



COMPETITION COMMISSION OF INDIA

Case No. 7 of 2017

In Re:

P. V. Basheer Ahamed,
Liberty Paradise Complex,
A V K Nair Road,
Thalassery,
Kannur, Kerala - 670101.

Informant

And

Film Distributors Association (Kerala)
P. B. No. 2037, Door No. CC41/1604-A,
Sopanam Square,
Arangath Cross Road,
Cochin, Kerala -682018.

Opposite Party No. 1

Kerala Film Producers Association
XL/7425, Kerala Film Chamber Building,
2nd Floor, M. G. Road,
Ernakulum, Kerala – 682035.

Opposite Party No. 2

CORAM

Mr. Devender Kumar Sikri
Chairperson

Mr. S. L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Mr. Justice G. P. Mittal
Member



Appearance during the preliminary conference held on 9.08.2017

<i>For the Informant:</i>	Mr. Harshad V. Hameed, Advocate
<i>For OP-1:</i>	Mr. Arvind Gupta, Advocate Mr. S. S. T. Subramanian, Joint Secretary
<i>For OP-2:</i>	Mr. G. Suresh Kumar, President

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

1. Mr. P. V. Basheer Ahamed (hereinafter, the '**Informant**') has filed the instant information under Section 19(1)(a) of the Competition Act, 2002 (hereinafter referred to as the '**Act**') against M/s Film Distributors Association (Kerala) (hereinafter, '**OP-1**') and M/s Kerala Film Producers Association (hereinafter, '**OP-2**') (OP-1 and OP-2 together referred to as "**Opposite Parties**") alleging contravention of Sections 3 and 4 of the Act.
2. Brief details of the facts presented in the information are as follows:
 - 2.1. The Informant exhibits movies in his theatres viz. Liberty Paradise, Liberty Movie House, Liberty Little Paradise and Liberty Suite, all located at Thalassery, Kannur District, Kerala. The Informant is also an office bearer of Kerala Film Exhibitors Federation (hereinafter, '**KFEF**'), which is one of the associations of exhibitors in Kerala. There was a pending dispute between OP-1 and KFEF with respect to revenue-sharing between distributors and exhibitors of Malayalam movies. In relation to the said dispute, a special meeting was convened by the Kerala Film Development Corporation with different organisations in the Malayalam film Industry on 7th March, 2003. In the said meeting, it was resolved that during the first week of movie releases in air-conditioned theatres, the share of distributors and exhibitors would be 60% and 40% respectively.



- 2.2. Contrary to the above understanding arrived at on 7th March, 2003, OP-1 unilaterally changed the revenue-sharing arrangement for air-conditioned theatres and multiplexes operating in shopping malls in the State of Kerala. The revenue share of such theatres was increased to 50% during the first week of release of a movie. The Informant, being an office bearer of KFEF, took up the issue with the Kerala State Film Development Corporation on 7th October, 2015 and sought parity between air-conditioned theatres operating in shopping malls and others. However, this demand was not acceded to due to the clout enjoyed by the Opposite Parties in the Malayalam Film Industry. As a result, KFEF was forced to call for a strike in the State of Kerala which was later called off due to the intervention by the Chief Minister.
- 2.3. Subsequently, several distributors who had initially agreed to release movies in the theatres of the Informant refused to do the same on account of an unofficial ban imposed by the Opposite Parties. In support of such contention, two letters dated 24th October, 2016 and 22nd November, 2011 from LJ films Private Limited and M/s Friday Tickets, respectively, were enclosed with the information.
- 2.4. The Informant was hence, compelled to close down his theatres as he was not getting movies on account of the unofficial ban imposed by the Opposite Parties.
3. The Informant has contended that such unofficial ban imposed by the Opposite Parties on the theatres of the Informant, for collective decision taken by KFEF, shows a conspiracy to exterminate the Informant financially and oust him from the Malayalam film industry. The Informant has alleged that such ban amounts to a cartel and abuse of dominant position, in contravention of the provisions of Sections 3 and 4 of the Act.



4. The Commission considered the information on 27th June, 2017 and had a preliminary conference with the parties on 9th August, 2017.
5. During the preliminary conference held on 9th August, 2017, the Informant reiterated the allegations contained in the information. On the other hand, the Opposite Parties contended that they did not impose any ban on the Informant and they have no role in the disputes between individual distributors and the Informant. OP-1 alluded that individual distributors had refused to give movies to the Informant due to his demand for higher revenue share. OP-1 also averred that KFEF, in which the Informant had been an office bearer, had forced its members not to screen movies scheduled for Christmas, as a result of which producers and the Government had to incur loss to the extent INR 20 Crore. OP-1 further contended that the Informant had closed down his theatres on his own accord to renovate them on par with multiplexes and movies are being released in the theatres of the Informant since April, 2017. In response, the Informant contended that refusal of movies between January and April, 2017 was a result of a ban imposed by the Opposite Parties. The Informant also suggested that he could produce his bank statement evidencing refund of money by a few distributors who had initially agreed to give him movies.
6. Upon hearing the parties, the Commission allowed them to file their written submissions and evidence relating to the allegations on Affidavit. Accordingly, the Informant and OP-1 filed their Affidavits on 21st August, 2017 and 24th August, 2017, respectively.
7. In his Affidavit, the Informant has submitted that OP-2 issued a notice dated 22nd February, 2017 to him purportedly making wrong allegations. He responded to the said notice on 25th February, 2017. The Informant also wrote letters dated 2nd March, 2017 and 28th March, 2017 to OP-1 and Kerala Film Chamber of Commerce, respectively, seeking revocation of the ban imposed on the theatres of the Informant. To support the allegations levelled, the Informant has also enclosed



his bank statement to suggest that two distributors returned the advance paid to them for exhibition of their movies in the theatres of the Informant.

8. In its reply dated 24th August, 2017, OP-1 has contended that the purported confirmation letters of distributors viz. LJ Films Private Limited and M/s Friday Tickets have neither been signed by the said distributors nor by the Informant and amounted to no agreement between them. OP-1 has submitted that strike has been a normal phenomenon of KFEF for the past four to five years, particularly during festival periods, driving the producers and distributors into losses. In order to show the anti-competitive behaviour of KFEF, OP-1 has enclosed a letter dated 1st November, 2016 of KFEF whereby it informed OP-1 that revenue-sharing arrangement between exhibitors and distributors would be 50:50. A copy of a circular dated 18th August, 2016 of KFEF to its members has also been enclosed with the reply. In the said circular, KFEF had asked its members not to increase the ticket rates so that the distributors and producers incur losses.
9. The Commission has carefully perused the information and the materials available on record and given careful consideration to the submissions made by the respective learned counsel for the parties during the preliminary conference as well as the Affidavits given by them.
10. The primary allegation in the instant matter is that the Opposite Parties have imposed a ban upon the Informant due to which no distributor is ready to give movies for exhibition at the Informant's theatres which has led to their shutdown. The reason behind the same has been alleged to be that the Informant, being a member of KFEF, had been a part of the strike convened to demand a higher revenue share (50:50) for the member exhibitors of KFEF, at par with the multiplexes and air-conditioned theatres in shopping malls, rather than the initially agreed share of 60:40. Such conduct of the Opposite Parties in imposing an unofficial ban has been alleged to be amounting to both an anti-competitive agreement as well as abuse of dominant position in contravention of the provisions of Section 3 and Section 4, respectively, of the Act.



11. At the outset, the Commission notes that the facts as alleged by the Informant, do not suggest any unilateral conduct on part of any enterprise or group, that merits an examination under Section 4 of the Act. The impugned conduct primarily alleges anti-competitive behaviour by the Opposite Parties, who are associations of persons and/ or enterprises. Hence, the conduct of such Opposite Parties can only be examined under Section 3 of the Act, which covers enterprises, associations of enterprises, persons and/ or associations of persons. Since the Opposite Parties here are Distributors' and Producers' Associations, who are engaged in identical or similar trade of goods, the present case merits examination under Section 3 (3) of the Act.
12. The Informant has alleged that there is an unofficial ban imposed by the Opposite Parties upon him, which has led to the Producers and Distributors not giving movies to the theatres of the Informant for exhibition. In support of his such contention, the Informant has, *inter alia*, submitted unsigned confirmation letters dated 24th October, 2016 and 22nd November, 2016 from two distributors *namely* LJ Films Private Limited and Friday Tickets, respectively, and his own bank statement evidencing return of money given by the Informant for purchasing exhibition rights, by two other distributors *namely* M/s Ever Green Films and August Cinema. The Commission observes that either of such documents do not suggest that exhibition rights were denied to him due to any ban imposed, or that such alleged ban was imposed by the Opposite Parties. The confirmation letters simply show that the two distributors agreed to screen their movies in the theatres of the Informant while the bank statement merely proves that certain amount was credited in the Informant's bank account from the two distributors.
13. Besides the same, the Informant has also relied upon certain news publications and letter dated 7th October, 2015 issued by KFEF as well as Show Cause Notice dated 22.02.2017 issued by OP-2 to him. While these highlight the difference in revenue shares of multiplexes and other theatres, the same also do not give any indication of the purported ban or involvement of the Opposite Parties in the same. The



Informant has also relied upon letters dated 15th January, 2017, 25th February, 2017, 2nd March, 2017 and 28th March, 2017 written by him to the Opposite Parties and others wherein he has alleged imposition of such unofficial ban by them. However, the Informant cannot use the same to his advantage as the same are nothing more than self-serving admissions.

14. The Commission also takes note of the contention of OP-1 that the producers and the Government had to incur losses due to the strike called by KFEF at the behest of the Informant, during Christmas season 2016. As a result of such purported strike, the Informant also being a member of OP-2 was asked to give an explanation for indulging in activities that resulted in losses to the producers as well as restricted movies releases. The strike being launched by the Informant is also evident from the news article dated 13th February, 2017 titled “*Liberty Basheer winds up theatre business*”, enclosed with the information. Relevant extract of the news item is reproduced as under:

“I’m left with no other option than to shut down theatres. My theatres are not getting Malayalam movies. At present, nearly 50 employees are serving in these firms and there is no point in operating the theatres without collection. Certain persons are adamant that even other language films or second grade movies should not be screened at my theatres. I am not willing to bow down before them to run my theatres,” he said.

In fact, I launched the protest for the benefit of over 350 theatre owners. As Dileep intervened, everyone followed him. Dileep could down shutter of my theatres. However, nobody can defeat me,” Basheer added.

Liberty Basheer, who was active in film production, has not produced any movie in recent years.”

(Emphasis supplied)

15. It is evident that KFEF, in which the Informant has been an office bearer, called for strike during Christmas 2016 demanding higher revenue share for its members. Most of the members of KFEF withdrew from the strike and started taking movies as per the prevailing revenue-sharing terms. However, the Informant refused to agree with the prevailing terms, which may have likely resulted in movies not being



given to him. It is also relevant to note that movies are being given and exhibited in the theatres of the Informant since April, 2017. This was also confirmed by the learned counsel for the Informant during the preliminary conference.

16. In view of the foregoing, the Commission is of the *prima facie* opinion that there is no sufficient material on record to suggest that the Opposite Parties have put a ban upon the Informant which led to movies not being given to him for exhibition in his theatres. Thus, *prima facie*, there is no case of contravention of Section 3 (3) of the Act or any other provision of the Act made out against the Opposite Parties.
17. The matter is ordered to be closed forthwith in terms of Section 26 (2) of the Act.
18. The Secretary is directed to forward a copy of this order to all the parties.

**Sd/-
(Devender Kumar Sikri)
Chairperson**

**Sd/-
(S. L. Bunker)
Member**

**Sd/-
(Sudhir Mital)
Member**

**Sd/-
(Augustine Peter)
Member**

**Sd/-
(U. C. Nahta)
Member**

**Sd/-
(Justice G. P. Mittal)
Member**

**New Delhi
Date: 03/10/2017**