following sub-paragraphs of para. 55, the Court has further observed:

(5) The power conferred by sections 21 and 35-A of the Banking Regulation Act, 1949 **is coupled with duty to act.** The Reserve Bank of India is the prime banking institution of the country entrusted with a supervisory role over banking and conferred with the authority of issuing binding directions, having statutory

force, in the interest of the public in general and preventing banking affairs from deterioration and prejudice as also to secure the proper management of any banking company generally. **The Reserve Bank of India is one of the watchdogs of finance and economy of the nation.** It is, **and it ought to be, aware of all relevant factors, including credit conditions as prevailing, which would invite its policy decisions.** RBI has been issuing directions/circulars from time to time which, inter alia, deal with the rate of interest which can be charged and the periods at the end of which rests can be struck down, interest calculated thereon and charged and capitalised. It should continue to issue such directives. Its circulars shall bind those who fall within the net of such directives. For such transaction which are not squarely governed by such circulars, the RBI directives may be treated as standards for the purpose of deciding whether the interest charged is excessive, usurious or opposed to public policy.

(7) Any interest charged and/or capitalised in violation of RBI directives, as to rate of interest, or as to periods at which rests can be arrived at, shall be disallowed and/or excluded from capital sum and be treated only as interest and dealt with accordingly.

(8) Award of interest *pendente lite* and post-decree is discretionary with the court as it is essentially governed by section 34 CPC dehors the contract between the parties. In a given case if the court finds that in the principal sum adjudged on the date of the suit the component of interest **is disproportionate with the component of the principal sum actually** advanced the court **may exercise its**

discretion in awarding interest pendente **lite** and **post-decree interest at a lower rate** or may **even decline awarding such interest**. The discretion shall be exercised fairly, judiciously and for reasons and not in an arbitrary or fanciful manner.”

(8) From the aforesaid judgment it is apparent that:

(a) the Apex Court has noticed instances of unscrupulous, unfair and unhealthy dealings without generalising the same. The Court has specifically observed that instances of unscrupulous, unfair and unhealthy dealings can be multiplied. But such issues are left open to be adjudicated upon in appropriate cases as and when they actually arise for decision. The present case is an instance of charging usurious rate of interest, which is unfair trade practice.

(b) The Banking Regulation Act, 1949 empowers the Reserve Bank to lay down the policy in the public interest and it has binding effect on the banks. The Reserve Bank of India is entitled to give directions as to rate of interest to be charged and other terms and conditions on which advances or other financial accommodation may be made.

(c) The power conferred by sections 21 and 35-A of the Banking Regulation Act, 1949 is **coupled with the duty to act**. The Apex Court considered the RBI as a watchdog of finance and economy of the nation, and presumed that it ought to be aware of the relevant factors including the prevailing credit conditions, which would invite its policy decision.

(d) Charging of interest should be reasonable. Further, penal interest can be charged only once for one period of default and, therefore, cannot be permitted to be capitalized. It would be opposed to public policy.

(e) The Court has specifically stated that unscrupulous banks may resort to charging of interest even on monthly rests. It is, therefore, required to be clarified that such unscrupulous banks should not be permitted to charge interest on credit cards on monthly rests.

(f) The Court has observed that most of the banks press into service long-running documents wherein the borrowers fill in the blanks, at times without caring to read what has been provided therein, and bind themselves by the stipulations articulated by the best of legal brains. In our view, such practice also would be an unfair trade practice.

(g) Further, despite our repeated suggestion, the learned Counsel for the RBI failed to find out what could be considered as usurious rate of interest on the basis of which the RBI had issued circulars to banks. There was no response except to say that with regard to rate of interest RBI has deregulated the same.

In our view, de-regulation is one thing but permitting the banks to charge excessive/usurious rates of interest would be quite different and it would be in clear violation of public policy.

If the RBI is considered to be one of the watchdogs of finance and economy of the nation and the prevailing credit conditions are such as should invite its policy intervention, then, in our view, there is no justifiable ground for not controlling the banks which exploit the borrowers by charging exorbitant rates of interest varying from 36% to

49% p.a., in case of default by the credit card holders to pay amount before the due date.

It is also to be stated that the RBI itself has issued various circulars that banks should not charge usurious rate of interest. However, it has failed to specify what would be termed by it as usurious rate of interest.

The aforesaid stand of the RBI is required to be considered in the context of observation made in Lucknow Development Authority Vs. M. K. Gupta, [(1994) 1 SCC 243], one of the leading judgments on Consumer Protection Act, 1986. The Apex Court observed: **“An ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities”**. The Court further observed: **“In fact, to meet the long felt necessity of protecting the common man from such wrongs for which the remedy under ordinary law for various reasons has become illusory; the importance of the Act lies in promoting the welfare of the society which enable the consumer to participate directly in the market economy”**.

Imagine, how aptly the above quoted observations of the Apex Court would apply to the present case, when the RBI refuses to define what is usurious / excessive rate of interest, despite various circulars issued by it directing the banks not to charge usurious rate of interest.

III. (1) Considering the aforesaid aspects we have to find out whether charging of interest between 36% p.a. to 50% p.a. from the credit card holders is usurious / excessive rate of interest.

For determining whether charging of interest rates from 36% to 49% is unfair trade practice, we have to also take into consideration the bargaining position of the parties, namely, banks and credit card holders. Credit card holders have no bargaining capacity except not to accept the facility of credit card.

Secondly, for having credit card there is all throughout inducement by the banks by various marketing tactics.

And, thirdly, if a condition requires a consumer to pay disproportionately high sum as compensation if he fails to fulfill his obligation, it would amount to unfair trade practice.

(2) As stated by the HSBC in its written submission, in the United States of America and the United Kingdom the interest rate for the credit card **ranges from 9.99% to 17.99%**. However, it is contended that both the countries have a 50-year history of development and building of the credit card business and the markets are mature markets. In Australia also rate of interest varies from 18% to 24%. In Hong Kong SAR credit card interest varies from 24% to 32%. In the Philippines, Indonesia and Mexico, which are emerging markets, the credit card interest rate varies from 36% to 50%.

(3) In our view, there is no justifiable ground for adopting the highest rate of interest prevailing in smaller economies. Further, there is no justifiable ground in not even attempting to follow what is prevailing in developed countries, namely, the rate of interest at 9.99% to 17.99 (USA and UK) or 18% to 24% (in Australia).

(4) For this purpose, we would refer to bank-wise lending rates for the advances for the quarter ending 2008, published on the website of the RBI:

- (i) For the public sector banks, the BPLR varies from 12.52% to 13.25%, i.e., the maximum is 13.25%.
- (ii) On demand loans, the maximum rate of interest varies from 13.75% to 17%; and the minimum rate varies from 6.25% to 13%.
- (iii) For various other banks, the Prime Lending Rate (PLR) varies from 10% pa to 15.50% p.a.
- (iv) The maximum rate of interest charged on demand loans is 18% p.a. and minimum rate of interest ranges from 5.63% to 14.50% p.a. On term loan also it is between 7.50% to 14.50% p.a. From the aforesaid statement it is apparent that average rate of interest on any kind of loan is upto 15%. Even if we add additional 15% p.a. as additional costs for recovering the amount from the credit card holders, then also the rate of interest cannot exceed 30%.

(5) Further, apart from charging of interest, the banks are undisputedly also charging commission from the traders or the service providers, if the items are purchased or the services are availed of from such traders or service providers, using credit cards. This aspect is not discussed by the HSBC in its written submissions. Further, it is to be stated that the burden of commission, which the bank gets would usually be passed on to the purchasers as it would generally be included in the price of the goods/services so transacted through credit cards. That is to say, the payment of commission to the bank by a trader or service provider would be at the cost of the consumer/credit card holder.

(6) A contention has been raised on the basis of section 21-A of the Banking Regulation Act, 1949, which provides that no court shall reopen a transaction between the banking company and its debtor on the ground that the rate of interest charged by the banking company in respect of such transaction is excessive. The said section reads as under:

“21-A. Rates of interest charged by banking companies not to be subject to scrutiny by courts.— Notwithstanding anything contained in the Usurious Loans Act, 1918 (10 of 1918), or any other law relating to indebtedness in force in any State, a transaction between banking company and its debtor shall not be reopened by any court on the ground that the rate of interest charged by the banking company in respect of such transaction is excessive.”

(7) In the present case, we are not reopening any transaction, which has taken place between the bank and the credit card holders. But under the provisions of the Consumer Protection Act, 1986, the Consumer Fora are required to decide whether a bank has adopted any unfair trade practice as defined under section 2(1)(r)(i). If it has adopted any unfair trade practice, section 14(1)(f) specifically empowers the Consumer Fora to give a direction to the bank / banks to discontinue such unfair trade practice and not to repeat it. The section, inter alia, reads as under:

“14. Finding of the District Forum.— (1) If, after the proceeding conducted under section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall

issue an order to the opposite party directing him to do one or more of the following things, namely:--

(a) to (e)

(f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them;

(g) to (i)”

(8) We are making it clear that the direction not to charge interest in excess of a specific rate would not be applicable to the past transactions and that we are not reopening the same.

(9) Considering the aforesaid factors, in our view, charging of interest in excess of 30% shall be considered usuries rate of interest and that if such rate of interest is charged it would amount to unfair trade practice.

Conclusion

For the foregoing reasons, it is directed as under:

- (i) Charging of interest at rates in excess of 30% p. a. from the credit card holders by banks for the former's failure to make full payment on the due date or paying the minimum amount due, is an unfair trade practice.
- (ii) Penal interest can be charged only once for one period of default and shall not be capitalised.
- (iii) Charging of interest with monthly rests is also an unfair trade practice.
- (iv) Hence, the banks are directed not to indulge in the aforesaid unfair trade practices or repeat them.

The complaint is allowed and the revision petition is disposed of accordingly.
There shall be no order as to costs.

We would like to place on record our appreciation of the valuable assistance given to this Commission by Ms. Indu Malhotra, Senior Advocate, with Mr. Abhinav Agnihotri, Advocate as amicus curiae and also Mr. J. K. Mittal, Advocate, also an amicus curiae.

Sd/-

.....J.

[M. B. SHAH)
PRESIDENT

Sd/-

.....
[RAJYALAKSMI RAO]
MEMBER

Sd/-

.....
[ANUPAM DASGUPTA]
MEMBER