

FIDC HANDBOOK ON REPOSSESSION

FIDC

FINANCE INDUSTRY DEVELOPMENT COUNCIL
(A Self Regulatory Organisation For Asset Financing NBFCs)

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FIDC Handbook on Repossession
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for and on behalf of
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INDEX

	Subjects	Page
1.	MESSAGE FROM CHAIRMAN	1
2.	Chapter – I Introduction <ul style="list-style-type: none">• Finance Industry Development Council (FIDC)• Role of NBFC- AFCs	3
3.	Chapter – II Important Facts on Repossession	9
4.	Chapter – III Various Aspects of Repossession	11
5.	Chapter – IV Guidelines for Repossession	14
6.	Annexure – I RBI circular on Repossession	17
7.	Annexure – II Changes in loan agreement for complying with RBI circular	19
8.	Annexure – III Changes suggested for some clauses in the loan agreement	21
9.	Annexure – IV Process to be followed before and after Repossession	25
10.	Annexure – V Draft Letters/Forms	31
11.	Annexure – VI Full text of the judgment in ICICI Bank v/s Prakash Kaur & Others in appeal (crl) 267 of 2007 delivered by Justice Dr AR. Lakshmanan & Justice Altamas Kabir	51
12.	Annexure – VII Reference to Important Judgments on Repossession	63



MESSAGE FROM CHAIRMAN

Non Banking Finance Companies (NBFC) in India have played a complementary role to banks in delivering credit to the under served segments of the economy for several decades. NBFCs have an intimate knowledge of their borrowers and rely on personal contacts both for assessing their customers as also for collections. In view of their superior understanding of the customers' cash flows, NBFCs are able to handle delinquencies on a case-to-case basis. The recovery process comprises gentle reminders, personal meetings, notices and persuasion through the guarantor. It is only in extreme cases where all these remedies fail, that repossession of the asset becomes necessary. This has been a time tested practice and has served as an important deterrent to default. While most often, NBFCs use their own staff, they have also used agents for repossession, which has worked quite well.

Of late, however, with the entry of many new players and the practices adopted by them, repossession has come in for a lot of criticism, sometimes justifiably, because of the unruly behaviour of the agents and often because of the mischief played by many defaulting borrowers.

Besides, aggressive unsecured lending by some of the players and the harsh, desperate measures taken by them for recovery of the unsecured dues, has blurred the important difference between recoveries in secured and unsecured lending. In the absence of any underlying security in an unsecured loan, the agents have been knocking at the doors of the defaulting borrowers at odd times, which has led to avoidable harassment. A rash of such cases led to adverse observations by different courts and the legitimate act of repossession came in to disrepute. Unlike recovery, in the case of repossession, agents are literally barred from knocking at the customers' doors, as their engagement is restricted to delivery of the asset to the lender. Therefore, the difference between a Recovery agent and Repossession agent has to be understood in this context.

Meanwhile, Supreme Court, in the petition for special leave to appeal (civil) No.19314/2007 filed by Citicorp Maruti Finance Ltd against the order of the National Consumer Redressal Commission, New Delhi, had observed that it would be appropriate to give directions as to the manner in which the recovery of loan by the financial institutions is to be regulated and regularised (order dated 26.10.2007). With a view to have the wider views of the industry heard, FIDC filed an application (I.A.No.3 of 2008), seeking intervention in the above proceedings, which was allowed by the Supreme Court. It was submitted by FIDC that, as a regulator of the financial sector, it would be appropriate for Reserve Bank of India (RBI) to frame guidelines

for repossession, which was well taken by the court. FIDC has also been in constant dialogue with RBI for the purpose of framing guidelines on repossession. While the Special Leave petition is pending before Supreme Court, RBI has since issued a circular on repossession, duly considering the suggestions put forth by FIDC.

As a responsible body, FIDC thought it fit to bring about uniformity in the practice of repossession amongst its members. A sub-committee of legal experts consisting of the following members from select member companies was tasked with bringing out a detailed document on repossession:-

1. Mr Raman Aggarwal - Bansal Credits Ltd (Chairman of the Sub-Committee)
2. Mr Srinivas Acharya - Sundaram Finance Ltd
3. Mr A K Dhuliya - Magma Fincorp Ltd
4. Mr R D Khullar - SREI Infrastructure Finance Ltd
5. Mr Vinod Kumar - Mahindra & Mahindra Financial Services Ltd
6. Mr Kamlesh Parekh / Mr Rahul Sundaram - TML Financial Services Ltd
7. Mr V Srinivasan - Sundaram Finance Ltd

This hand book is the result of the painstaking efforts of the Legal Sub-Committee of FIDC. Mr.Raman Aggarwal, Co-Chairman FIDC, deserves special mention for ably steering the proceedings of the committee. I commend the efforts of the committee for a job well done. I also thank the member companies for sparing their legal experts for this assignment.

It is my earnest hope that every Asset Financing NBFC will follow the guidelines for repossession both in letter and in spirit. It is in our own interest to do so, since we run the risk of losing this important deterrent to default, if we do not.

Ultimately, we must continue to play our designated role as responsible, law abiding corporate citizens in the financial sector of the economy.

T T Srinivasaraghavan

Chairman - FIDC

Chennai

September 2009

Chapter - I

INTRODUCTION

The history of Non Banking Finance Companies (NBFCs) in India dates back to the early part of the 20th century. The financing to the social sector was largely done by NBFCs till the banks, after nationalisation, started lending to this sector. Even so NBFCs continue to play a major role in financing to the social sector.

Asset Financing Non-Banking Finance Companies (NBFC-AFCs)

Non-Banking Finance Companies (NBFCs) are regulated by Reserve Bank of India under Chapter-III B of Reserve Bank of India Act, 1934 (as amended by Reserve Bank of India (Amendment) Act, 1997) and also by way of periodical circulars issued from time to time. Under this Act, all NBFCs have to mandatorily obtain registration from RBI.

Recently, thanks to the efforts of FIDC, those NBFCs, whose principal business is financing of physical productive assets supporting economic activity, such as automobiles, tractors, lathe machine, generator sets, earth moving and material handling equipments, moving on own power and multipurpose machines, are classified as Asset Financing Company (NBFC-AFCs) by RBI.

Finance Industry Development Council (FIDC)

The Asset Financing NBFCs, (NBFC-AFC) registered with Reserve Bank of India have joined hands and formed a Self Regulatory Organisation (SRO) under the name of Finance Industry Development Council (FIDC). FIDC is an All India body and is registered as a Company U/s. 25 of Companies Act, 1956. Our main objective is to work towards enforcing fair business practices amongst our members by enforcing a model code of conduct and represent the views of the industry to the appropriate authorities where necessary and present a unified face of this sector.

In the four years since its inception, FIDC has come to be recognised as a credible and responsible voice of the Asset Financing NBFCs all over the country. Reserve Bank of India, at whose behest FIDC was set up, has acknowledged FIDC as the SRO for NBFCs. FIDC is regularly invited for consultations with the Governor, Deputy Governor and other senior functionaries in RBI, as well as being invited to be part of working groups and committees that have been constituted from time to time. FIDC has also been invited by the Department of Banking, Ministry of Finance to provide inputs on various matters pertaining to the NBFC sector as well as participate in high level meetings involving the Ministry and IBA.

Constitution, Structure & Working of FIDC

In order to ensure efficient working, transparency and credibility, FIDC has been given a corporate face and it was registered as a company under section 25 of the Companies Act 1956 on 14th June 2004.

In consonance with the prevailing financial system of our country, a federal structure has been given for FIDC. Due to our prime regulator RBI being based in Mumbai, FIDC Head Office is located in Mumbai with the Regional Chapters being established in different parts of the country.

To begin with, the following Regional Chapters have already started operations:

- Northern Regional Chapter in Delhi under Delhi Hire Purchase & Leasing Companies Association
- Eastern Regional Chapter in Kolkata under Hire Purchase & Lease Association
- Southern Regional Chapter in Chennai under Equipment Leasing Association, India

The Memorandum and Articles of Association of FIDC and the rules for constitution of the Managing Committee have been so framed as to provide for a democratic process requiring equal numbers of representatives from "Big" and "Small & Medium" NBFCs. The Managing Committee shall be headed by a Chairman and a Co-Chairman, one of whom has to be compulsorily from "Small & Medium" NBFC. This ensures equitable role for "Big" and "Small & Medium" NBFCs in the management of FIDC.

Code of Conduct

A code of conduct and fair business practices has already been drafted and adopted by our members. This code of conduct was prepared by an expert committee set up by FIDC for this purpose, and members' opinion was sought and received before adoption. The Code of Conduct is available on our website www.fidcindia.com

Role of NBFC-AFCs

The Indian economy today is in a phase of healthy growth. We have seen year on year growth rates of between 8% & 9% in the last few years. Financing requirements are also increasing commensurate with this growth and will continue to increase in order to support and sustain the economic growth led by asset creation. NBFC-AFCs have been playing a complementary role to the other financial institutions, including Banks, in meeting the funding needs of the economy. In fact, diversification of

financial markets is an important component of financial sector reforms. The increased consumerism in the Indian economy witnessed in the past decade or so has been possible largely because of the availability of credit to retail customers which has been supported by NBFC-AFCs and banks. Also, the Indian economy is fairly non-corporate and these sectors have primarily been catered to by non-banking sources. It is, therefore, evident that NBFC-AFCs in India have made a significant contribution to the economic growth hitherto and will continue to do so, given a congenial environment to grow.

Successive RBI reports, reports of the Expert Committees, including The Parliamentary Standing Committee on Finance, have recognised that the financial intermediaries like NBFC-AFCs have a definite and critical role to play in a developing economy such as ours.

Asset Financing companies are now very well regulated almost in line with banks. NBFCs are required:

- To be registered with RBI
- To follow prudential norms set by RBI in the matters of capital adequacy, credit/investment norms, asset-liability & risk management, income recognition, accounting standards, asset classification, provisioning for NPA and several disclosure requirements
- To follow KYC norms
- To adopt a Code of Fair Business Practices

We are also required to file regular returns with RBI and are subject to inspection on site by RBI. Indeed, RBI has clearly articulated its intent of leveling the regulatory playing field between banks and NBFC-AFCs.

1. Role of AFCs in Funding The Road Transport Sector and Infrastructure

NBFC-AFCs play a very useful role in channelising funds towards acquisition of commercial vehicles and consequently aid in the development of the road transport industry. NBFC-AFCs are engaged in creation of assets used in transportation and infrastructure projects. Needless to mention, the road transport sector accounts for nearly 70% of goods movement and 80% of passenger movement across the length and breadth of the country and the role of NBFC-AFCs in the growth and development of this sector has been historically acknowledged by several committees set up by the Government and RBI, over the years.

Road Transport Sector today is the lifeline of our economy. It is an industry on wheels and is responsible for creating self-employment opportunities – both direct and indirect - in semi-urban and rural areas. As stated earlier,

the Road Transport Industry carries a major chunk of freight and passengers. Recently, Government has accorded a very high priority to this sector. It is a well-established fact that NBFC-AFCs are major providers of finance for vehicles used in the Road Transport Sector.

Some of the facts related to Commercial Vehicles and their financing are as follows:

- Indian economy is becoming more dependent on Road than Rail because of the flexibility of roads. Heavy government outlay for mega road projects like the Golden Quadrangle will further accelerate this trend. Sale of Commercial Vehicles is one of the barometers of the performance of the economy
- Ninety five percent of the Commercial Vehicles are acquired under financing.
- Already we are witnessing demand for replacement of vehicles on account of the need for replacement of old Commercial Vehicles.
- It is estimated by various study groups that each commercial vehicle manufactured, sold & financed in this country gives direct & indirect employment to minimum 20 persons, thereby providing employment opportunities to several lakhs of people all across the country.
- The potential of the commercial vehicles financing industry is estimated at Rs. 15,000 crores and is growing fast. Another Rs.6,000 crores would be required for phasing out of commercial vehicles, which are more than 15 years old.
- Borrowers' Profile: Mainly Retail with minimum individual/group exposure and therefore, concentration of risk is reduced.
- Priority of Repayment: Being an earning asset, it ranks high in priority.
- Ticket value of each transaction: Rs. 10 lakhs to Rs. 15 lakhs for new vehicles and Rs. 5 lakhs to Rs. 8 lakhs for used vehicles.
- CRISIL in its study has placed commercial vehicle financing under the "low risk" category, in its Risk Continuum.
- NBFC-AFCs have a strong presence in the rural markets where they are engaged in financing farming machinery such as tractors, LCVs and three-wheelers used for transportation of agricultural produce. Given the necessity of increasing agricultural growth through improvements in productivity and also of generating employment in rural areas, asset-financing companies will continue to play a vital role in meeting these objectives.

2. Observations made by RBI and various Government Committees:

In its Mid-Term Credit Policy 2006-2007, RBI has accorded recognition to the role of Asset Financing NBFCs within the financial sector by classifying them as "Asset Financing Companies", and by segregating them from NBFCs involved in the Investment and Loan business.

As part of the overall NFBC sector, the comments in the various reports are outlined below:-

A. Observations made in the RBI's report titled "Report on trends and progress of banking in India 2003-2004"

"Notwithstanding their diversity, NBFCs are characterised by their ability to provide niche financial services in the Indian economy. Because of their relative organisational flexibility leading to a better response mechanism, they are often able to provide tailor-made services relatively faster than banks and financial institutions. This enables them to build up a clientele that ranges from small borrowers to established corporate."

B. Observations made by the Parliamentary Standing Committee on Finance in their 45th Report on The Financial Companies Regulation Bill, 2000

- a) *NBFCs have higher level of customer orientation; fewer pre and post sanction requirements and provide simple and speedy tailor-made services.*
- b) *NBFCs have become an integral part of the Indian Financial System in view of their complementary as well as competitive role.*
- c) *Non-Bank credit cover 70% of the requirements for the Trading activity and more than 50% of the requirement of unregistered manufacturing.*

C. Observations of the Task Force on NBFCs (Vasudev Committee) appointed by Government of India in 1998.

- a) *Financial intermediaries like NBFCs perform the function of being a link between savers in the society and users of the savings.*
- b) *NBFCs have greater reach and flexibility in tapping resources and they provide retail services to small and medium level business and road transport operators.*
- c) *NBFCs constitute an important link between banks and the requirer of services and are an important component of a diversified financial market.*

Therefore, it can be seen that Asset Financing Companies (within the NBFC segment) play a significant role in ensuring cost-effective delivery of credit to the weaker and the un-banked segments of Indian society, act as an intermediary between the banking sector and borrowers in the rural markets, and assist in the creation of real and productive assets, which in turn have a multiplier effect on employment.

Therefore, the role of Asset Financing Companies within the financial sector cannot be overstated.

Chapter - II

IMPORTANT FACTS ON REPOSSESSION

What is Repossession?

1. The term "Repossession" refers to the process by which the finance company retakes the possession of the physical asset financed by it from the borrower in case of default by the borrower in repayment of dues under the underlying agreement.
2. Repossession is the last and the most difficult re-course for NBFC-AFCs and is resorted to only after all other options such as personal discussion, written reminders, notices etc. fail.
3. Statistics show that only 2% (maximum) of the total number of finance cases lead to repossession. However, more than being a tool for recovery, repossession is needed as a deterrent to default for the borrower.
4. In a majority of cases, repossessed assets are returned to the Borrower, when he makes payment to the satisfaction of the NBFC. In a few cases alone, on failure of the Borrower to regularise the account, the asset is sold after due notice.

Incidents of Unethical and Illegal Practices used by Agents - Need to distinguish between "Recovery" and "Repossession"

Recently, there have been few unfortunate cases where unethical and illegal practices were adopted by repossession agents leading to a situation where the entire process of repossession has been painted in an unfavourable light. This is perhaps the most unfortunate development and needs to be understood in the light of the following facts:-

1. NBFC-AFCs have been financing physical assets like automobiles for well over 60 years. Repossession was resorted to through all these years without any significant problems. It is also pertinent to note that the litigations and proceedings against repossession have eventually been unsuccessful and considered to be frivolous.
2. With the recent advent of unsecured retail lending in the form of personal loans and credit cards, the above said problems started to surface.
3. The recent problems have arisen due to the methods employed by agents in "Recovery" of dues in case of unsecured lending where there is no underlying security. Whereas NBFC-AFCs do not face these

problems as they finance tangible, moveable assets with clean documented re-course to the security in case of default for which they engage agents for “**Repossession**”

4. Over time, the terms “Recovery” and “Repossession” got mixed up and were commonly referred to as “Recovery” and consequently the agent engaged for repossession got branded as “Recovery Agent”

Difference between “Recovery” and “Repossession”

S.No.	Recovery	Repossession
1	Resorted to in case of default in unsecured loans like personal loan & credit cards	Resorted to in case of default in secured lending against the security of tangible moveable assets
2	Often pressure tactics are adopted on the customer since there is no underlying security	Focused on retaking possession of the asset which is the prime security
3	Recovery agents focus on customer contacts which may lead to harassment of the borrower by calling at odd hours and use of force	Repossession agents focus only on tracing and repossessing the asset. They are not required to approach the Borrower
4	Start approaching the borrower at the first instance of default	Repossession is the last recourse resorted to only after other conciliatory options like reminders, personal contacts, notices etc. by the lender fail
5	The borrower may not be aware/ informed of the default	The borrower is an “informed defaulter” to whom reminders, notices etc. have been sent

Chapter - III

VARIOUS ASPECTS OF REPOSSESSION

The entire process of repossession involves the following:

1. The Right to Repossession
2. Who Should Repossess?
3. How to Repossess?
4. Post Repossession Actions - Re-delivery, Sale & Transfer of the Asset

1. The Right to Repossession

All the judgments passed by the various courts including the Hon'ble Supreme Court till date have upheld the financier's Right to Repossess the underlying security in case of default.

Unfortunately, the Supreme Court order in case of ICICI Bank Ltd. Vs. Prakash Kaur dt. February 26, 2007 has been misinterpreted by some people and blown out of proportion by negative media publicity giving an impression that the Right to Repossession had been taken away.

The factual position however, is exactly the opposite. According to this judgment, the Right to Repossession is clearly upheld provided it is carried out by using "legal means".

Reserve Bank of India vide its circular no. DNBS(PD)CC.No.139 / 03.10.001/ 2008-09 dated April 24, 2009 has endorsed the Right to Repossession by NBFCs subject to the conditions laid down therein. The circular is attached as Annexure I.

Some of the important judgments pronounced by the courts in matters relating to Repossession are given in Annexure-IV.

2. Who Should Repossess?

The success or failure of any activity depends heavily on the individuals / entities engaged in it. The crux of the recent problems in repossession is the integrity and behaviour of the agents involved. In the absence of any regulation or any system of registration/ licensing of repossession agents, their integrity and acceptability are in question.

Repossession agents as a class are termed as "goons" and they are often presumed to indulge in unethical behaviour, though this may not be the case generally.

FIDC has been strongly advocating and representing for the need to

register / license repossession agents after verification of their credentials and training in handling such cases. This would prevent any anti social elements or individuals with dubious track record from entering this profession.

Therefore, certain precautions and actions need to be taken by the financier while engaging repossession agents. These are dealt with in Chapter IV on Guidelines for Repossession.

3. How to Repossess?

The second most important aspect in repossession is the manner in which repossession is carried out.

There have been reports of agents causing physical injury to borrowers. Such behaviour can never be acceptable in any civilised society. On the other hand, there are many cases where false complaints alleging misbehaviour are lodged by defaulting borrowers against the agents leading to stringent action being taken by the police authorities, including issuance of arrest warrants against the agents and the managements of the finance companies, without any investigation. Such a situation is equally undesirable and encourages default.

Use of Force and Using Legal Means in Repossession

It is often argued that no "Force" should be used by the agents while repossessing the asset and only "legal means" should be employed.

Let us consider a situation where a repossession agent visits the defaulting borrower and asks him to handover the possession of the asset. In many cases, the borrower would simply refuse to part with the possession and prevent the agents from repossessing the asset, which is against the terms of the agreement.

Under these circumstances, if no "Force" is used, the repossession would fail, which would encourage default by borrowers. In other words, it is presumed that a borrower who is an "informed defaulter" would peacefully handover the asset to the repossession agent. This is unfortunately far removed from reality.

Such a sensitive issue can only be resolved when both the parties concerned i.e. the defaulting borrower and the repossession agent are both considered on equal footing in terms of their integrity and accountability. This can only be achieved when the repossession agents' actions are viewed impartially, any complaints of unethical behaviour, physical abuse made by a defaulting borrower against the repossession agent could be properly investigated before initiation of any action by

the police authorities. This would also do away with the current practice of unilaterally issuing arrest warrants against the agents and top management of the finance company merely on the basis of the frivolous complaint made by a defaulting borrower.

The need to use “legal means” is complied with when repossession of the asset is done pursuant to the terms of the contract which entitle NBFCs to repossess the asset by themselves or through their agents on the commission of default by the borrower as per the conditions laid down in the RBI circular dated April 24, 2009.

This aspect has also been dealt with in Chapter IV on Guidelines for Repossession.

4. Post Repossession Actions - Re-delivery, Sale, & Transfer of the Asset

Normally, after repossession, unless circumstances so demand, the defaulting borrower is given the option and time to regularise the account to the satisfaction of the lender and take back the repossessed asset.

If, however, the borrower fails to pay the dues, the finance company realises it by selling the asset. Question has been raised on the pricing and the procedure adopted for the sale of the asset by the finance company. The common allegation is that the finance company, to realise its dues, sells the repossessed asset in a hurry at throw away prices following arbitrary procedure.

There has to be a system of sale of the asset whereby the asset fetches the best price in its ‘as is where is’ condition. Excess amounts realised from such sale, if any, should be refunded to the borrower.

Chapter IV on Guidelines for Repossession deals with the same.

Chapter - IV

GUIDELINES FOR REPOSSESSION

Guidelines for Engagement of Repossession Agents by NBFC-AFCs

A. Criteria for Repossession Agents

1. Agents in these guidelines would include agencies engaged by the NBFC and the agents/ employees of the agencies concerned.
2. Any individual agent engaged by NBFCs for Repossession should have undergone a certificate course for Repossession Agents with minimum of 100 hours training. (Institutes like Indian Institute of Banking & Finance (IIBF) in consultation with Indian Banks Association (IBA) & Finance Industry Development Council (FIDC) should undertake the training for Repossession Agents on the lines of the training provided for Bank's Recovery Agents).
3. The Repossession Agents engaged by NBFCs should preferably be holding a valid Passport (Passport is the only Identity document which is issued after Police verification) or PAN card

B. Engagement of Repossession Agents

NBFCs are advised to take into account the following specific considerations while engaging Repossession Agents

1. NBFCs should have a due diligence process in place for engagement of Repossession Agents. NBFCs should comply with the requirements of "Know Your Customer (KYC)" for Repossession Agents also similar to what is being followed for their customers. This includes photo identity etc.,
2. The details/ documents obtained by the NBFCs from the Repossession Agents in compliance with KYC norms must be scrutinised and verified by them and submitted to the Local Police Station concerned for verification.
3. NBFCs should sign a clear agreement with the Repossession Agents conforming to the criteria stated above and also lay down the measures/ precautions to be taken in the process of Repossession
4. Every act of repossession by an agent must be supported by a specific authorisation letter from the NBFC, in each specific case clearly identifying the borrower and the asset. This authorisation must clearly prohibit use of force by the agent under any circumstance including use of force by the borrower to prevent repossession.

Guidelines for Repossession of Assets

- A. Process of Repossession of Assets Financed by the NBFCs
1. The duly executed agreement between the NBFCs and its borrowers should clearly set out the rights and duties of both parties including the inalienable right of the lender to repossess the asset in case of default. These are detailed in Annexure IV.
 2. NBFCs must ensure that the borrower is an “informed defaulter”.
“Informed Defaulter” shall be a borrower to whom the NBFC has:
 - a) Sent reminders/notice by registered post or telegram informing him/her of the default and giving him specific time as per the agreement to pay the dues, failing which requiring the Borrower to surrender the asset.
 - b) Sent notice(s) by Registered Post informing him/ her of the “Intent” of the NBFC to determine the agreement and repossess the asset, if the Borrower continues with default and fails to surrender the asset.

However, the criteria mentioned in Para 2 a) and b) above may be waived under special circumstances where, there is a strong possibility of alienation or misappropriation of the asset or use of the asset for illegal activities or alienation of the Borrowers’ personal assets to defeat the claim of NBFC. Suitable evidence supporting this should be kept on record by the NBFC.
 3. In the event of the borrower failing to surrender the asset as mentioned in the above said notice, NBFCs may repossess the asset by themselves or through agents.
 4. Post repossession, the NBFC or agent should immediately intimate the nearest Police Station within whose jurisdiction the asset was repossessed. The same may also be lodged with the centralised Police Control Room by dialling 100.
 5. The NBFC or agent should prepare an Inventory preferably with the acknowledgement by the borrower or the person from whom the asset is repossessed. If they refuse to sign the inventory list, it is advisable to take a 3rd party witness. The NBFC should then issue a notice to the defaulting borrower along with the copy of the Inventory, informing him of the repossession and giving him a final opportunity to repay the entire amount due within the time limit stipulated as per the terms of the agreement and take back the possession of the asset.

Post Repossession – Sale of the Asset

1. In the event of the borrower failing to pay the dues and comply with para 5 above, the NBFC may proceed to sell the repossessed asset in any of the following manner after complying with the requirements, if any, under the Motor Vehicles Act:
 - a) Giving paper publication in any one of the National or Vernacular daily newspapers
 - b) Collecting offers from the prospective buyers
 - c) e-Auction on Internet
2. NBFC must notify the Borrower by telegram the highest offer received and their proposed action for proceeding with the sale. The telegram must also state that if the highest bidder does not turn up for finalising the sale for some reason, the asset would be sold for the next highest offer without any further notice.
3. The borrower shall be entitled to refer to the NBFC any prospective buyer(s) who are interested in purchasing the repossessed asset along with their quotation, within the stipulated time under the agreement.
4. The NBFC should ensure that the repossessed asset is sold at a fair market value,
5. The Borrower should be notified about the conclusion of sale. The excess sale proceeds after appropriating the amount due under the agreement as on the date of sale, if any, should be refunded to the borrower.

Annexure - I

RBI CIRCULAR ON REPOSSESSION

RBI Circular dt. April 24, 2009

Clarification regarding repossession of vehicles financed by NBFCs

RBI/2008-09/454

DNBS (PD) CC.No.139 /03.10.001/2008-09

April 24, 2009

All Non-Banking Finance Companies

Dear Sir,

Clarification regarding repossession of vehicles financed by NBFCs

Please refer to DNBS (PD) CC No. 80 / 03.10.042 / 2005-06 dated September 28, 2006, advising NBFCs to put in place a Fair Practices Code with the approval of their Boards which, inter alia, covers recovery of loans.

2. In this connection, it is further clarified that, with particular reference to queries arising from repossession of vehicles, NBFCs must have a built in re-possession clause in the contract/loan agreement with the borrower which must be legally enforceable. To ensure transparency, the terms and conditions of the contract/loan agreement should also contain provisions regarding: (a) notice period before taking possession; (b) circumstances under which the notice period can be waived; (c) the procedure for taking possession of the security; (d) a provision regarding final chance to be given to the borrower for repayment of loan before the sale / auction of the property; (e) the procedure for giving repossession to the borrower and (f) the procedure for sale / auction of the property. A copy of such terms and conditions must be made available to the borrowers in terms of DNBS.PD/ CC. No. 107 / 03.10.042 / 2007-08 dated October 10, 2007 wherein it was stated that NBFCs may invariably furnish a copy of the loan agreement along with a copy each of

all enclosures quoted in the loan agreement to all the borrowers at the time of sanction / disbursement of loans, which may form a key component of such contracts/loan agreements.

Yours sincerely,

(P.Krishnamurthy)
Chief General Manager-In-Charge

Annexure - II

CHANGES IN LOAN AGREEMENT FOR COMPLYING WITH RBI CIRCULAR

In view of the above said RBI circular dated 24.04.09, giving clarification regarding repossession of asset financed by NBFCs, all NBFCs shall ensure the following:

1. The finance agreement with the borrower, in order to ensure transparency and fair practice, shall contain clauses detailing the procedure which the finance company intend to follow with regard to repossession and sale of the financed asset and such procedure should be communicated to the borrower(in writing).
2. It would be advisable that separate clauses in the agreement are mentioned, detailing procedure for repossession of asset and procedure for sale of the repossessed asset.
3. The procedure for repossession of asset should necessarily cover the following points:
 - a) Before repossession, a notice period (e.g. a week or 10 days) should be given to the borrower which should be mentioned both in the agreement as well as in the pre- repossession notice.
 - b) The agreement should also specify the circumstances under which the finance company may not be obliged to send any notice to the borrower prior to repossession, like fraud committed by the borrower, using the asset for illegal purpose, alienating or parting possession with the asset, the asset being in danger of being confiscated by any authority or getting sold to a third party etc.
 - c) Provision regarding final chance to be given to the borrower before selling the vehicle by way of notice generally known as a pre sale notice whereby the borrower is called upon to pay the total amount due under the agreement or come up with better offer within the stipulated time mentioned in the notice and take back the asset.
 - d) Conditions in which the asset will be given back to the borrower.
 - e) Conditions under which the asset will be sold.
4. Similarly, the procedure for sale of the repossessed asset should include the following:

- a) How the asset will be sold i.e by paper publication or public auction including E-Auction, or by inviting quotes etc.
- b) Whether the borrower will be allowed to participate in the sale process by referring any prospective buyers for the asset within a time frame stated in the agreement or pre-sale notice.
- c) The asset should be sold to the highest bidder.
- d) Appropriation of sale proceeds towards the dues of borrower should be done.
- e) Clause to ensure refund of excess amount, after appropriation, if any, to the borrower.
- f) Any post sale notice to be given, demanding shortfall, if any.

It is also stated in the above said RBI circular that the NBFCs need to provide copies of the agreement along with copies of all enclosures to the borrower at the time of signing the agreement.

Annexure - III

CHANGES SUGGESTED FOR SOME CLAUSES IN THE LOAN AGREEMENT

LENDER'S RIGHTS

1. Upon occurrence of any/all of the aforesaid events of default, the Borrower shall be liable to pay the following to the Lender within 10 days from the date of receipt of notice from the Lender:
 - (a) Arrears of instalments;
 - (b) Instalments for the remaining period, which would have been payable by the Borrower, if the agreement had run to its full term;
 - (c) Additional interest at the rate specified in the first schedule on the Principal outstanding and on the other amounts due;
 - (d) All other sums and charges of whatsoever nature, including, but not limited to interest on account of default in payment of insurance premia, and on account of other taxes
2. However, in extraordinary circumstances where there is a likelihood of the Borrower alienating or secreting or keeping the Asset beyond the reach of the Lender or the Borrower using the Asset for unlawful purposes or the Borrower subjecting the Asset to abnormal wear and tear and / or alienating such other Assets of the Borrower which provide additional cover to the Lender for recovery of the amount due under the agreement, the Lender shall be entitled to take such steps including seizure of the Asset without any notice to the Borrower.
3. In the event of failure of the Borrower in complying with the demand in the said notice, the Borrower shall be bound to surrender the Asset to the Lender at the cost of the Borrower at such location, as the Lender may designate, in the same condition in which it was originally delivered to the Borrower, ordinary wear and tear excepted, failing which, the Lender shall be entitled to seize the Asset wherever it is without any further notice. The Borrower shall not prevent or obstruct the Lender from taking the possession of the Asset. For this purpose, the Lender's authorised representatives, employees, officers and agents will have unrestricted right of entry and shall be entitled to enter upon the premises, or garage, or godown, where the Asset shall be lying or kept, and to seize the Asset. In the event of the Borrower not cooperating, the Lender, if necessary, have the right to break open any such place where the Asset is believed to be kept and to

seize the Asset. The Lender will be well within its rights to use tow-van or any carrier to carry away the Asset. The Borrower shall be liable to pay any towing charges and other such expenses incurred by the Lender in connection with the seizure of the Asset and for its sale etc.

4. After seizure of the Asset by the Lender or surrender by the Borrower, the Lender's authorised representatives, employees, officers and agents will prepare an inventory of the Asset. The Lender will send a notice, after seizure or surrender of the Asset by the Borrower, along with a copy of the inventory, granting the Borrower 10 days time to settle the contract and to take back the vehicle. The Borrower shall, in the event of failing to settle the contract within the time limit mentioned above, deliver all original documents relating to the Asset, including RC book, Tax token, Permit and Insurance Certificate/policy etc., in the case of Asset being vehicle ,if the said documents were not available in the vehicle at the time of seizure or surrender and shall render all assistance including execution of necessary documents for transfer of the Asset in favour of the Lender or its nominees or its agents or the purchaser of the Asset identified by the Lender. If, however, the Borrower fails to render necessary assistance for transfer of the Asset, the Lender shall be entitled to take all such steps unilaterally as may be necessary to facilitate early sale of the Asset.
5. Neither the Lender nor its agents, officers, nominees shall be in any way responsible and liable and the Borrower hereby agrees not to make the Lender or its officers, agents or nominees liable for any loss, damage, limitation, or otherwise for any belongings and articles that might be kept or lying in the hypothecated Asset at the time of taking charge and/or possession or seizure of the hypothecated Asset.
6. On the Borrower repaying the amount due to the Lender in full to the satisfaction of the Lender, the Lender agrees to return the Asset to the Borrower. The Lender may, at its sole discretion, also agree to release the Asset on part payment of the dues on such undertaking / conditions which the Lender may prescribe. The Borrower shall pay all costs of seizure / surrender, the expenses incurred by the Lender after seizure / surrender, including garage rent etc. The Borrower shall acknowledge delivery of the Asset together with the documents and articles kept in the Asset at the time of seizure or surrender by way of delivery receipt addressed to the Lender which is an acknowledgement that the Borrower has taken delivery of the Asset in the same condition in which it was seized/surrendered by the Lender/Borrower together with the documents and articles kept in

the asset. The Borrower shall not raise any dispute nor make any claim regarding seizure of the Asset or condition of the Asset or any documents and articles kept in the Asset at the time of seizure/ surrender of the Asset.

7. The Lender shall, in any/all the aforesaid Events of default, be entitled to and the Borrower hereby irrevocably authorises the Lender to sell/ transfer/assign the Asset either by public auction or by private treaty or otherwise howsoever, and appropriate the proceeds thereof towards repayment of all the outstanding amounts from the Borrower to the Lender under this Agreement.
8. If the sale proceeds are not sufficient to meet all the dues of the Lender, the Borrower shall be liable to pay for any deficiencies after the said appropriation. In case there is any surplus after adjusting the dues of the Lender, the same shall be paid to the Borrower. Nothing contained in this Article shall oblige the Lender to seize or sell the Asset and the Lender shall be entitled to proceed against the Borrower or Guarantor(s), if any independently of such security, particularly the Lender deprived of seizing the Asset for any reason whatsoever.
9. The Borrower shall not be entitled to raise any objections regarding the regularity of the sale and/ or actions taken by the Lender nor shall the Lender be liable/ responsible for any loss that may be occasioned from the exercise of such power and/ or may arise from any act or default on the part of any broker or auctioneer or other person or body engaged by the Lender for the said purpose.
10. The Lender shall be entitled to recover from the Borrower all expenses (including legal costs on full indemnity basis) incurred by or on behalf of the Lender in ascertaining the whereabouts of the Asset, taking possession, garaging, insuring, transporting and selling the Asset and of any legal proceeding that may be filed by or on behalf of the Lender to enforce the provisions of this agreement. It is expressly clarified that the remedies referred to hereinabove shall be in addition to and without prejudice to any other remedy available to the Lender either under this Agreement, or under any other Agreement/ undertaking, or in law or equity.
11. Notwithstanding anything to the contrary contained in section 151 of the Indian Contract Act, the Lender or its officers, agents or nominees shall not be in any way responsible for any loss, damage, limitation, or depreciation that the hypothecated Asset may suffer or sustain on any account whatsoever whilst the same is in the possession of the Lender or its officers, agents or nominees or because of exercise or

non-exercise of the rights, powers, or remedies available to the Lender or its officers, agents or nominees and all such loss, damage or depreciation shall be debited to the account of the Borrower howsoever the same may have been caused.

Annexure - IV

PROCESS TO BE FOLLOWED

BEFORE AND AFTER REPOSSESSION

A. Before Repossession

1. To send Demand Letter to the Borrower and the Guarantors Informing the “Intent” to Repossess by way of Registered Post with Acknowledgement due:

- Facts in brief regarding the contract entered into by the parties as Borrower/Guarantor
- The relevant clause of the agreement, enjoining duty on the parties to pay the instalments on due dates
- The breach committed by the parties with details
- Failure to regularise the contract despite several demands
- Details of the amount due and the date upto which the amount holds good
- Demand to pay the amount due either jointly or severally or arrange for surrender of the asset in good condition at the place specified in the letter, together with vehicular documents such as RC, Tax token, Insurance Certificate, Copy of the Insurance Policy (in case of the asset being vehicle) within a specified time limit
- In the event of failure to comply with the demand, to seize/repossess the asset
- The asset will be sold in its ‘as is where is’ condition for the best price it will fetch, in the event of surrender/seizure/repossession of the asset
- Appropriation of sale proceeds as against the amount payable under the contract as on the date of sale and to proceed against the parties for recovery of shortfall, if any

2. Letter of Offer to be obtained from the Repossessing Agency/Agent

- Introduction of the agency/agent with their profile
- The profile shall contain the following:
 - o Name
 - o Constitution
 - o Name of the Proprietor/Partners/Directors (If the constitution is other than Individuals)

- Experience
- Educational Qualification (in the case of individual)
- PAN/ PASSPORT - Mandatory
- Address
- Phone Nos
- E mail Address
- Brief Details about existing clients
- Reference (Other than relatives) with name, profession, address, Phone Nos with e-mail address
- Declaration as to involvement of any case including criminal proceeding, if so, the details
- Concluding paragraph, certifying the information furnished in the profile to be true and correct and would be the basis for considering the offer.
- Date, Place and Signature
- Affixture of photograph of individual/Proprietor/Managing Partner/Managing Director
- To enclose proof of identity such as Photocopy of the PAN Card or Passport
- To enclose Partnership Deed/Memorandum or Articles of Association (if applicable)
- Offer for appointment to seize the assets under finance facilities with a quotation for charges

3. Letter of Acceptance (in duplicate) in each case of assets to be repossessed, addressed to the Repossession Agency/Agent, signed by the branch manager, appointing the Agent which shall contain the following main conditions:

- Clear, unambiguous, description of the asset to be repossessed
- The agent shall depute a proper person, having no criminal antecedents, holding a valid licence and having proper expertise in locating and seizing the asset/vehicle.
- The agent shall issue proper identity card to the person so deputed and also a suitable letter of authority to locate and seize the asset/vehicle.
- The agent shall make his own arrangements for effecting seizure of the asset/vehicle.
- The letter of authority issued by the agent to the person deputed shall contain the following instructions:

- The asset/vehicle shall not be seized when the Borrower's family are travelling in the vehicle
- No weapon shall be used against the Borrower or his representatives while seizing the asset
- No physical injury shall be caused to any person
- The letter of authority shall show the amount due
- Unless the situation warrants to seize the asset/vehicle immediately, once the asset/vehicle is sighted, the person deputed shall reconfirm the amount due from company's officials and on confirmation that default still persists, the asset/vehicle shall be seized;
- Immediately after seizure, he shall intimate to the nearest Police Station within whose jurisdiction the asset/vehicle is seized.
- Upon seizure of the asset/vehicle, the person shall make an inventory
- Immediately upon seizure of the asset/vehicle, the person shall contact:
 - ❖ The company official and shall move the asset/vehicle to a place as per the instructions of the official.
 - ❖ To park the asset/vehicle in the said place and to obtain suitable acknowledgement from the person who is at the place of garage.
 - ❖ To deliver the keys, the documents of the asset/vehicle such as RC, Insurance Certificate, fitness certificate and any other documents, including the inventory to the company official under proper acknowledgement.
- If the asset/vehicle is seized with goods, in addition to the adherence of the instructions stated above, the person shall take necessary care and steps to protect the goods and inform the company officials the names and address of the consignor and the consignee and shall carry out the instructions of the company officials.
- The asset/vehicle shall not be seized, when it carries combustible goods
- The person shall not have authority to compromise, to enter into any settlement or understanding with the Borrower or his representatives
- The person shall not collect any money or instalment from the Borrower

- The charges for seizure should be clearly stated
- The agent shall ensure that the deputed person shall carry the copies of the demand notice sent to the parties, this letter, the original Letter of authority and the identity card.
- It is a condition for this appointment that the agent or the person deputed by the agent shall, without fail, function within the civil and criminal laws of the country and shall follow all the terms and conditions of the arrangement. The financier shall not be liable and responsible in whatsoever manner for any breach of the above terms and conditions committed by the agent or the person deputed by him.
- The agent shall indemnify against any loss, damages, costs and claim made against the financier on account of any breach of the above terms and conditions committed by the agent or the person deputed by the agent.
- The avail of the services to locate and seize the asset/vehicle ends as and when the person deputed delivers the original keys, the documents of the asset/vehicle and inventory to the company official.
- To obtain agents acceptance by signing the copy of this letter.

B. After Repossession

4. Inventory

- Immediately after seizure, the person deputed shall take an inventory.
- The inventory shall furnish the following:
 - Asset / Vehicle No., make, engine and chassis Nos.
 - Date of seizure
 - Time, mileage
 - Availability of keys
 - Availability of vehicular documents and if so their details
 - Details of the available accessories
 - Condition of the tyres
 - Condition of the asset / vehicle
 - It shall be signed by the person who seized the asset and also the driver or any representative of the hirer/borrower.
 - In the event of the asset being surrendered, the signature of the person who surrendered the asset shall be obtained.

- o In the absence of the driver or the representative of the borrower, the signature of two witnesses shall be obtained.
- o The copy of the inventory shall be sent to the Borrower along with the letter to be sent to the parties after repossession.

5. Vehicle Repossessed with Goods - Telegram to the Consignee, with Copies to the Consignor and the Registered Owner

- In the event of the asset being seized with goods, the person who seized the vehicle shall take proper care of the goods.
- A telegram shall be sent to the consignee stating that the goods (to mention the nature of the goods) which are consigned to him has been seized in view of default committed by the Hirer/ Borrower and the vehicle and goods are now in the possession of the finance company
- In the telegram, the consignee shall be directed to take delivery of the goods at the earliest clearly indicating that any failure, the financiers are not responsible for the loss of or damage to the goods
- The vehicle with combustible goods shall not be repossessed.
- Copies of the telegram shall be sent to the Consignor and the Registered Owner.

6. Letter of Acknowledgment from the Consignee

- Immediately after delivery of the goods, an acknowledgement shall be obtained from the consignee stating that they have taken custody of the goods after inspection and verification and have no claim against the financier as to the condition and quality of the goods.

7. To send Notice to the Borrower and the Guarantors Informing them about Repossession and Giving a Final Opportunity to Settle the Account and Take back the Possession of the Asset - by way of Registered Post, copies by way of Certificate of Posting:

- Immediately after repossession, a notice shall be sent to the parties (Borrower and the Guarantor), informing the fact of repossession and also the amount due under the contract.
- Copy of the Inventory prepared as per Para 4 above, shall be enclosed with the notice
- A demand shall be made on the parties to settle the contract within 10 days from the date of receipt of the letter.

- The following shall also be stated:
 - Steps will be taken for sale of the asset in its as is where is condition, in the event of failure to comply with the demand.
 - The parties can also bring suitable offer for sale of the asset within the time limit mentioned above, failing which the asset will be sold for the best price it will fetch and the parties shall not dispute the sale.
 - The sale proceeds will be appropriated as against the amount due and payable under the contract as on the date of the sale and to proceed against the parties for recovery of shortfall, if any.
- In the absence of vehicular documents, demand shall be made to surrender them.

8. In Case the Borrower Approaches for Settlement:

i) Letter of request from the Borrower for release of the Asset

- A suitable letter shall be obtained from the parties, when they approach for settlement and to take back the asset.
- In the said letter, they should acknowledge the repossession due to their default and also the amount due to the financier.
- In case of part payment, there should be an undertaking that they would not be in default in future and on breach of undertaking, they should surrender the asset in good condition with vehicular documents, at their cost.
- It shall also be stated in the letter that upon surrender/seizure of the asset, the financier can proceed with sale of the asset without reference to them and they undertake to pay the shortfall if any.

ii) Delivery Receipt

- Upon delivery of the asset to the Borrower, delivery receipt shall be obtained from him stating they have taken delivery of the asset together with accessories as mentioned in the inventory after having inspected and satisfied with the condition of the asset. They have no claim in this regard.

Annexure - V
DRAFT LETTERS / FORMS

1. DEMAND LETTER TO THE BORROWER AND THE GUARANTOR

BY REGD POST WITH ACK DUE

Date:

1. Mr/Mrs

S/o W/o

(Address)

BORROWER

2. Mr/Mrs

S/o W/o

(Address)

GUARANTOR

Re: Cont. No.

Make:

Model:

Registration No.

In connection with above contract, we state the following:-

1. The first of you entered into a Loan dated (Cont.No.....) with us in respect of the said vehicle, duly guaranteed by the second of you. The total loan amount of is repayable in monthly instalments. The first instalment had commenced on and the last instalment ended/will end on In consideration of having agreed to extend the loan facility, the first of you hypothecated the said vehicle in our favour as a security for the amount payable under the said agreement. The fact of hypothecation in our favour was also recorded in the registration certificate of the said vehicle by the Registering Authority,

2. We state that under Clause No..... of the loan agreement, the first of you had undertaken to pay the instalments on the due dates mentioned in the schedule to the said agreement to us whether previously demanded or not. Contrary to the said undertaking, the first of you had remitted only instalments and committed default in paying the subsequent instalments due from In view of the default, the first of you is liable to pay the additional interest at the rate of as provided under the said agreement. The first of you failed to regularise the contract despite our several demands.
3. Under the above said agreement, a sum of Rs. is due and payable by the first of you towards settlement. Please note that the settlement figure will hold good till and would vary thereafter. The details of the settlement figure are as follows:-

SETTLEMENT FIGURE

	Amount in (Rs.)

4. The liability of the second of you, as a guarantor, is co-extensive with that of the first of you as borrower / hirer and hence both of you are jointly and severally liable for the amount payable under the said agreement.
5. In the light of the above, both of you are hereby called upon to pay the aforesaid amount of towards settlement of the agreement either jointly or severally or arrange for surrender of the aforesaid vehicle in good roadworthy condition to our Branch at on or before along with the original records of the said vehicle such as original RC, tax token, insurance certificate and valid insurance policy, failing which, we shall be constrained to seize the said vehicle in exercise of the paramount right conferred under the said agreement.
6. In the event of surrender/seizure of the vehicle, we will sell the same in its "as is where is" condition for the best price it will fetch and appropriate the sale proceeds towards the dues under the said agreement as on the date of the sale and will proceed against both of you for recovery of the shortfall, if any, together with costs,

damages, loss occasioned thereon, by initiating appropriate legal action as provided under the said agreement. Both of you can also bring suitable offer for sale of the said vehicle.

We trust that both of you will avoid needless embarrassment by complying with the aforesaid demand.

For

2. OFFER FROM THE REPOSSESSING AGENCY/AGENT (TO BE OBTAINED UNDER LETTER HEAD)

Sir,

Sub: Offer for appointment to repossess the assets under finance facilities.

We introduce ourselves that we are specialised in locating and repossessing the assets, upon which loan facilities are extended by various finance companies. We enclose our Profile.

We wish to offer our services and request you to signify your acceptance on a case to case basis.

Thanking you,

Yours truly,

PROFILE

1.	Name :		Affix the Photograph of the Individual / Proprietor / Managing Partner / Managing Director
2.	Constitution:		
3.	If the constitution is other than individual, name of the Proprietor, Partners, Directors as the case may be:		
4.	Experience		
5.	Educational qualification (in case of individual)		
6.	PAN / GIR No. (mandatory)		
7.	Residence address (in case of individual)		
8.	Office address:		
9.	Phone	Office No. :	
		Residence No. :	
		Cell No. :	
		Fax No. :	
10.	E mail address:		
11.	Brief details of about existing clients		
12.	Reference (other than relatives)	Name :	
		Profession :	
		Address :	
		Phone (Res & Off):	
		Cell No. :	
13.	Whether Involved in any case including criminal proceedings, if so, details Yes / No		
<p>I/We do hereby certify that the above information is true and correct. I/we also understand that the proposal, if accepted, would be on basis of information provided by me/us in this profile.</p> <p>Date: _____ Place: _____ Signature: _____</p>			

To attach the following

- Identity proof - Photocopy of the PAN Card
- Partnership Deed/Memorandum and Articles of Association (if applicable)

3. REQUEST FOR APPROVAL FROM BRANCH INCHARGE TO HIGHER AUTHORITY TO ENGAGE AGENTS FOR REPOSSESSION

Branch :
Date :
LOAN Cont. No. :
Agreement date :
NAME OF THE
BORROWER :
Association with since :
GUARANTORS NAME :
Existing / Old / New :

VEHICLE DETAILS

Regn No.	Make	Model	Type

ACCOUNT STATUS

Amt O/s	Due Since	Arrears	AFC & Incls	No of Instl recd

FC Validity :
Road Tax Paid up to :
Demand letter by
RPAD sent on :
Advocate Notice by
RPAD sent on :
Whether acknowledged :
If not, the reasons :
Branch Field staff name
who is following :
The last date on which
our field staff met the
Borrower and
the guarantor in person :

The last date on which the
Branch incharge met the
Borrower and the
guarantor in person :

Response from the
Borrower :

Nature of the Borrower :

Guarantor's response :

Whether the branch
attempted repossession
and reasons for failure :

Name of the agent who
offered and the branch'
recommendations for
engaging them :

Repossession charge per vehicle

BRANCH INCHARGE

Copies of Demand letter and advocate notice, proof of dispatch, postal acknowledgement, if received, to be attached.

4. LETTER OF ACCEPTANCE (IN DUPLICATE) FROM THE BRANCH INCHARGE ADDRESSED TO THE REPOSSESSION AGENCY/AGENT

To

Sir,

Sub : Loan Contract no :
Borrower name & address :
Vehicle :
Engine no :
Chassis no :
Vehicle registration no :
Amount due :

Ref: Your letter of offer dated.....

With reference to your letter of offer dated, subject to the following terms and conditions, we agree to avail of your services for

locating and repossessing the above vehicle in view of the default committed by the Hirer/Borrower in paying the instalments,

- 1) You shall depute a proper person, holding valid licence and having proper expertise in locating and seizing the vehicle and you shall ensure that such person shall not be an anti social element nor having any criminal antecedents.
- 2) You shall issue proper identity card to the person so deputed and also a suitable letter of authority to locate and seize the above vehicle.
- 3) You shall make your own arrangements for effecting seizure of the vehicle.
- 4) The letter of authority issued by you shall contain the following instructions:
 - a) The vehicle shall not be repossessed when the Borrower and his family are travelling in the vehicle;
 - b) He shall not use any weapon against the Borrower or his representatives or against any third parties while repossessing the vehicle;
 - c) He shall not cause any Law and Order Problem nor any injury to any person or property while repossessing the vehicle;
 - d) The letter of authority shall show the amount due as aforesaid;
 - e) Unless the situation warrants to repossess the vehicle immediately, once the vehicle is sighted, the person deputed shall reconfirm the amount due from our officials and on confirmation that default still persists, the vehicle shall be repossessed;
 - f) Immediately after repossession, he shall send telegram to the nearest Police Station within whose jurisdiction the vehicle is repossessed, as per the format given in the Annexure-I;
 - g) Upon repossession of the vehicle, the person shall take an inventory as per the format given in the Annexure-II and shall obtain signature of the Driver or the representative of the Hirer/Borrower or by two independent witnesses;
 - h) Immediately upon repossession of the vehicle, the person shall contact:
 - (i) our company official and shall move the vehicle to a place as per the instructions of the official.
 - (ii) To park the vehicle in the said place and to obtain suitable

acknowledgement from the person who is at the place of garage.

- (iii) To deliver the keys, the documents of the vehicle such as RC, tax token, Insurance Certificate, fitness certificate and any other documents, including the inventory to our company official under proper acknowledgement.
 - i) If the vehicle is repossessed with goods, in addition to the adherence of the instructions stated above, the person shall take necessary care and steps to protect the goods and inform the company officials the names and address of the consignor and the consignee and shall carry out the instructions of the company officials.
 - j) The vehicle shall not be repossessed , when it carries combustible goods
 - k) The person shall not have authority to compromise, to enter into any settlement or understanding with the Borrower or his representatives
 - l) The person shall not collect any money or instalment from the Borrower
- 5) The charges for repossession shall be fixed at Rs./- subject to TDS.
 - 6) You shall ensure that the deputed person shall carry the copies of the demand notice sent to the parties, this letter, the original Letter of authority and the identity card.
 - 7) It is a condition for this engagement that you or the person deputed by you shall, without fail, function within the civil and criminal laws of the country and shall follow all the terms and conditions of this arrangement. We shall not be liable and responsible in whatsoever manner for any breach of the above terms and conditions committed by yourself or the person deputed by you.
 - 8) You shall indemnify against any loss, damages, costs and claim made against us on account of any breach of the above terms and conditions committed by you or the person deputed by you.
 - 9) The avail of your services to locate and to repossess the vehicle ends as and when the person deputed by you delivers the original keys, the documents of the vehicle and inventory to the company official.

Kindly signify your acceptance by signing the copy of this letter.

Thanking you,

Yours truly,

For

BRANCH INCHARGE

5. **FORMAT OF THE LETTER OF AUTHORITY GIVEN BY THE AGENT TO THE PERSON DEPUTED FOR REPOSSESSION.**

To

Sir,

Reg: Loan Contract no :
Borrower name & address :
Vehicle :
Engine No. :
Chassis No. :
Vehicle registration No. :
Amount due :

M/s (hereinafter referred to as "the company"), having its office at, vide letter dated has appointed us to locate and seize the above vehicle, the Photostat copy of which is enclosed.

In this regard, you are deputed and have authority to locate and seize the aforesaid vehicle on our behalf.

This letter of authority is subject to the following terms and conditions:

- a) The vehicle shall not be seized when the Borrower and his family are travelling in the vehicle;
- b) You shall not use any weapon against the Borrower or his representatives or against any third parties while seizing the vehicle;
- c) You shall not cause any Law and Order Problem nor any injury to any person or property while seizing the vehicle;
- d) The amount due by the Borrower under the above contract is

Rs..... and the demand notice sent to the Borrower is enclosed.

- e) Unless the situation warrants to seize the vehicle immediately, once the vehicle is sighted, you shall reconfirm the amount due from the officials of the company, whose contact Nos. are and on confirmation that default still persists, the vehicle shall be seized;
- f) Immediately after seize, you shall send telegram to the nearest Police Station within whose jurisdiction the vehicle is seized, as per the format given in the Annexure-I;
- g) Upon seizure of the vehicle, you shall take an inventory as per the format given in the Annexure-II and shall obtain signature of the Driver or the representative of the Borrower or by two independent witnesses;
- h) Immediately upon seizure of the vehicle, you shall contact
 - i. The company official and shall move the vehicle to a place as per the instructions of the official.
 - ii. To park the vehicle in the said place and to obtain suitable acknowledgement from the person who is at the place of garage.
 - iii. To deliver the keys, the documents of the vehicle such as RC, tax token, Insurance Certificate, fitness certificate and any other documents, including the inventory to the company official under proper acknowledgement.
- i) If the vehicle is seized with goods, in addition to the adherence of the Instructions stated above, you shall take necessary care and steps to protect the goods and inform the company officials the names and address of the consignor and the consignee and shall carry out the instructions of the company officials.
- j) The vehicle shall not be seized, when it carries combustible goods
- k) You shall not have authority to compromise, to enter into any settlement or understanding with the Hirer/Borrower or his representatives
- l) You shall not collect any money or instalment from the Borrower
- m) You shall have the copies of the letter of appointment issued by the company, the demand notice sent to the Borrower by the Company, this letter of authority, the identity card, while venturing on seizure of the aforesaid vehicle and shall produce the same as and when demanded by the Borrower.

- n) This letter of authority comes to an end immediately after delivery of the keys, the vehicular documents, other documents including the inventory to the company official, as stated under Clause h(iii).

.....

(SIGNATURE)

6. IDENTITY CARD

Mr.....s/o..... residing at is deputed by M/s having office at.....and is authorised to seize the vehicle bearing Regn No:..... Engine No:.....Chassis No:.....MAKE/ MODEL..... (Under hypothecation in terms of the agreement entered into With M/s. by the Borrower Mr..... s/o,..... having address at,.....) in accordance with the terms and conditions contained in 'letter of authority' enclosed. Mr.....'s photograph and signature are attested herein.



This identity card is specific to the vehicle mentioned herein and would automatically ceases to be in force immediately after seizure of the vehicle and delivery of the keys, vehicular documents and the inventory as contemplated in the 'letter of authority'

Yours truly,
Authorised signatory

7. FORMAT OF THE TELEGRAM TO BE SENT TO THE POLICE STATION WITHIN WHOSE JURISDICTION THE ASSET / VEHICLE WAS SEIZED BY THE PERSON DEPUTED

The Inspector of Police

The vehicle bearing Registration No.....which is under finance with M/s, was seized athours on upon the instructions of the financiers under the rights conferred under the agreement, in view of the default committed by Mr in paying the instalments. Request not to entertain any type of complaint from the said person or any other persons.

8. INVENTORY

INVENTORY OF ITEMS IN THE VEHICLE BEARING REGN.NO.

Vehicle No. :
Make :
Ac/Non-A/c :
Colour :
Engine No. :
Chassis No :
Date of Seizure :
Time Mileage Key's : Y/N.

1. Registration Book :
2. Insurance Policy :
3. Instruction Manual :
4. Warranty Booklet :
5. Tool Kit :
6. Jackie :
7. Tyres (Condition & Make)
 - Front : 1.New/ Good/Bad-Old/Retread
2 .New/ Good/Bad-Old/Retread
 - Rear : 1.New/ Good/Bad-Old/Retread
2 . New/ Good/Bad-Old/Retread
 - Spare Tyre : 1.New/ Good/Bad-Old/Retread
8. Music System : Make : Working : Y/N
9. No of Cassettes/CDs :
10. No of Speakers : Make :
11. Clock : Y/N
12. Radio :
13. Tarpaulin Sheets :

14. Buckets :

15. Additional item, if any :

16. Damage Report :

Name and address of the person
Surrendering the vehicle

Signature of the person
seizing the vehicle

Witnesses:

1.

2.

9. VEHICLE SEIZED WITH GOODS - TELEGRAM TO THE CONSIGNEE, WITH COPIES TO THE CONSIGNOR AND THE REGISTERED OWNER

To

Reg: *

(* Description of goods shall be typed)

The vehicle bearing No..... under finance with us carrying the above goods which are consigned to you, has been seized by us in view of default by the registered owner. The vehicle along with the goods are now at Take delivery of the goods at the earliest failing which we are not responsible for loss of or damage to goods.

Copies shall be sent to the Consignor and the registered owner

10. LETTER OF ACKNOWLEDGEMENT FROM THE CONSIGNEE

To

Dear Sir,

Reg: Your telegram dated

We have taken custody of the goods carried in the vehicle bearing registration No..... under finance with you after having inspection and verification. We have no claim as to the condition and quantity of the goods.

Thanking you,

11. LETTER TO THE BORROWER AND THE GUARANTORS INFORMING THEM ABOUT SEIZURE AND GIVING A FINAL OPPORTUNITY TO SETTLE THE ACCOUNT AND TAKE BACK THE POSSESSION OF THE ASSET - BY WAY OF REGISTERED POST, COPIES BY WAY OF CERTIFICATE OF POSTING:

Date:

Sir / Madam :

Re : Loan Agreement No ...

Vehicle No:

Owing to the default committed by you under the said Agreement, we have, in exercise of our paramount right conferred in the Agreement, seized the subject vehicle on

Under the said agreement, a sum of Rs..... is due and payable towards outstanding, besides additional interest and other charges, as per the terms of the Agreement.

You are hereby called upon to settle the contract within 10 (ten) days from the date of receipt of this letter, failing which, we will be constrained to sell the vehicle in its 'as is where is' condition and also to take steps for recovery of the shortfall amount, if any, that may arise after appropriation of the sale proceeds against the amount payable under the said agreement as on the date of the sale. You can also bring suitable offer for sale of the said vehicle.

You are also hereby called upon to surrender the Original RC, Tax token and the Insurance Policy of the aforesaid vehicle within the time frame mentioned above, at our Branch and in case of failure to surrender the above documents within the stipulated time, it will be construed that they have been lost.

Thanking you,

Yours truly,

for

Copy to: (Guarantor)

Your liability as a Guarantor is co-extensive with that of the Borrower under the said agreement. Hence, you are also Jointly and severally liable for the amount due and payable by the Borrower to us.

You are hereby called upon to settle the contract within 10 (ten) days from the date of receipt of this letter, falling which, we shall be constrained to take further action as indicated above. You can also bring suitable offer for sale of the vehicle.

13. DELIVERY RECEIPT

To

Sirs,

Reg: Loan Contract No..... Vehicle Details:

I/We have taken delivery of the said vehicle together with accessories as mentioned in the Inventory dated after having inspected and satisfied with the condition of the vehicle. We have no claim as to the condition of the vehicle and also as against the accessories, the items mentioned in the inventory.

Thanking you,

Yours truly,

14. PUBLICATION FOR SALE OF THE VEHICLE

Available for sale (Vehicle) . Model.

For details, contact Phone No :

within a week.

15. OFFER / QUOTATION FROM THE PROSPECTIVE BUYER:-

Date

From :

To :

Sir:

Re : Vehicle :

Chassis No. :

Engine No. :

Regn. No. :

I have inspected the above said vehicle and submit my offer/ quotation for purchase of the above vehicle in its 'as is where is condition' for Rs.

In case my offer / quotation is accepted, I undertake to deposit 10% of the amount quoted by me, immediately on the date of intimation of acceptance of my offer. The balance 90% of the amount will be paid to you within 7 (seven) days from the date of receipt of your intimation of acceptance. Failure on my part to pay the balance

amount within the time stipulated above, the offer ceases to be in force without any reference to me and the amount deposited shall also stand forfeited. I will have no claim whatsoever against you in respect of the amount deposited by me and also against the vehicle.

Thanking you,

Yours faithfully,

16. LETTER TO THE PROSPECTIVE PURCHASER

Date :

To

Sir

Re : Vehicle :

Chassis No. :

Engine No. :

Regn. No. :

This refers to your offer dated submitted for the aforesaid vehicle.

In this regard, we wish to inform you that your offer has been accepted by us for sale of the aforesaid vehicle to you in its 'as is where is condition'.

As agreed by you in your offer letter, you are hereby requested to deposit 10% of the sale price immediately on receipt of this letter and the balance 90% of the sale price within 7 (seven) days from the date of receipt of this letter.

In case of your failure to deposit the amount within the time stipulated above, your offer will automatically lapse without any further intimation to you and the Initial deposit also stands forfeited.

Kindly acknowledge receipt of this letter by way of signing on its copy in token of your acceptance of the above condition.

Thanking you.

Yours truly,

Signature & Date :.....

Name

Address

17. **INDEMNITY FROM THE BUYER TO BE EXECUTED ON A STAMP PAPER OF VALUE AS APPLICABLE TO AGREEMENTS PRESCRIBED UNDER STAMP ACT OF DIFFERENT STATES (SHALL NOT BE WITNESSED):-**

THIS DEED OF INDEMNITY EXECUTED ON THIS
DAY MONTH AND YEAR

BY

Mr. S/o. residing at
(hereinafter called as 'The Purchaser', which term unless the context otherwise requires, shall mean and include his/her heirs, representatives in interest, executors, administrators, successors and assigns)

IN FAVOUR OF

M/s., a public / private limited company, Incorporated under the Indian Companies Act 1913 / Companies Act, 1956, having its registered and Head office at (hereinafter called as 'the Company', which expression shall mean and include its successors in interest and assigns).

WHEREAS one (hereinafter called 'the Party') entered into a Loan Agreement dated with the Company in respect of

(vehicle) bearing Registration No. (hereinafter called 'The Vehicle');

AND WHEREAS the Party committed default In paying the monthly Instalments and the Company seized the Vehicle on in its as is where is condition,

AND WHEREAS the Purchaser, after having inspected the Vehicle and satisfied with its condition, offered to purchase the Vehicle in its as is where is condition for a sum Rs./- and agreed to pay the sale consideration to the Company as per the terms of the offer and acceptance letter.

AND WHEREAS the Purchaser undertakes to comply with all the formalities for transfer of the registration certificate and other necessary documents in the name of the purchaser at his/her cost and requested the company to deliver all the necessary forms and the documents relating to the vehicle which are In possession of the company to the purchaser for effecting transfer of the registration certificate and any other documents relating to the vehicle in the name of the Purchaser and the Purchaser assures the company that the purchaser will not misuse the forms and the documents.

AND WHEREAS the Purchaser undertakes to pay the motor vehicle Tax and any other fee and duties in respect of the vehicle which are in arrears and represents that the Purchaser shall be responsible for any acts on the Vehicle and the company is not in any way responsible for any offence or act committed by the Purchaser.

AND WHEREAS the Purchaser assures that he/she will not make any claim, demand either with reference to the condition of the vehicle or the sale price

AND WHEREAS the Company has acceded to the request provided that the Purchaser indemnifies against all demands, losses, claims, damages and charges, which the Company may sustain or incur by reason of delivering the forms / the documents which are in possession of the company to the Purchaser pending transfer of the Registration certificate and other necessary documents relating to the vehicle.

NOW THIS DEED WITNESSETH THAT in consideration of the premises and of the Company having acceded to the request of the Purchaser, the Purchaser hereby agrees at all times hereinafter to keep the Company harmless and indemnified of and from all manner of actions, suits, claims and demands whatsoever and of and from all damages, costs and charges whatsoever which the Company may at any time hereafter sustain, bear or be put to on account of delivery of the vehicular documents and other forms to the purchaser.

PURCHASER

18. LETTER ADDRESSED TO THE GARAGE OWNER FOR RELEASE OF THE VEHICLE TO THE PURCHASER:

To

Sir,

Reg : Release of Vehicle

You are requested to release the above mentioned vehicle to Mr/ Mrs/Ms,..... whose specimen signature is attested below :

Signature of Mr/Mrs./Ms :

Thanking you,

Yours faithfully,

For

Authorised Signatory

19. DELIVERY RECEIPT

Date :

From

To

Sir:

Re : Vehicle :

Chassis No. :

Engine No. :

Regn. No. :

I have today taken delivery of the said vehicle in its 'as is where is condition'. I shall not have any claim whatsoever nature against you in respect of the said vehicle.

Thanking you.

Yours faithfully.

Annexure - VI

Full text of the Judgment in ICICI Bank v/s Prakash Kaur & Others in appeal (crl) 267 of 2007 delivered by

Justice Dr AR. Lakshmanan & Justice Altamas Kabir

CASE NO.:

Appeal (crl.) 267 of 2007

PETITIONER:

MANAGER, I.C.I.C.I. BANK LTD

RESPONDENT:

PRAKASH KAUR & ORS

DATE OF JUDGMENT: 26/02/2007

BENCH:

AR. Lakshmanan & Altamas Kabir

J U D G E M E N T

(Arising out of S.L.P. (Crl.) 15/2007)

ALTAMAS KABIR,J.

Leave granted.

This appeal has been filed by the Manager, I.C.I.C.I. Bank Ltd. against the order dated 7th December, 2006, passed by the Allahabad High Court in Criminal Miscellaneous Petition No.11210/2006 disposing of the petition with a direction upon the S.S.P. Allahabad, to ensure the registration of a case on the basis of Annexure VII to the Writ Petition and its investigation by a competent police officer.

Before advertng to the subject-matter of the writ petition, it may be pointed out that in the writ petition, the writ petitioner has chosen to implead as respondents, not only the Union of India and other police authorities of Uttar Pradesh but also the President/Chairman/Managing Director of the I.C.I.C.I. Bank, the General Manager, Loans, I.C.I.C.I. Bank, Branch Sardar Patel Marg, Civil Lines, Allahabad and M/s. Kartik Associates, Banaras Automobiles, Kodopur, Ram Nagar, Varanasi, through its authorised Goonda Officers and Goonda Employees and Institutions created against the law for doing work and persons of the Institutes, Criminals to do work for I.C.I.C.I. Bank. The subject matter of the writ petition relates to a loan taken by the writ petitioner from the I.C.I.C.I. Bank, Allahabad Branch for purchase of a truck. It appears that the writ petitioner defaulted in payment of the instalments and in terms of the agreement entered into

between the writ petitioner and the Bank, the writ petitioner's truck was taken possession of by the bank authorities by use of force on 13th July, 2006. It also appears that the writ petitioner requested the Chief Manager (Loans), I.C.I.C.I. Bank, Sardar Patel Marg, Civil Lines, Allahabad, for release of the truck which was alleged to have been forcibly taken possession of by M/s. Kartik Associates, acting as the agents of the Bank. The writ petitioner appears to have also written to the said agents on 25th July, 2006, requesting them to provide details of the instructions given to them to seize the petitioner's truck. Since the truck was not returned to the writ petitioner, she caused a legal notice to be served on M/s. Kartik Associates but the same was returned unserved as having been refused. The writ petitioner contended that the Bank and its officials had systematically conspired to cheat the writ petitioner by advancing the loan for purchase of the truck and accordingly wrote to the police authorities on 3rd/4th September, 2006, requesting them to register the First Information Report of the alleged offences punishable under Sections 120-B, 400/ 403/ 406/ 409/ 417/ 418/ 419/ 420/ 421/ 422/ 424/ 466/ 467/ 468/ 469/ 571 and 511 IPC. It was also urged that since no steps had been taken by the police authorities on the basis of the application dated 3rd/4th September, 2006, the respondent Nos. 1, 2, 5, 6, 7 & 8, being the Union of India and other officers of the U.P. Police, had committed offences punishable under Sections 166/ 167/ 212/ 217/ 218/ 221/ 120-B IPC and Section 13 of the Prevention of Corruption Act. On the basis of the aforesaid allegations, the writ petitioner, inter alia, prayed for a direction upon the respondent Nos. 1, 2, 4, 5, 6, 7 & 8 to register a First Information Report in Civil Lines Police Station, Allahabad, against the respondent Nos. 9 to 13 and during the period of investigation, to save the losses of the writ petitioner by recovering the truck along with all the documents relating to the truck and to hand over the same to the writ petitioner. The writ petitioner also prayed for a writ of mandamus to direct the respondent Nos. 1 and 3 to cancel the licence of I.C.I.C.I. Bank and for other ancillary reliefs.

On the basis of the aforesaid writ application, the Division Bench of the Allahabad High Court while disposing of the writ petition passed the following order:-

"The relief sought in this Writ Petition is for issuance of a direction for Registration of the case against the Respondents.

Heard learned counsel for the petitioner and the learned AGA for the State and perused the record.

The contention for the learned counsel for the petitioner is that a perusal of Application dated 03/09/06 (Annexure VII) to the Writ Petition discloses commission of a cognizable offence. It was obligatory on the part of the

police to have registered the case and to proceed with the investigation but it was not done. The petitioner is a lady and she has approached this Court for the relief sought therein and in support of his contention he has relied on Ramesh Kumari vs. State (N.C.T. of Delhi) & Ors., reported in 2006 (1) Crimes 229 (SC) wherein the Apex Court was pleased to issue direction for registration of the case.

We have perused the application dated 03.09.2006 which shows the alleged commission of cognizable offence. Consequently we direct the SSP Allahabad to ensure the registration of a case on the basis of Annexure-VII to the Writ Petition and its investigation by a competent police officer.

The Writ Petition stands disposed off accordingly.”

Appearing for the appellant, Mr. Harish Salve, learned senior advocate with Mr. Mukul Rohatgi, learned senior advocate, submitted that the disputes between the parties, if any, were entirely of a civil nature relating to the instalments payable by the writ petitioner on the loan taken by her from the Bank and accounting of all payments actually made and there was no element of criminal intent in the entire transaction. Mr. Salve submitted that while the writ petition had been filed with the intention of exerting pressure on the Bank and its authorities to release the truck, the High Court should have also looked into the pleadings and the frame of the writ petition before passing the impugned order dated 7th December, 2006. A glance at the pleadings would make it quite clear that the dispute involved was of a purely civil nature and did not warrant any direction as has been given. However, while make his submissions, Mr. Salve also conveyed the Bank’s willingness to compromise the matter by foregoing the interest which was payable on the outstanding dues which amounted to Rs.1,62,917/-. Mr. Salve also submitted that in the event the writ petitioner had any doubts regarding the payments made by her and credited to her account, she could sit with the officers of the Bank along with her agent and verify the accounts and in the event it was found that any payment made by her had not been credited to her account, she would be entitled to receive credit for the same. Mr. Salve submitted that if the writ petitioner paid an initial sum of Rs.50,000/- (Rupees Fifty thousand) only, the truck could be returned to her and upon final accounting the balance principal amount found payable by her could be paid off in suitable instalments. On behalf of the writ petitioner/respondent, it was contended that the amount said to be due towards principal was highly inflated since according to the writ petitioner she had defaulted in making payment of only one instalment.

Be that as it may, we are inclined to accept Mr. Salve’s suggestion and we accordingly direct that upon deposit of a sum of Rs.50,000/- (Rupees

Fifty thousand) only, the Bank shall forthwith release to the writ petitioner or her agent the truck bearing registration No.UP-78-AN-1951 which had been seized from the writ petitioner's possession. The writ petitioner assisted by her agent, will sit with the Bank officials for the purpose of reconciling the accounts and in the event it is found that the writ petitioner had not been given credit for certain payments made by her, such payments are to be taken into account and the balance principal amount will then be paid by the writ petitioner-respondent to the Bank in six equal monthly instalments, the last instalment being for any broken amount, if any. The writ petitioner-respondent undertakes not to encumber or dispose of the truck till the final accounting is completed and all dues are cleared. In case of default in payment of subsequent instalments, if any, the Bank will be entitled to re-possess the vehicle in accordance with law. The Bank shall forego the interest said to be payable by the writ petitioner and the writ petitioner will also not be entitled to make any claim on account of any damage and wear and tear that may have been caused to the writ petitioner's vehicle while in the custody of the Bank and its officials. The appeal is accordingly allowed and the order impugned in the appeal is set aside. If any First Information Report has already been registered in terms of the impugned order, the same shall also stand quashed along with the investigation commenced thereupon. Before we part with this matter, we wish to make it clear that we do not appreciate the procedure adopted by the Bank in removing the vehicle from the possession of the writ petitioner. The practice of hiring recovery agents, who are musclemen, is deprecated and needs to be discouraged. The Bank should resort to procedure recognised by law to take possession of vehicles in cases where the borrower may have committed default in payment of the instalments instead of taking resort to strong-arm tactics. There shall be no order as to costs.

CASE NO.:

Appeal (crl.) 267 of 2007

PETITIONER:

Manager, ICICI Bank Ltd

RESPONDENT:

Prakash Kaur & Ors

DATE OF JUDGMENT: 26/02/2007

BENCH:

Dr. AR. Lakshmanan & Altamas Kabir

J U D G E M E N T

(Arising Out of SLP (Crl.) No. 15 OF 2007)

Dr. AR. Lakshmanan, J.

I had the privilege of perusing the judgment proposed by my learned Brother - Hon'ble Mr. Justice Altamas Kabir. While respectfully concurring with the conclusion arrived by the learned Judge, I would like to add the following few paragraphs:-

1) Regarding the role of Recovery Agents, use of abusive language, due process of law, RBI guidelines.

FACTORS:

The issue of Banks employing alternate means of recovery other than by due process of law i.e., either through Courts, Tribunals, Adalats or Commissions is an issue that has to be viewed from two angles (1) from the angle of the common man and (2) from the angle of the bank.

REASONS:

1. First of all, the entrance of the multi national banks into the country has spread the culture of Credit Cards, Loans on an unimaginable level where rather than the rich, it is the middle class, the lower middle class and the lower class who are at the receiving end of the bonanzas promised by the Banks.
2. Inadequate information on the Credit Card application, Loan Applications, Advertisements or even while meeting the bankers in person in respect of the lending rates and hidden charges, leads to this class of people being lured into the buying of the Credit Cards or taking of the home loan or education loan without knowing the ramifications of non-payment and default.
3. The first mistake here is most definitely on the part of the bank who does not believe in educating the masses regarding the promises. Once the credit card or loan is taken and there appears a default, then the witch-hunt begins.
4. Now the bank is the aggressor and the public is the victim. The first step to recovery of the money due is through the so-called RECOVERY/COLLECTION AGENTS. A very dignified term used for paid recovery agents who are individual and independent contractors hired by the Banks to trace the defaulters and to both physically, mentally and emotionally torture and force them into submitting their dues.
5. A man's self respect, stature in society are all immaterial to the agent who is only primed at recovery. This is the modernised version of Shylock's pound of flesh. No explanation is given

regarding the interest charge and the bank takes cover under the guise of the holder of the card or loan having signed the agreement whose fine print is never read or explained to the owner.

6. When a harassed man approaches the Court or the police station he is not armed with a recording phone and finds it difficult to give evidence of the abuse he has suffered. Here the bank gets away with everything. Young and Old members of the family threatened on streets, institutions and also at home at godforsaken hours by these agents who have the full support of their contractor bank. The stance taken by the bank in any suit alleging such incidents is that no such agent has been appointed by them or their agents do not misbehave in the manner aforesaid and if found guilty the agents have to bear the cross and the bank gets away scot free.
7. Using of the abusive language for recovery is the norm of the day for most nationalised or multi national bank or non-nationalised bank. Though some are smart enough to record the abuse and proceed to establish the same through Court of Law, most of them are unfortunate not to have recourse to it. Such people form the majority and such litigations are pending in large volumes before the Civil and Consumer Courts. Again the banks escape liability since these agents are not salaried employees of the bank and hence not directly liable for anything.
8. Taking it from the angle of the common man the inflow of software money and high salaries has resulted in uncontrolled expenditure. Rather than utility it is a fashion to carry a card for it makes a statement depending on the type of card one carries.
9. To maintain ones image one pays the price of utilizing the card without realizing that even a single day's delay in payment results in more than 100 to 200 rupees being charged as default and penalty charges, which if accumulates over a month, results in the charges exceeding the actual payment due.
10. As for loans, when litigation is commenced by the customer against the bank or an institution, then they refuse to divulge the true statement of account stating that it will be produced in court. This gives ample scope for manipulation.

SUGGESTIONS

1. Chronic defaulters should mean a default of a maximum of three months if intermittent payments have been made.

2. It is mandatory that the banks be held vicariously liable for such acts of agents. These agents have to be identified as registered agents of the bank and should be bought directly under the purview of the RBI.
3. It may be useful that in view of the enormous amount of litigation pending and being filed against the banks that the recovery agents be made employees of the bank and the bank be held liable directly for all actions of such employees.
4. Also every statement sent by the bank should disclose clearly the rate of interest and the default interest and penalty charges separately calculated and added to the amount pending and due by the customer.
5. At the very first month of default, the card should automatically be terminated by the bank to prevent further use/misuse.
6. At the time of issuance of card itself, the issuance letter should contain every single charge being made, explained in simple terms and the penalty the customer will bear for such non-payment.
7. These agents should be held responsible for every background check done on the person to whom the card is issued and the defaulter should be made liable along with the agent. This would ensure that the agent does not source illegal or fraudulent customer.
8. This is dealt with elaborately in the RBI guidelines issued on 21.11.2005 but which still remains only on paper and is not being followed.

2) HIRE PURCHASE:

FACTORS:

Very many banks and more importantly banks like ICICI have extended liberal credit facilities for purchase of vehicles whether two wheelers or four wheelers, more the number the targets are achieved. This results in a certain amount of default cases. The default can be two-fold (1) genuine and (2) fraudulent. Both, in the case of genuine and fraudulent the method usually adopted by these institutions is to engage thug/hooligan/gangster for recovery or the two wheelers or four wheelers. Many times even notice is not given to them. They seize the vehicles even in public places deliberately to cause embarrassment. There is no codification till date. This requires

immediate attention. In all the cases of hire purchase, advance cheques for a period of 36 months or 48 months or 60 months are obtained and since there is no proper collection process, they not only seize the vehicles but also continue to present the cheques merely to harass the customers. A recent incident has taken place when the Recovery Agent had gone and threatened a school going child for the money due by the father. Unless we have an effective supervisory system the abuse will continue.

SUGGESTIONS

Most of the non-banking financial institutions adopt the arbitration route for the purpose of getting a commissioner of the Court appointed for seizing the vehicles.

The most important aspect would be a broad guideline for fixing the targets, whether they be for lending or for recovery. This would result in a proper balance between the extreme differences of working conditions between the Multinational Commercial Banks and Nationalised and Non-nationalised Banks who are doing the very same credit business with dignity.

3) Agency systems to be abolished

FACTORS

Though there are voices raised stating that the agency system should be abolished, this has to be examined from the view of the bank for whom this system has proved to be extremely productive in view of chronic and regular defaulters and customers who have a premeditated intention of cheating the bank. Such people are identified easily by the agents and produced physically before the bank who resort to all means including the local police help to force such customers to repay their dues.

REASON

The delay in the Courts and the in-effective and corrupt police structure enables the bank to seek the help of such agencies which proves to be cost effective and less cumbersome.

SUGGESTIONS

- Abolition of the system is not the answer but effective control over the agency by the respective banks is essential.
- Even though, the Reserve Bank of India Guidelines permit the use of an Independent Agency, no prescribed qualification or license is granted.

- If there could be a guideline only licensed recovery agents would be employed and misuse of the agents as against the borrowers can be eradicated.
- License also should be granted after the respective agents get through in a course conducted by the banks.
- In accordance with the RBI Guidelines, in any proven cases the license of the agent should be cancelled with penal consequences on them.
- This could be the best alternative if the banks do not come forward to employ their own personnel and depute them for recovery of outstandings.

4) RBI Guidelines

- The widely published and circulated guidelines dated 21.11.2005 has constituted a working group on regulatory mechanisms and for fair trade practices.
- It came into effect as of 30th November, 2005 and covers a wide area pertaining to the rights of the customers and right to privacy, confidentiality, practice of debt collections, Redressal of grievances and monitoring systems to be implemented by the banks.
- Pursuant to this certain knowledgeable persons/executives aggrieved by the agencies behaviour took recourse through the Ombudsman.
- Not many are aware of this forum and the banks continue to be safe.

5) Banking Regulations Act

- Banking Regulations Act does not, in any way, provide the details of the conduct of the bank business.
- It only contemplates the registration of a bank, incorporation of a bank and thereafter puts the bank under the control of RBI.
- While there are guidelines both for lending and recovery which contemplates that no use of force or abuse is used in recovery proceedings, in the absence of an effective overseeing body, these abuses continues.
- Since every bank should hold a license issued to carry on the banking business in India by the RBI in accordance with the

conditions imposed by the RBI, if and when both nationalised and MNB's violate any of the rules and regulations consistently over a period of time, then strictures ought to be imposed on such digressing banks to curb their high handed activities and to make them answerable to the general public.

- Only this would reinstate the confidence of the masses in the banking system who are already burdened with the population of over 60 years of age having lost tremendously on the lowering of the interest rates.
- The banking procedures should be people friendly at the same time, strict in its enforcement and educative enough to guide the public on the benefits of prudent banking and savings and at the same time, enlighten them on the pitfalls of borrowing or taking credit from institutions for various purposes, way beyond their means.

CONCLUSION

On an overall assessment of the system presently existing in India, the Multi National Banks score over the nationalised banks in terms of connectivity and ease in functioning, since they are highly automated and efficient. The staff too is well trained and well paid also. The disadvantage here is that the more the pay, the greater the pressure. Every facility is provided but work is extracted to the maximum irrespective of the age or personal circumstances. In a nationalised bank, since there is no fear of immediate removal, the attitude of the staff is tolerant. No effort is made to go a little more to help the masses. Burden is shifted easily at the lower level. The middle management and higher management are under tremendous pressure, since they are to achieve targets on par with the Multi National Banks. Though there is job security and comfort in pension, there is no answerability. This leads to a recalcitrant attitude and apathy.

As a conclusion, one can state that though efficiency is necessary, it should not be attained under pressure and this situation would only improve if answerability is made the prime criteria in both the sectors.

ADDITIONAL INPUTS

Considering the difficulties of the customers as well as banks, the concept to be developed is to create distinct and separate department for recovery. This should be manned by persons who will not resort to violence or force when they are in the process of recovery

of the dues. While the fraudulent defaulters can be dealt with by taking the Police help for such action, it is only when law is taken into the hands of the so called recovery agents, who are appointed on contract basis, the issue gets aggravated. A separate wing, wherein appropriate training is given in accordance with RBI guidelines would facilitate the bank in its recovery process and also would provide more responsibilities to the persons so engaged.

Yet another suggestion would be that of loans whether they are Personal Loans or Credit Cards or Housing Loan with less than Rs.10 lakhs exposure, can be referred to Lok Adalat which can be specially created for resolving the issues between the banks and the borrowers. In fact, the Lok Adalat should be used as an effective machinery to resolve the issues and concentrate with reference to keeping the fine balance between the Banks and Borrowers.

If the Agency System is inescapable, then the Agency must be coupled with a license issued after conducting examination. Appropriate training should be given to the agents who should have requisite qualification and maturity to handle delicate and sensitive situation. Merely because the Agency System is convenient to the banks, and has been approved by RBI, it should not lead to lawlessness and conduct resulting in challenge to rule of law.

While performance of the banks are always co-related with reference to its growth, its assets utilisation and finally profit in the balance sheet, that and that alone cannot be relied upon, with reference to a country like India, where there is enormous disparity in respect of various sections of the society. These are all positive steps that would bring in the over all balance in the working of all these institutions.

Whether it is a bank, which concentrate on higher segment of banking or it is a bank which concentrate upon middle class, lower middle class and such other segment of the Indian Public who look to and requires the banking comfort, it is not mere question of lending the money that matters, but also the consequences thereafter. The social responsibility is larger than the banks profit and growth ratio alone. Keeping in mind the social responsibility, it is absolutely necessary to appoint a Special Committee who will look into the disparity in working conditions, at least upto the managerial level and make such recommendations to the RBI and Union of India for all remedial actions.

In conclusion, we say that we are governed by a rule of law in the country. The recovery of loans or seizure of vehicles could be done only through legal means. The Banks cannot employ goondas to take possession by force.

Annexure - VII

REFERENCE TO IMPORTANT JUDGMENTS ON REPOSSESSION

- (1) Trilok Singh & Others – Vs – Satya Deo Tripathi – AIR 1979, SC. 850 – dt. January 11, 1979 - Complaint for theft / robbery / dacoity / criminal conspiracy etc by hirer against the financier on the latter exercising the right of seizure, when default was committed. The Hon'ble Supreme Court said that the dispute is held to be of civil nature and initiation of criminal proceedings against the financier is an abuse of the process of the court.
- (2) K. A. Mathai Vs. Kora Bibikutty – (1996) 7 SCC 212 – dt. February 15, 1995 - The Supreme Court has held that on failure to make payment of Instalments, the Financier has a right to resume possession.
- (3) Charanjit Singh Chadha Vs. Sudhir Mehra – (2001) 7 SCC 417 – dt. August 31, 2001 - The Supreme Court has held that when the agreement specifically says that the Owner has got right to repossess the vehicle, there cannot be any basis for alleging that the Owner has any dishonest intention in taking possession nor does have intention of causing wrongful gain to himself and wrongful loss to the hirer.
- (4) Orix Auto Finance (India) Ltd., Vs Shri. Jagmander Singh & another – 2006 SCCL. COM 82 – dt. February 10, 2006 - Hire Purchase – Default committed by hirer in making payment. Possession of vehicle taken over by financier – The financier to repossess under Hire Purchase agreement is contractual and courts cannot interfere with the said right and rewrite the contract.
- (5) Manager, ICICI Bank Ltd. Vs Prakash Kaur & others – dt. February 26, 2007 – Role of Agents, use of abusive language and need to follow due process of law. Seizure of vehicles (i.e Repossession) could be done only through legal means.

Comments:

The judgment stated that repossession agents should be licensed and trained as per RBI guidelines. This judgment was misinterpreted by few people so as to mean that the Hon'ble court has banned repossession and the right to repossess has been taken away. This was blown out of proportion by the negative media publicity, creating a situation where Repossession is practically not happening. As a result, the entire recovery process suffered and some of the borrowers who

were otherwise regular in their repayments, started to default since the deterrent to default (repossession) was banned by the police authorities in many states.

- (6) Magma Leasing Ltd Vs. Abu Rahul Gaznabi – High Court at Calcutta – repossession of the vehicle as per the terms of the agreement executed between the parties, no criminal liability can be attached.
- (7) GE Capital Transportation Financial Services Ltd, - Batch of cases against various parties – The High Court of Calcutta upheld the financier taking possession of the asset in case of default of instalments.

