STATE CONSUMER DISPUTES REDRESSAL COMMISSION

WEST BENGAL

CONSUMER COMPLAINT NO. SC/19/CC/844/2018

Smt. Sampa Basak .....Complainant(s)
PRESENT ADDRESS - Son/Wife of D.L. Basak, 13, S.P. Mukherjee Ro

Versus

Cholamandalam Investment & Finance Co. Ltd. & Another .....Opposite Party(s)
PRESENT ADDRESS - Office at 55/55/1, Chowringhee Road, 5th Fl
Mandar Das(Authorised Signatory), Cholamandalam Investme
PRESENT ADDRESS - Office at 55/55/1, Chowringhee Road, 5th Fl
Rajprotim Supply Chain Solution Ltd.
PRESENT ADDRESS - 49/89, Prince Golam Mohammad Shah Roc
Partha Pratim Banerjee
PRESENT ADDRESS - Flat no. 9D, Hasting Tower, 41, Bosepukur Ro

BEFORE:

HON'BLE MR. RAJES GUHA RAY , JUDICIAL MEMBER

HON'BLE MR. SANTANU SAHA , MEMBER

FOR THE COMPLAINANT: Smt. Sampa Basak, Sk. Abu Sakar, Ghulam Muztaba (Advocate)

FOR THE OPPOSITE PARTY: Cholamandalam Investment & Finance Co. Ltd. & Another, Ms. Soni Ojha. (Advocate)

DATED: 30/07/2026

ORDER

Hon’ble Mr. Santanu Saha, Member

Genesis of the Case

The present complaint case has been initiated under Section 17 of the Consumer Protection Act, 1986 by the Complainant against the Opposite Parties (hereinafter referred to as "OPs"). The primary grievance of the Complainant stems from the allegedly forceful, illegal, and high-handed repossession of a commercial goods vehicle purchased by the Complainant and financed by Opposite Party No. 1, under the pretext of an alleged default in loan repayment premiums.

Proceedings Before This Commission

Following the institution of the complaint, the Complainant moved an Interlocutory Application seeking an interim injunction to restrain Opposite Party No. 1 from transferring, selling, or creating any third-party interest or rights in respect of the vehicle in question. This Commission, vide its temporary order dated 05.12.2018, granted the said injunction. In response, Opposite Party No. 1 preferred an application bearing No. IA/384/2021 on 14.12.2021, praying for the vacation of the interim injunction order. While this Commission initially directed on 13.10.2022 that the said application would be heard concurrently with the final arguments, the Opposite Parties No. 1 and 2 subsequently submitted on 29.07.2024 that they would not press the interlocutory application, endorsing it as "not pressed voluntarily," leading to its formal disposal.

On 28.06.2022, the matter was referred to the Lok Adalat scheduled for 13.08.2022 upon the joint request of the learned counsels for both parties to explore the possibility of an amicable settlement. However, no compromise could be reached and the case was returned to this Commission for adjudication on its merits. Regarding the other parties, Opposite Parties No. 3 and 4 were debarred from filing their Written Version vide an order dated 04.06.2019 of this Commission and subsequently, by an order dated 31.12.2025, the proceedings against them have been ordered to run ex parte.

Facts in Brief

Complainant purchased a goods vehicle (RC No.WB 37B 0813 dated 10.05.2016) after obtaining financial assistance of Rs.21,46,248/- from OP No.1 (for which a loan agreement was entered into between the Complainant and OP No.1 on 31.08.2017) supposed to be repaid in 46 EMIs amounting to Rs.64,641/- only commencing on 28.09.2017.

The Complainant subsequently engaged the vehicle to transport a consignment of food products obtained from Opposite Party No. 3 for delivery across West Bengal, Assam, and Tripura. While the vehicle was en route to Uttardinajpur loaded with merchandise on 10.11.2018, agents and associates acting on behalf of Opposite Party No. 1 intercepted the truck and forcibly took physical possession of it, handing over a basic inventory of the loaded goods. The Complainant approached the local police station to report the interception, but the law enforcement authorities refused to entertain or register a formal complaint, which compelled the Complainant to seek redress before this Commission. The Complainant seeks reliefs including the restoration of the vehicle's possession, a comprehensive financial statement of account detailing principal and penal rates, daily compensation of Rs.3,000/- for loss of livelihood, Rs.5,00,000/- towards mental agony, and Rs.50,000/- as litigation expenses

Contentions of the Complainants

The learned counsel for the Complainant strongly argued that the Opposite Parties, and specifically Opposite Party No. 1, is guilty of gross and definitive deficiency in service by systematically withholding crucial contractual documentation. It was underscored that despite repeated requests, the financier failed to provide the

Complainant with a copy of the formal finance agreement, the original loan proposal form, and broken-down statements of account detailing the principal, interest components and other levied charges separately, which effectively kept the borrower in the dark regarding her exact liabilities.

Addressing the maintainability of the action under consumer jurisprudence, the Complainant vehemently maintained her status as a bona fide consumer under the Act. She categorically averred in her primary pleadings as well as in her Brief Notes of Arguments (BNA) that services hired by the Complainant “are not used in any activity directly intended to generate profit”. The Complainant strongly resisted the OP's attempt to classify her as a large-scale commercial operator, explaining that the second loan agreement executed by her pertained to an entirely separate vehicle driven by her son, which in no way establishes the operation of a commercial fleet or a profit-maximizing enterprise.

On the core issue of the vehicle's seizure, the Complainant demonstrated through the finance company's own records that she was not a defaulter in the repayment of the loan. From the inception of the first installment on 28.09.2017 till the last payment made on 28.10.2018, every single monthly EMI had been successfully deposited within seven days of the scheduled due date. While there were only four minor occasions of delayed payments over the entire duration of the loan, these were minor aberrations that were set aright immediately, meaning that the Complainant's outstanding overdue balance on the fateful date of repossession was absolutely "nil".

The Complainant's counsel drew direct attention to the binding regulatory directives of the Reserve Bank of India (RBI), which explicitly dictate that a bank or financial institution cannot initiate an asset seizure or recovery process unless the underlying loan account has formally deteriorated into a Non-Performing Asset (NPA). Under these statutory guidelines, an account can only be declared an NPA after ninety days of continuous, uninterrupted non-payment of loan premiums or installments. In the present case, the vehicle was intercepted and repossessed on 10.11.2018 i.e. merely days after the Complainant's regular monthly installment had been successfully processed on 28.10.2018.

Furthermore, the Complainant's counsel raised a sharp contractual objection by highlighting Clause a)(i) of Article 11 of the loan agreement. While the OP relied on a separate clause to claim a right to seize without notice, Clause a)(i) explicitly mandates that in the event of an alleged default, the financing company must issue a mandatory 7-day prior written warning notice to the borrower at their registered address. The Complainant has continuously and repeatedly denied the receipt of any purported notice dated 13.11.2018 or any prior demand notice from the OP, and emphasized that the financier made no genuine claim or proof of prior service before the high-handed highway interception. Learned Counsel attacked any interpretation that allows immediate seizure without notice as draconian, one-sided, and legally void under established Apex Court precedents.

Finally, the Complainant argued that the OP's services were hired for a distinct financial consideration, as the financier stands to gain a profit margin through the structured interest spread, making them fully liable to provide unblemished service. To fortify her claims of severe deficiency and illegal repossession, the Complainant placed reliance on a constellation of landmark judgments, including the Hon'ble Supreme Court's verdicts in IndusInd Bank Limited vs. Samarjit Singh (Civil Appeal No. 784/2022), Manager, ICICI Bank vs. Prakash Kaur (Appeal No. 267/2007), and Citicorp Maruti Finance Limited vs. S. Vijoy Laxmi (Civil Appeal No. 9711/2011) alongside the National Commission's (NCDRC) order in M/s Indiabulls Housing Finance Limited vs. Sandip Kumar (RP/872/2018).

The Complainant additionally raised a serious technical objection regarding the authorization of the OP's witness, pointing out that one Sri Mandar Das had signed all crucial evidentiary documents, questionnaires and pleadings as an authorized signatory of OP No. 1 without filing a valid letter of authorization or a formal Board Resolution to that effect, thereby rendering the OP's entire documentary evidence legally defective and liable to be expunged from the record. The Complainant concluded by stating that because the vehicle has been left to rot in the open custody of the OP, it has undergone severe mechanical deterioration and is no longer ply-worthy without hefty, prohibitive repair costs, thereby entitling her to complete restitution over and above daily operational losses.

Contentions of the Opposite Parties:

The learned counsel for Opposite Party No. 1 countered these arguments with equal vigor, raising primary jurisdictional and contractual objections to defeat the maintainability of the complaint. The OP contended, first and foremost, that the structural relationship between the Complainant and the financing company is strictly that of a debtor and a creditor, a purely commercial transaction that does not fall within the regulatory or statutory protective umbrella of the Consumer Protection Act, 1986.

The OP asserted that the Complainant is an active commercial operator running a widespread transport business aimed at profit maximization. This assertion was based on the fact that the Complainant had approached the institution to secure multiple loans for the purchase of three separate heavy commercial goods vehicles and had systematically defaulted on her repayment obligations in respect of the other parallel loan accounts as well. The OP maintained that because no independent service was ever hired by the Complainant and no separate consideration was paid outside of a standard loan layout, she cannot be classified as a consumer.

On the merits of the repossession, Opposite Party No. 1 maintained that this transaction was intrinsically governed by a Hire-Purchase Agreement rather than a standard, simple loan agreement. In a hire-purchase framework, the financier remains the absolute legal owner of the vehicle until the very last installment is fully liquidated, granting the financier an inherent right to repossess its own property if the hirer commits any act of default. The OP strongly relied on Clause

(a) of Article 11 of the executed agreement, which stipulates that in case of any event of default identified under Article 10, the rights of the borrower shall stand determined and void ipso facto without the requirement of any prior notice whatsoever. The OP argued that hire-purchase agreements are governed by distinct contractual principles and are completely exempt from the rigid, procedural recovery provisions of the SARFAESI Act, 2002.

The financier claimed it acted in total conformity with the law, stating that the Complainant had defaulted on her general dues and ignored multiple demand notices. To demonstrate its bona fides and negate any element of force, the OP stated that it had strictly followed due process of law both prior to and immediately following the repossession on 10.11.2018, as evidenced by written pre-repossession and post-seizure intimations formally submitted to the local police authorities.

The OP further stated that it issued a formal legal notice to the Complainant on 13.11.2018, explicitly calling upon her to liquidate the total outstanding closure balance of Rs.16,89,215/- and to take back physical delivery of the vehicle, failing which the asset would be liquidated through a public or private sale. A comprehensive statement of account was subsequently annexed to their Written Version, reflecting a total outstanding liability of Rs.20,85,547/- as of 17.01.2019.

To further prove its clean hands and reasonable conduct, the OP pointed out that on 14.11.2018, it immediately entertained a request from the Complainant's authorized representative, one Sri Sujay Das, permitting seamless transhipment and release of the loaded food products from the repossessed truck into two separate alternative vehicles (Nos. WB 03C 6199 and WB 37D 1336).

To justify its actions, the OP relied on the authoritative rulings of the Hon'ble Supreme Court in Orix Auto Finance (India) Ltd. vs. Jagmendra Singh (2006) 2 SCC 598 and HDFC Bank Ltd. vs. State of West Bengal & Anr (CRR 4190 of 2009), arguing that a financier has an absolute right to take over an asset upon a default in a hire-purchase agreement. Finally, the OP raised a technical misjoinder objection, stating that because the finance company is a distinct juridical person capable of being sued independently, Opposite Party No. 2, who is merely an employee of the corporation, is neither a necessary nor a proper party to these proceedings and should be exonerated from any personal liability.

Points for Consideration

To adjudicate the matter conclusively, this Commission frames the following key points for determination:

1. Whether the Complainant falls within the definition of a "Consumer" under Section 2(1)(d) of the Consumer Protection Act, 1986, or is the transaction excluded as a commercial venture?

2. Whether Opposite Party No. 1 committed a deficiency in service by failing to provide necessary loan documents and by repossessing the financed vehicle without following the due process of law?

3. Whether the Complainant is entitled to the reliefs and monetary compensations claimed in the complaint?

Decision with Reasons

Point No. 1

The primary challenge raised by Opposite Party No. 1 targets the maintainability of the complaint under consumer jurisdiction. The OP asserts that the Complainant is an active commercial operator running a widespread transport business aimed at profit maximization, highlighting the existence of parallel loan agreements for separate heavy goods vehicles. However, the explanation to Section 2(1)(d)(ii) of the Consumer Protection Act, 1986, explicitly clarifies that a "commercial purpose" does not include use by a person of goods bought and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment.

In her primary pleadings and Brief Notes of Arguments (BNA), the Complainant has averred that services hired by her “are not used in any activity directly intended to generate profit” and that the same “is not meant for commercial purpose”. While the record indicates involvement with more than one vehicle, including a parallel agreement executed for a vehicle operated by her son, the mere financing of another asset does not automatically establish the operation of a massive commercial fleet or an organized, profit-maximizing corporate enterprise. Opposite Party No. 1 has failed to adduce any documentary proof, such as commercial tax registrations, institutional trading accounts, or large-scale net profit margins, to conclusively displace the Complainant’s assertion of livelihood generation.

We draw strong support from the ruling of the Hon'ble Supreme Court in IndusInd Bank Limited vs. Samarjit Singh (Civil Appeal No. 784/2022), where the Apex Court observed that consumer complaints involving financed commercial vehicles should not be dismissed outright on a rigid interpretation of commercial use but must be evaluated on the factual reality of whether the asset was deployed towards sustaining livelihood through self-employment. Consequently, this Commission holds that the transaction is not excluded as a commercial venture and the Complainant is maintainable as a bona fide consumer under the Act. Point No. 1 is decided in favour of the Complainant.

Point No. 2

We now move to the core substantive dispute: whether the repossession of the vehicle by Opposite Party No. 1 on 10.11.2018 constitutes a deficiency in service. The OP has built its entire defence upon two pillars: first, the contractual text of Clause 11 of the agreement which purports to authorize a notice-less, automatic seizure; and second, the ratio decidendi of the Supreme Court in Orix Auto Finance (India) Ltd. vs. Jagmendra Singh (2006). This Commission, after a thorough review of the law, finds that both pillars are unsustainable when applied to the unique facts of this case.

First, we must examine the applicability of Orix Auto Finance. In that matter, the Hon'ble Supreme Court did recognize a financier's right to repossess an asset under a hire-purchase framework. However, the crucial legal distinction lies in the factual prerequisites of that case. In Orix Auto Finance, the borrower was in systemic, protracted default for a continuous period exceeding four months, with substantial, deep-seated arrears running into several lakhs of rupees. In the present case, the evidence on record reveals an entirely different scenario. The Complainant's payment history shows that from the first installment in September 2017 up until 28.10.2018—just twelve days before the forceful seizure—she had consistently paid every single EMI within a reasonable seven-day window. On the date of the seizure (10.11.2018), her outstanding overdue balance for the subject vehicle was absolutely nil.

A financier cannot invoke the harsh remedy of repossession when there is no active financial default on the specific asset. To seize a commercial vehicle when the borrower is current on her payments is a gross display of bad faith and a severe deficiency in service. The OP's argument that the Complainant had defaulted on other separate loan accounts cannot be used to justify the seizure of this specific vehicle. A financier cannot cross-collateralize a default to execute an extra-legal highway seizure of a clean asset unless explicit, unambiguous contract terms and clear prior legal notices for that specific account are established, none of which exists here.

Second, the OP's reliance on the judgment in HDFC Bank vs. State of West Bengal is similarly misplaced. That case arose out of criminal quashing proceedings under Section 482 of the Cr.PC, where the High Court was evaluating the existence of criminal intent (mens rea) for offenses like theft or dacoity. The standard of proof required to establish criminal liability is entirely different from the standard required to establish a civil "deficiency in service" under the Consumer Protection Act. Furthermore, in *HDFC Bank*, notices of repossession had been fully and properly served upon the borrower before any recovery action was taken. In the matter before us, no such notice was ever served.

This brings us to the contractual clause itself. Opposite Party No. 1 contends that Clause 11 gives them an absolute right to declare the borrower's rights void *ipso facto* without notice. However, the OP completely ignores Clause a)(i) of the very same Article 11, which explicitly mandates a 7-day prior written warning notice to the borrower's registered address. Legal interpretation requires that a contract must be read as a whole. A specific clause requiring prior notice cannot be nullified by a broad, general clause allowing automatic seizure.

Even if we accept the OP's interpretation that the contract permitted a seizure without notice, such a clause is legally unenforceable. The Hon'ble Supreme Court has repeatedly held that one-sided, draconian clauses in standard-form contracts executed by powerful financial institutions against individual consumers carry no weight in a court of law and are liable to be set aside as unfair trade practices.

The law on repossession is firmly settled by the Hon'ble Apex Court in Manager, ICICI Bank vs. Prakash Kaur (2007). The Supreme Court ruled that banks and financial institutions cannot deploy musclemen, recovery agents or extra-legal forces to intercept, terrorize or forcibly seize running vehicles from borrowers on public highways. The recovery of debts must be pursued through civil means and within the boundaries of statutory law. This rule was reinforced in Citicorp Maruti Finance Limited vs. S. Vijoy Laxmi (2011), where the Supreme Court stated that even in a valid hypothecation or hire-purchase agreement, any repossession must be preceded by a fair, reasonable, and unambiguous written notice. A failure to provide such notice, followed by a forceful seizure, constitutes an incurable deficiency in service that makes the financier liable for full compensation.

In the present case, the OP produced no reliable evidence of serving a prior written notice before the seizure on 10.11.2018. The post-facto letter dated 13.11.2018, sent three days after the physical seizure, cannot retroactively cure an illegal and high-handed act. The fact that the local police station refused to register the Complainant’s complaint does not legitimize the OP's actions; rather, it underscores the vulnerable position of the consumer.

Additionally, the Complainant’s procedural objection carries significant weight. Sri Mandar Das, who signed the OP's evidence and questionnaires, acted without any authorization letter or Board Resolution on the record, which weakens the evidentiary foundation of the defense. Therefore, we hold that the sudden, forceful interception and repossession of the vehicle without a prior written notice and in the absence of an active default constitutes a flagrant deficiency in service by Opposite Party No. 1. Point No. 2 is decided firmly against the OPs.

Point No. 3

Having established a gross deficiency in service on Point No. 2 due to the illegal highway repossession without prior written notice, we must determine the appropriate structure for reliefs and compensation. The Complainant has prayed for multiple reliefs, including the physical restoration of the goods vehicle, a rolling daily compensation of Rs.3,000/- for the continuous loss of business income, Rs.5,000,000/- for mental agony, and specific litigation costs.

In structuring this relief, this Commission must balance the scales of equity to ensure that while the Complainant is fully indemnified for the high-handed actions of the financier, the order does not result in an impermissible windfall or unjust enrichment.

The unlawful seizure took place on 10.11.2018. By the time of this judgment in 2026, a span of nearly eight years has elapsed, during which the commercial vehicle has remained completely stationary, exposed to the elements under the hostile custody of the Opposite Party. As the Complainant correctly argued, a heavy commercial truck left idle for such an extended period suffers from severe mechanical deterioration, rust, and engine decay. Returning the physical vehicle to the Complainant now would be an empty remedy; it is no longer ply-worthy and would require massive financial investments in repairs and maintenance just to

make it operational. Furthermore, directing a rolling daily penalty across eight years would result in an excessive penalty that exceeds the bounds of equity.

In balancing the equities between the parties, this Commission cannot also lose sight of the fact that the Complainant had successfully liquidated 14 regular monthly installments spanning over a year from 28.09.2017 through 28.10.2018, totalling a substantial financial layout towards an asset she was ultimately deprived of through illegal, high-handed means. To allow Opposite Party No. 1 to retain both the seized asset and the entire sum of these paid capital installments while leaving the borrower empty-handed would amount to gross unjust enrichment. Conversely, ordering a direct refund of these past installments alongside a separate award for the vehicle's capital value would result in a double recovery for the same asset.

Therefore, ends of justice would be best served by directing Opposite Party No. 1 to refund the exact sum of Rs.8,76,974/- representing the capital equity built by the Complainant. To balance this, since the vehicle has lost virtually its entire economic value while in the unlawful possession of the financier due to their failure to maintain or liquidate it timely, the underlying loan account must be ordered closed as fully satisfied, thereby legally wiping out the remaining unliquidated balance of the loan and preventing the OP from pursuing the Complainant for any further balance.

By intercepting the vehicle on the highway while it was actively transporting a consignment of food products, the OP completely disrupted her ongoing business operations and abruptly ended the revenue-earning capacity of this specific asset. While a daily calculation of Rs.3,000/- over eight years would be mathematically excessive, a lump-sum award of Rs.5,00,000/- is legally justified to compensate for the continuous and unlawful interruption to her livelihood and earnings derived from this vehicle.

The manner in which the repossession was executed—intercepting a loaded commercial vehicle en route on a public highway without warning, constitutes a high-handed act that caused deep humiliation and distress. The Complainant was forced to seek police intervention, endure their refusal to assist, and spend nearly eight years pursuing legal remedies before this Commission. This prolonged uncertainty warrants an explicit award of Rs.3,00,000/- to address the acute mental agony and harassment caused by the OP’s deficient services.

The Complainant is further entitled to reimbursement of Rs. 40,000.00 for the direct legal expenditures, professional fees and court costs incurred by the Complainant since 2018.

ORDER

1. The Complaint Case No. CC/844/2018 is hereby allowed on contest against Opposite Party No. 1 and ex parte against the remaining Opposite Parties.

2. Opposite Party No. 1 is directed to pay to the Complainant a consolidated compensation amount of Rs. 16,76,974/- (Rupees Sixteen Lakh Seventy Six

Thousand Nine Hundred Seventy Four only), which includes Rs. 8,76,974/- for loss of property, Rs.5,00,000/- for loss of livelihood and business interruption, and Rs.3,00,000/- for harassment and mental agony caused by its deficient services.

3. Opposite Party No. 1 shall also pay to the Complainant a sum of Rs.40,000/- (Rupees Forty Thousand only) towards cost of litigation.

4. The loan account of the Complainant maintained with Opposite Party No. 1 in respect of the subject commercial vehicle (Registration No. WB 37D 0813) shall stand closed, fully satisfied and liquidated from the date of this judgment, acknowledging the 14 installments already paid by the Complainant as final settlement of her capital obligations. Opposite Party No. 1 is permanently restrained from raising any further financial claims, interest, or dues against the Complainant regarding this specific transaction.

5. Consequent upon the closure of the account and the full payout of the capital refund by the OP, the physical remnants/salvage of the vehicle currently in the custody of Opposite Party No. 1 shall be retained by the said financier as its sole property and the Complainant shall execute necessary document to that effect, if so demanded by OP No. 1, at the cost of the latter.

6. The directed amounts shall be paid by Opposite Party No. 1 to the Complainant within a period of 45 days from the date of this Order, failing which the total directed amount of Rs.15,40,000/- shall carry interest at the rate of 9% per annum from the date of default until final realization.

7. Let copies of the Order be provided free of cost to the parties, as per rules.

.....

RAJES GUHA RAY

JUDICIAL MEMBER

.....

SANTANU SAHA

MEMBER