

**COMPETITION COMMISSION OF INDIA**

**Case No. 56 of 2011**

**Date: 10.01.2013**

**In re:**

**M/s Cinergy Independent Film Services Pvt. Ltd.**

**Informant**

Through  
Sh.Harshvardhan Jha,  
Sh.Ravindra  
Suyavanshi, Advocates

**v.**

**1. Telangana Telugu Film  
Distributors Association**

**Opposite Party No.1**

Through  
Ms. Sangeeta kumar,  
Advocate

**2. Karnataka Film Chamber of  
Commerce**

**Opposite Party No.2**

Through  
Sh.Balaji Srinivasan,  
Ms.Jai Kriti S.  
Sachdeva, Advocates

**3. Indian Film Exporters Association  
(now known as Indian Council of  
Impex for Films & TV Programmes)**

**Opposite Party No.3**

Through  
Sh.Nand Kumar Bele,  
Secretary-General

**4. Andhra Film Chamber of Commerce**

**Opposite Party No.4**

Through  
Sh.P.Subramainum,  
Member and Authorised  
Representative

**5. M/s Big Bang Media Pvt. Ltd.**

**Opposite Party No.5**

Through  
Sh.Shantanu  
Krishna, Advocate

**Coram:**

**Mr. Ashok Chawla**  
**Chairperson**

**Mr. HC Gupta**  
**Member**

**Dr. Geeta Gouri**  
**Member**

**Mr. R. Prasad**  
**Member**

**Mr. Anurag Goel**  
**Member**

**Mr. M. L. Tayal**  
**Member**

**Mr. Justice (retd.) S.N. Dhingra**  
**Member**

**Order under section 27 of the Competition Act, 2002**

The present information has been filed under section 19(1)(a) of the Competition Act, 2002 ('the Act') by M/s Cinergy Independent Film Services Pvt. Ltd. ('the informant') against M/s Telangana Telugu Film Distributors Association ('the opposite party No.1'/ TTFDA), M/s Karnataka Film Chamber of Commerce ('the opposite party No.2'/ KFCA), M/s Indian Film Exporters Association (now known as Indian Council of Impex for Films & TV Programmes) ('the opposite party No.3'/ IMPEX), M/s Andhra Film Chamber of Commerce ('the opposite party No.4'/ AFCC) and M/s Big Bang Media Pvt. Ltd. ('the opposite party No.5') alleging *inter alia* contravention of the provisions of sections 3 and 4 of the Act.

2. Shorn of details, the informant is a company incorporated under the Companies Act, 1956 and engaged *inter alia* in the business of production and distribution of cinematographic films. The opposite party Nos. 1, 2 and 4 are the associations of film producers, distributors and exhibitors acting as regulatory bodies for production, distribution and exhibition of films in their respective territories. The opposite party No. 3 is an association of distributors engaged in import and export of Indian films/ TV programmes. The opposite party No. 5 is a company engaged *inter alia* in the business of production and distribution of cinematograph films.

3. It is alleged by the informant that the opposite party associations make it compulsory for every film distributor to become their member and/or register his/its film with them before the exhibition of such film. A distributor who refuses to become a member and/or refuses to register his film with them is not allowed to distribute and exhibit his/its film in the territory which is governed/ regulated by the respective opposite party association. The opposite party associations enforce such compulsion on distributors by threatening their members of serious consequences for exhibiting films of a distributor who is not a member of any of the opposite party associations or whose film is not registered with them. On account of such threats, the cinema exhibitors who are neutral parties are unwilling to undertake the risk of exhibiting the film of a distributor who is not a member of the opposite party associations or whose film is not registered with them. It is further alleged that although the distributors only acquire the theatrical distribution rights of the films, these associations make those distributors sign their standard form of registration which has clauses putting an undertaking of the distributors not to exploit other rights of such film (satellite rights/ home video rights etc.) for a certain period. It is averred that the distributors of the films have no choice but to sign these forms even when they don't have any control over other rights of such films other than theatrical exploitation rights.

4. Coming to the specific grievance of the informant, it is averred that the opposite party No.1 *vide* its circular dated 10.09.2011 directed its members not to release the film '*Mausam*' slated for release on 16.09.2011, in its territory unless the claim of its member *viz.* M/s Suresh Productions Pvt. Ltd. of Rs.2.5 crores was settled. The opposite party No. 3 *vide* its letter dated 10.09.2011 conveyed to the informant that it would inform its members to intervene in the distribution of the film '*Mausam*' until recovery of dues of M/s Suresh Productions Pvt. Ltd. It is further averred that the said claim of Rs.2.5 crores was due against one Shri Madhu Mantena of M/s Big Bang Media Pvt. Ltd. *i.e.* the opposite party No. 5 herein in connection with the production of film '*Rann*'. It is, thus, alleged that the opposite party associations acted *malafidely* and arbitrarily in boycotting the film '*Mausam*' with an effort to secure a claim of their member *viz.*, M/s Suresh Productions Pvt. Ltd. It is further alleged that Shri D. Suresh Babu, Managing Director of M/s Suresh Productions Pvt. Ltd., who is also the President of the opposite party No.4 misused his position in order to recover the claim against the opposite party No.5 by preventing the release of the film '*Mausam*' produced by the informant.

5. Based on these averments and allegations, the informant has alleged that the actions of the opposite party associations have contravened the provisions of section 3 and section 4 of the Competition Act, 2002.

6. After considering the information and the material available on record, the Commission on 15.09.2011 directed the Director General (DG) to conduct an investigation into the matter and to submit a report. Accordingly, on completion of the investigation, the Office of the DG submitted its report to the Commission on 05.03.2012.

7. The DG in the report concluded that the allegations relating to infringement of the provisions of the Act were found to be correct against the opposite party Nos. 1, 2 and 4. It was noted that the bye laws and conduct of

these opposite parties were restrictive in nature and controlled the film distribution business. In an effort to regulate the film distribution and exhibition in their respective territories, they have crossed the limits of the activities of an association and have hampered the process of free competition. The tools adopted by these associations to settle the disputes between the affected parties were not found to be in conformity with the law. Instead of creating a legitimate mechanism to settle the disputes, it was found by the DG that these associations were coercing the producers/ members to follow their directions. These opposite parties were found to be indulging in anti-competitive practices with regard to limiting and controlling provisions of services of film distribution and exhibition. Further, the opposite party Nos. 1 2 and 4 were found to have restricted the market of film distribution in their territories by taking decisions to not deal with film '*Mausam*' unless their directions are obeyed. The aforesaid anti-competitive activities of these opposite parties were found to be anti-competitive in contravention of the provisions of section 3(3)(b) of the Act. However, no contravention of the provisions of the Act was found against the opposite party Nos. 3 and 5.

8. The Commission considered the report of the DG in its ordinary meeting held on 22.03.2012 and *vide* its order of even date decided to forward copies thereof to the informant and the opposite parties to file their respective replies/ objections thereto. The copies of the report were also forwarded to the office-bearers of the opposite party associations.

#### KFCC

9. KFCC in its reply submitted that it is an association of film producers, theatre owners and distributors in the State of Karnataka. It is only a regulatory body in so far as it relates to the production, distribution and exhibition of films by its members in the territory of Karnataka. It is stated to be affiliated to South Indian Film Chamber of Commerce and Film Federation of India which are the highest bodies regulating production and exhibition of films.

10. It has been submitted that the membership of KFCC is voluntary and it is not compulsory for every film distributor to become its member before exhibition of films. Further, it is stated that the association has not given any direction to its members regarding release of the film '*Mausam*'. It has also not imposed any restriction of any nature on the release and/or exhibition of the said film. The object of KFCC is to promote the Kannada film industry which is a very small industry with limited audience being confined only to the State of Karnataka and is facing the threat of being wiped out owing to the monopolistic capture of the market by multinational corporations such as the informant herein.

11. KFCC is striving to keep the Kannada film industry running amidst the huge competition from the multination corporations like the informant. It has been submitted that as an association it is the duty of KFCC to attend to the complaints filed by its members and resolve the disputes and it is in connection with the complaint received by one of its members that KFCC issued a letter requesting the informant to be present for the arbitration proceedings in order to resolve the dispute between the informant and its member.

12. KFCC has not issued any direction regarding the release of the film '*Mausam*' by the informant in its letter. Objection is taken to the finding of the DG to the effect that KFCC pressurized the producer of the film '*Mausam*' by issuing circular/ letters for not dealing with the film or threatening to settle the outstanding payments of the member and/ or taking decision to not deal with the film unless the dispute is resolved. Thus, it is urged that there was no basis of the finding of the DG.

13. The letter was issued by KFCC only with the object to resolve the dispute amicably and there was no other intention behind issuing the letter which is clear from the fact that no adverse directive was made by KFCC even though the informant did not attend the proceedings initiated by it. It is further submitted that

it is because of the conduct of the informant in not clearing the dues payable to certain exhibitors that the other exhibitors were reluctant to enter into agreements with the sub-distributors and not due to any circular or directive issued by the opposite party associations. In the business circle, if a person/ company fails to clear its dues or to abide by the contractual terms, other persons/ companies will be wary of making any further dealings with such defaulting person/ company.

14. In the present case also as the informant had not cleared dues to certain exhibitors, the other exhibitors were wary/ reluctant to deal with it. However, the informant instead of resolving the dispute approached the Commission alleging anti-competitive activities only with an intention to wriggle out of the liability to clear the dues payable by it. The DG has failed to consider the conduct of the informant either during the investigation or while submitting his report. The DG has erred in coming to the conclusion that the opposite party associations have contravened the provisions of section 3(3)(b) of the Act and the same is without any basis as there are no materials to prove that KFCC issued any directive or imposed any restriction regarding the release of the film.

15. It is further submitted that the finding of the DG that KFCC has complete control on the distributors and exhibitors and hence is able to impose directions or restrict or limit and control the provision of service in the market of film distribution is erroneous. The DG has failed to substantiate the above findings. Further, there are also no materials placed on record to prove that KFCC has used its power to control the market at the time of the release of the film '*Mausam*' by pressurizing the producers to follow its direction or face the consequences.

16. It has been pointed out by KFCC that the director of the informant itself has admitted that they were not aware of the status of the arbitration proceedings initiated by KFCC and thus, it is crystal clear that KFCC's only intention in issuing the letter was to resolve the dispute amicably and not to control the market as

reported by the DG. The DG, instead of conducting independent investigation on the issue that has been raised in the present case, seemed to have blindly followed the order passed by the Commission dated 16.02.2012 without even considering the fact that the issues involved in those cases were completely different from the one that has been raised in the present case. The DG proceeded to report his finding on the issue regarding restriction on dealing with non-members even without considering that it is not the issue involved in the present case.

17. It has been further submitted that the finding of the DG to the effect that KFCC is an exclusive association of producers, distributors, exhibitors *etc.* and enjoys market control and ensures non-participation of the non-members in the territory is baseless as there are many non-members who are carrying on business in the State of Karnataka without any restriction. Further, the very fact that the informant which is a non-member as has been admitted by its director in his own statement before the DG has released its films in the State of Karnataka makes it crystal clear that the finding of the DG is baseless and erroneous.

18. It has been submitted that the DG has blindly followed the orders of the Commission passed in previous cases and no proper investigation has been conducted on the issues involved in the present case. The DG has neither appreciated the facts and circumstances of the present case nor has the DG appreciated the documents produced before it in proper perspective and hence the entire report of the DG is erroneous, preconceived and baseless. It has been pointed out that the DG has attributed the intention of pressurizing the informant just before the release of the film to the letter issued by KFCC without appreciating the circumstances in which the said letter was issued and also without appreciating the contents of the said letter.

19. In the investigation conducted by the DG, the informant has admitted that they neither attended the proceedings initiated as per the letter nor were they

aware of the status of the proceedings before KFCC which itself goes to show that the intention behind the letter was only to resolve the dispute amicably and not to pressurize the informant. As an association, it is the duty of KFCC to act upon a complaint received by its member and the said duty cannot be termed as an anti-competitive activity.

20. The findings of the DG that KFCC has taken a decision not to deal with the film '*Mausam*' until the dues are settled is not substantiated either by statements of any of the parties or by any documents and it appears to be a mere assumption of the DG. Challenging the findings of the DG that the rules and byelaws of KFCC are in contravention of the provisions of section 3(3)(b) of the Act, it has been submitted that the DG has not substantiated the same. It has been contended that the Act does not restrict any association or society from initiating any arbitration/ dispute resolution proceedings on the complaint received by its members. Hence, the DG has erred in coming to the conclusion that the activities of KFCC are in violation of the provisions of the Act when the same are not substantiated either by statement of parties or by documents.

21. It has been further stated that findings of the DG to the effect that the conduct of the opposite party associations infringed the provisions of section 3 of the Act are erroneous and baseless. The further findings that the activities of the opposite party associations result in foreclosure of competition by hindering entry into the market and that the associations are collectively deciding not to deal with a person who does not agree with the directions of the associations is completely baseless and erroneous. KFCC has neither issued any directive nor has it made any decision not to deal with the informant/ the film '*Mausam*' and therefore when no directions were issued by KFCC, the question of the informant agreeing or not agreeing does not arise. Further, there are no documents to substantiate the findings of the DG that KFCC imposed any restriction on the release of the film or that KFCC made a decision not to deal with the said film.

22. The report also does not substantiate the appreciable adverse effect caused due to the acts of the opposite party associations. Referring to the applicability of section 3 of the Act to the present case, it has been submitted that no such agreement as mentioned therein was found by the DG. It has been submitted that section 3(3) of the Act is very clear that what is prohibited is the agreement between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise. Therefore, there has to be an agreement between the association and in the present case there is no such agreement entered into by the KFCC with any other person or enterprise or any other association.

23. Further, the byelaws of the association cannot be construed as agreement for the purpose of this section as byelaws are not agreements entered into by KFCC with any other person and these are the laws governing the *inter se* dealings of the members within the association and hence the same does not fall within the purview of section 3 of the Act. Thus, conclusion of the DG that byelaws are in violation of section 3 of the Act is erroneous, submits KFCC.

24. Furthermore, it has been submitted that in view of the observations of the DG in Case Nos. 25 of 2010, 41 of 2010, 47 of 2010 and 48 of 2010 that the KFCC is not engaged directly in any activity relating to the production, storage, supply, distribution, acquisition or control of articles or goods or the provision of services of any kind concerning the distribution/ exhibition of films and hence does not constitute an enterprise or a group to fall within the purview of section 4 of the Act. Thus, in view of such observations, it was submitted that KFCC could not come within the purview of section 3 of the Act as it is not directly engaged in any activity relating to production, storage, supply, distribution, acquisition or control of articles or goods or the provision of services of any kind concerning the distribution/ exhibitions of films.

25. The findings of the DG that KFCC acted in violation of section 3(3)(b) of the Act is erroneous and baseless and there are no documents supporting the said finding. Lastly, it has been submitted that the DG has concluded that the tools adopted by the associations to settle the disputes between the affected parties are not in conformity with the law. In this connection, it has been contended that the report does not provide sufficient reasons for the said conclusion other than merely stating that the tools are adopted to coerce the producers which is not correct.

26. It was also submitted that the main contention in the information is that the informant had to incur additional expenses to promote the film for the delay caused in the release of the film. However, the delay in the release of the film '*Mausam*' was due to the non-availability of (i) No Objection Certificate from the Indian Air Force and (ii) the Censor Certificate from the Central Board of Film Certification (CBFC) in time and not due to any act of KFCC.

27. In this connection, it has been pointed out that the producers, directors and the actors of film themselves have given press-statements that the delay in release of the film was due to the delay in getting the NOC from the IAF and also due to certain changes that were required to be made as per the conditional NOC given by the Indian Air Force. Further, the IAF while giving the conditional NOC had also asked for the film to be reviewed again by CBFC after the changes are made. This is also clear in the documents produced by the informant itself. Thus, the release of the film was delayed for the reasons stated above and not due to any act of opposite party associations as alleged in the information and the report. It is argued that the DG has failed to appreciate these aspects in the report.

28. In support of its contentions, KFCC has filed print outs of the excerpts from the press statements of the producers and actors of the film published in online portals.

29. In sum, it is the case of KFCC that the delay in the release of the film was due to the above factors and not due to any act of KFCC and hence the DG has erred in coming to the conclusion that KFCC acted in violation of the provisions of section 3(3)(b) of the Act.

30. Lastly, it has been submitted that neither the information nor the DG report discloses the number of theatres in which the film was released or the number of shows it ran or the collections therefrom. Assailing the findings of the DG, it has been contended that other than the self-serving affidavit of the director of the informant, the DG has not made an effort to enquire into the relevant details and has blindly proceeded on the information given on behalf of the informant. In the result, KFCC has prayed that the present information may be rejected by the Commission.

#### TTFDA

31. TTFDA in its reply dated 04.05.2012 stated that it filed its response before the DG *vide* its letter dated 03.12.2011. In the said response, it was pointed out that the membership and registration with the association is not compulsory for every film distributor to screen his film in the territory covered by it. It is, however, averred that almost all the film distributors of both Hindi and Telugu films are its members. Further, it has been stated that the association is not having any facility for registration of films of any language since inception.

32. It is averred that there are absolutely no terms and conditions imposed by the association upon any distributor or exhibitor to carry its trade. Any distributor or exhibitor is free to purchase any film of any language and is free to release the film in any available cinemas of its choice in the entire circuit. The film exhibitors and distributors are allowed to release their films as per their professional and

commercial requirements freely in the territory and theatres of their choice. It has been stated that the association has not imposed any restriction in this regard.

33. It was clarified that no restriction was put by the association on the informant or any other film distributor in Nizam territory. Further, it was explained that the circular dated 10.09.2011 was issued on receipt of complaint letter dated 09.09.2011 from M/s Suresh Film distributors, Secunderabad, who are having life membership with the association. It has been stated that the distributor members were requested to extend their co-operation in sorting the issue before release of the film '*Mausam*' in Nizam territory. Subsequently, the said circular is stated to have been withdrawn.

#### APFCC

34. At the outset, APFCC has pointed out that M/s Cinergy Independent Film Services Pvt. Ltd. and M/s Big Bang Media Pvt. Ltd. are inter-connected undertakings through Sh. Madhu Mantena. It has been pointed out that the opposite party No. 5 i.e. M/s Big Bang Media Pvt. Ltd. accepted that it had some disputes with M/s Suresh Productions Pvt. Ltd. on account of outstanding payments. It is stated that as both the parties were members of the association, APFCC advised the said members to settle the issue amicably before the release of the film '*Mausam*'.

35. It has been further contended that APFCC addressed a letter to the informant to settle the matter to avoid any *inconvenience* before the release of the film. It is urged that the word *inconvenience* can be interpreted either way. It is also averred that APFCC advised the release of the film in a smooth way and it did not impose any restriction or acted against any legal provision with regard to the exhibition of the film '*Mausam*'.

36. It has been also pointed out that during the course of the investigations M/s PVR Pictures – the distributor of the film '*Mausam*'.was asked to furnish details of events relating to the present case and M/s PVR Pictures never mentioned name of APFCC in its letter nor did it complain of any contravention against APFCC.

37. Referring to the findings of the DG of contraventions against APFCC on the grounds that as per rule 52(a)(ii) of APFCC, the members are restricted to have business dealings relating to film production, distribution, exhibition, *etc.* with any person, who is not members of the association, it has been contended that the restriction on the members of APFCC to deal with non-members is not total. It has been argued that as per the said rule, such restrictions are not to apply any temporary dealings by a member with a non-member who is outside the jurisdiction of the chamber, irrespective of the nature of the dealing.

38. Coming to the findings of the DG of contraventions against APFCC on the grounds that and as per rule 4(ii)(j), the producers are prohibited to telecast film on satellite, TV or any other electronic media before a period of 3 years in case of big budget films and 2 years in case of low budget films, it has been urged that the purpose of the provision is to see that the distributors and exhibitors do not lose money in case of outright purchase of films and on the basis of minimum guarantee and not to lose any advance money given on basis of distribution due to simultaneous screening of the film on satellite, TV *etc.*, and in theatres.

39. At the outset, it may be mentioned that the informant has not made any allegations of contravention of the provisions of the Act against the opposite party No.5. From the report of the DG, it may be pointed out that in 2009, at the time of film '*Rann*' directed by Shri Ramgopal Verma, Shri D. Suresh Babu had made a payment of Rs.3 crores in February, 2009 to the producer of film *i.e.* the opposite party No.5 *viz.* M/s Big Bang Media Pvt. Ltd. However, due to some differences in March 2009, Shri D. Suresh Babu separated from the film '*Rann*' and his

amount of advance became due on the producer of the film. Subsequently, on demand of payment, Shri D. Suresh Babu was told to wait till the performance of the film '*Rann*'. The film did not do well at the box office and Shri Babu was asked to wait for some more time by Shri Madhu Mantena of the opposite party No.5. Finally a payment of Rs.50 lacs was made in Oct 2010, but no further payment was made by him. As the film in question in the present case viz. '*Mausam*' was co-produced by the informant in which Shri Madhu Mantena of the opposite party No.5 has also an interest, it was impleaded as a party in the present case. As no allegations against the opposite party No.5 were made by the informant nor the DG found any contraventions by it, the Commission is of the opinion that no further analysis is required to examine the conduct of the opposite party No.5 in the present case.

40. Similarly, as noted by the DG, the opposite party No. 3 *i.e.* IMPEX has no direct role in film distribution and exhibition. Further, no clauses were found in the rules and regulations of the opposite party No. 3 by the DG, it appears that the said association does not have the power to regulate the film distribution business in India or in the overseas market. In these circumstances, the Commission is of the view that no further analysis is needed to examine the conduct of this opposite party as well.

41. In view of the above, the following points fall for consideration before the Commission:

- (i) Whether the opposite party Nos. 1, 2 and 4 have contravened the provisions of section 3 of the Act?
- (ii) Relief, if any.

Whether the opposite party Nos. 1, 2 and 4 have contravened the provisions of section 3 of the Act?

42. The informant is the producer of the film '*Mausam*' and had granted exclusive distribution rights of the said film in favour of M/s PVR Pictures Ltd. for the territory of Delhi, U.P., Nizam, Mysore, Tamil Nadu and Kerala. The film was due for theatrical release on September 16, 2011. However, it was informed by its distributor M/s PVR that the opposite party associations have issued circulars/directions to their members to interfere with release and exploitation of the informant's film '*Mausam*' until recovery of the dues of Rs.2.5 crores of one of their member viz. M/s Suresh Productions Pvt. Ltd.

43. By way of background, it may be noted that in 2009, at the time of film '*Rann*' directed by Shri Ramgopal Verma, Shri D. Suresh Babu had made a payment of Rs.3 crores in February 2009 to the producer of the film i.e. the opposite party No.5. However, due to some differences, in March, 2009, Shri D. Suresh Babu separated from the film '*Rann*' and his amount of advance became due on the producer of film. On demand of payment, Shri D. Suresh Babu was told to wait till the performance of the film '*Rann*'. The film did not do well on box office. Therefore, he was told to wait for more period by Shri Madhu Mantena of the opposite party No.5. Finally, a payment of Rs.50 lacs was made in Oct 2010, but no further payment was made by him.

44. At the time of release of film '*Mausam*' co-produced by the informant in which Madhu Mantena of the opposite party No.5 has also interest in addition to other people, Shri D. Suresh Babu wrote to opposite party Nos. 1 to 4 requesting to do the needful before the release of film '*Mausam*' on September 16, 2011 to recover the long outstanding amounts. As Shri D. Suresh Babu is the President of APFCC and member of TTFDA, KFCC and IMPEX, he addressed a letter on September 09, 2011 to all these associations and also to the other associations of film producers to take action before the release of film '*Mausam*'. In response thereto, the opposite party associations immediately on the same day or next day issued letters to Shri Madhu Mantena of the opposite party No.5 and/or the distributors of the film '*Mausam*' to make the outstanding payments immediately.

45. On the distributor of the film *i.e.* M/s PVR intimating to the informant that the exhibitors are not confirming to the release of the film '*Mausam*' on account of the dispute with Sh. D. Suresh Babu, the informant filed the instant information before the Commission on September 13, 2011 against the opposite parties and also postponed the date of release of the film from September 16, 2011 to September 23, 2011. The Commission *vide* its interim order dated September 15, 2011 restrained the opposite party Nos. 1 to 4 from imposing restrictions, direct or indirect, to prevent any distributor/exhibitor in relation to exhibition of the film '*Mausam*' in the respective territories of their operation if the exhibitors/ theatre owners are willing and desirous to exhibit the said film.

46. The Commission has perused the information, report of the DG and the replies/ objections thereto filed by the opposite parties as also the material/ submissions available on record.

47. It appears that a dispute was pending between M/s Suresh Production Pvt. Ltd. (which was a member of the opposite party associations) and M/s Big Bang Media Pvt. Ltd. *i.e.* the opposite party No.5 herein in connection with the film '*Rann*'. In order to secure the alleged claim of M/s Suresh Production Pvt. Ltd. which was a member of the opposite party associations, letters/ circulars were issued by these associations to their respective members in order to put pressure on the informant producer just before the release of the film to ensure that the alleged outstanding payment to their member *i.e.* M/s Suresh Production Pvt. Ltd. is made by the informant.

48. In this connection, it would be useful to quote the relevant portions of the said letters/ circulars issued by the opposite party Nos. 1, 2 and 4.

49. The opposite party No.1 association *i.e.* TTFDA issued a circular No.9/2011-12 dated 10.09.2011 to all the film distributors in Secunderabad

requesting them not to release the film 'Mausam' in Nizam area. The last para of the circular is reproduced below:

*So we request all the Film Distributors in Secunderabad, do not release the Hindi Picture titled Mausam in Nizam area unless and until the dues of Rs.2.5 crores paid to M/s. Suresh Productions Ltd., Hyderabad by the producer Mr. Madhu Mantena.*

50. The opposite party No.2 association i.e. KFCC issued a letter dated 09.09.2011 to M/s PVR Pictures Ltd., Bangalore and M/s Big Bang Media Ltd., Mumbai. The contents of the letter are reproduced below:

*The above complaint has been fixed for hearing by the Arbitration Board on Monday, the 12th September 2011 at 11.30 am at the Conference Hall of the Chamber.*

*The Respondent is hereby advised to attend the meeting on the above said date together with necessary documents to substantiate their stand if the claim of the claimant is disputed.*

*As the case referred to the arbitration board has to be disposed off on priority basis, the claimant and the respondents are informed to attend the hearing on the said date without fail.*

51. The opposite party No.4 association i.e. APFCC also issued a letter dated 09.09.2011 to M/s Cinergy Movies Pvt. Ltd. The relevant portion of the letter is reproduced below:

*Since the film 'Mausam' (Hindi) produced by you is being released on 16th September, 2011, we request you to settle the matter to avoid any inconvenience in this regard.*

52. On a plain reading of the aforesaid circulars/ letters, it is evident that the opposite party associations through these circulars/ letters tried to limit/ control

the supply of the film in contravention of the provision of section 3 (1) read with section 3(3)(b) of the Act. By virtue of the provisions contained in section 3(3) of the Act, any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which (a) directly or indirectly determines purchase or sale prices; (b) limits or controls production, supply, markets, technical development, investment or provision of services; (c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way; (d) directly or indirectly results in bid rigging or collusive bidding, is presumed to have an appreciable adverse effect on competition.

53. Thus, in the case of agreements listed in section 3(3) of the Act, it will be presumed that the agreement has an appreciable adverse effect on competition. Though, the presumption is rebuttable, the opposite party associations have not been able to controvert the same by adducing material/ evidence in their replies/ objections.

54. In the result, it is held that the opposite party Nos. 1, 2 and 4 through their impugned actions, as noted above, have contravened the provisions of section 3(1) read with section 3(3) of the Act.

55. The DG in the report, apart from investigating the aforesaid conduct of the opposite party associations, also examined the rules and regulations/ practices of the opposite party associations which put restrictions in the market. In this connection, it was noted by the DG that the investigations on similar issues involving film trade associations were conducted by the Office of the DG and the Commission had passed orders in such cases where the conduct and practices

of the film associations were found to be in contravention of the provisions of the Act. It was further noted that the Commission in its order dated 16.02.2012 in Case Nos. 52 of 2010 and 56 of 2010, in addition to levying penalty on the opposite party associations therein, had also directed them to cease and desist from following the practices listed below and to take suitable measures to modify rules/ regulations since they were found anti-competitive:

a) The associations should not compel any producer, distributor or exhibitor to become its members as a pre-condition for exhibition of their films in the territories under their control and modify their rules accordingly,

b) The associations should not keep any clause in rules and regulations which makes any discrimination between regional and non-regional films and impose conditions which are discriminatory against non-regional films.

c) The rules of restrictions on the number of screens on the basis of language or the manner in which a particular film is to be exhibited should be done away with.

d) Associations should not put any condition regarding hold back period for release of films through other media like, CD, Satellite etc. These decisions should be left to the concerned parties.

e) The condition of compulsory registration of films as a pre-condition for release of any film and existing rules of association as discussed in the preceding paras of this order on the issue should be dispensed with.

56. Further, it was noted by the DG that in the instant case also, the allegations are similar to the allegations made in Case No.52 of 2010 and 56 of 2010 where the associations threatened the producers to make the payment of

the outstanding amount of their members lest the film should not be released in their respective territories.

57. The Commission is of the view that in the case of KFCC and TTFDA, it had already been established that they restrict its members to deal with the non-members and therefore, the detailed discussion and the statements of various parties recorded need not be noted again in the light of the order of the Commission passed in Case Nos. 52 of 2010 and 56 of 2010.

58. So far as the opposite party No.4 association *i.e.* APFCC is concerned, it may be noted that this association was not the subject matter of the investigation in previous similar cases. Thus, it may be necessary to examine its memorandum in the present case. In the reply filed by APFCC before the DG, the association denied that it is compulsory for the film producers, distributors and exhibitors of Telangana and Nizam area to become its member for carrying out their business activities. However, from the perusal of its rules and regulations, it appears that the association restricts its members in dealing with non-members.

59. As per rule No.52(a)(ii) of the Rules of APFCC, no member shall have business dealings or transactions or contracts relating to film production, distribution, exhibition, studios and other infrastructural units of films in any language with any person/ body within the jurisdiction of the Film Chamber unless such person/ Body is a member of the Film Chamber. Further, by virtue of rule 52(b), a member, who directly or indirectly violates or contravenes the provision of rule No. 52(a)(ii) renders himself liable to disciplinary action, including fine, suspension and/or expulsion as may be determined by the Sub-Committee.

60. It appears that the aforesaid rule restrict the members of APFCC in dealing with non-members. Further, rule 4(ii)(j) provides that no producer shall

sell or assign or otherwise deal with any T.V. channel holders either private or Government, Cable TV, Satellite TV, or any other electronic media to telecast their full length feature films or parts thereof, other than for publicity purposes of the film for a period of three years from the date of obtaining Censor Certificate in respect of high budget pictures, and two years in respect of low budget pictures and to this effect the producer shall execute an affidavit in the prescribed form and submit the same along with the application form for admitting as a member in APFCC.

61. Though, in the present case, no allegation of imposition of restrictions regarding satellite telecast has been made against APFCC, the rule appears to be restrictive in nature in contravention of the provisions of section 3 of the Act.

62. In the result, in the case of APFCC, the Commission is of the opinion that the afore-quoted rules of the association are in contravention of the provisions of section 3(1) read with section 3(3)(b) of the Act.

#### Order under section 27 of the Act

63. The Commission directs the Opposite Party Nos. 1, 2 and 4 to cease and desist from the practices of pressurizing the distributors to settle the monetary disputes with its members. Further, as the opposite party Nos. 1 and 2 have already been directed in Case Nos. 25, 52 and 56 of 2010 (TTFDA in Case No. 56 of 2010 and KFCC in Case Nos. 25 and 56 of 2010) *inter alia* to suitably modify their respective Articles of Association, rules and regulations to remove the condition of compulsory registration of films as a pre-condition for release of any film and as such it is not necessary to pass such directions again in the present case. So far as APFCC is concerned, since it was not a party in previous cases and accordingly, it is directed to suitably modify its articles, rules in the light of the findings noted by the Commission against it in this order. Hence, the

directions issued by the Commission in Case Nos. 52 of 2010 and 56 of 2010 (as noted in para 55 above) shall also apply to APFCC *mutatis mutandis*.

64. The Commission is also of the opinion that the impugned acts and conduct of the opposite party Nos. 1, 2 and 4 warrant imposition of penalty to ensure effective functioning of the market. As per provisions of section 27(b) of the Act, penalties for anti-competitive agreements are to be imposed either on turnover or profit. In this connection, it may be pointed out that KFCC was a party in Case No. 25 of 2010 where its by-laws prohibiting members from dealing with non-members; making registration of film compulsory before release; observance of hold back period for exploitation of films through other media; putting restriction on exhibition of non-regional films were found to be anti-competitive. In the said case, the Commission apart from issuing a cease and desist order, ordered modification of the said by-laws. A penalty of Rs. 16,82,204 was also imposed upon KFCC. In light of the said penalty, the Commission did not find it appropriate to impose penalty upon KFCC in a subsequent case *i.e.* Case No. 56 of 2010. Accordingly, the Commission is of the view that it is not necessary to impose any separate penalty upon KFCC in the present case as well.

65. Further, in Case No. 56 the Commission imposed a penalty of Rs. 1 lac on Telangana Telugu Films Distributors Association (TTFDA) for similar conduct. In the present case also, the acts and conduct of the opposite parties including TTFDA are similar in nature in so far as this association through its impugned letters/ circulars tried to limit/ control the supply of films, it is unnecessary to impose any penalty upon TTFDA in the present case as well.

66. In view of the above, a penalty is proposed to be imposed upon only the opposite party No. 4. Since, the opposite party No. 4 is an association and does not have a turnover of its own out of exploitation of the activities of film distribution and exhibition, the Commission finds it appropriate to impose penalty on receipts/ income of the opposite party No. 4.

67. Looking at the gravity of the contraventions, the Commission decides to impose a penalty on the opposite party No. 4 at the rate of 10% of the average of the turnover and receipts/ income respectively for the last three preceding financial years.

S.No.	Name of Opposite Party	Income/ receipts of three years/ Turnover (in Rs.)			Average of three years Income/ receipts/ turnover	Penalty - 10% of average turnover/ receipts
		2008-09	2009-10	2010-11		
1.	APFCC	1,23,80,547	1,19,18,612	1,43,92,894	1,28,97,351	12,89,735.1

68. The Commission also directs that the opposite party No.4 should deposit the aforesaid amount within 90 days of receipt of this order. Further, the opposite party No. 4 is at liberty to deposit the said penalty from its account or after collecting it from its respective members.

69. The directions in para 63 above, should be complied with immediate effect and the opposite parties are also directed to file an undertaking to this effect within a period of 30 days from the date of this order.

70. The Secretary is directed to inform the parties accordingly.

Sd/-  
**Member (G)**

Sd/-  
**Member (GG)**

Sd/-  
**Member (R)**

Sd/-  
**Member (AG)**

Sd/-  
**Member (T)**

Sd/-  
**Member (D)**

Sd/-  
**Chairperson**