

BEFORE THE COMPETITION COMMISSION OF INDIA

NEW DELHI

Case No. 71 of 2011

Date: 10.01.2013

IN THE MATTER OF

**M/s Shri Ashtavinayak Cine Vision Limited
Through
Shri Vikram Mehta, Advocate**

Informant

AND

- 1. PVR Picture Limited, New Delhi through Shri Ashvani Matta, Senior Advocate**
- 2. Northern India Motion Pictures Association, Jalandhar City through Ms Mala Goel, Advocate**
- 3. Motion Pictures Association, Delhi**
- 4. Central Circuit Association, Bhusawal**
- 5. TelenganaTelegu Films Distributors, Secunderabad**
- 6. Telengana Film Chamber of Commerce, Secunderabad**
- 7. Film Distribution Association, Kerala**
- 8. Karnataka Film Chambers of Commerce, Bangalore**
- 9. Eastern India Motion Picture Association, Guwahati**
- 10. Eastern India Motion Picture Association, Kolkata**
- 11. Andhra Pradesh Film Chamber of Commerce, Hyderabad**
- 12. Nepal Motion Picture Association, Nepal**
- 13. Orissa Film Distributors Syndicate, Cuttak**
- 14. The Chennai KanchipuramThiruvallur District Film Distributors Association, Chennai**
- 15. Indian Motion Picture Distributor's Association, Mumbai**
- 16. Bihar & Jharkhand Motion Pictures Association, Patna**
- 17. Indian Film Association, Mumbai**
- 18. Eros International Limited, Mumbai**

Opposite Parties

ORDER UNDER SECTION 27 OF THE COMPETITION ACT, 2002

The present Information was filed on 04.11.2011 by M/s Shri Ashtavinayak Cine Vision Limited, Mumbai (hereinafter referred to as “the Informant”) under section 19(1) (a) of the Competition Act, 2002 (hereinafter referred to as “the Act”) against M/s PVR Pictures Ltd. (hereinafter referred to as “the Opposite Party No.1”), Northern India Motion Pictures Association (hereinafter referred to as “the Opposite Party No.2”), Motion Pictures Association (hereinafter referred to as “the Opposite party No.3”), Central Circuit Association (hereinafter referred to as “the Opposite Party No.4), Telangana Telugu Films Distributors (hereinafter referred to as “the Opposite Party No.5”), Telangana Film Chamber of Commerce (hereinafter referred to as “the Opposite Party No.6”), Film distributors Association (hereinafter referred to as “the Opposite Party No.7”), Karnataka Film Chambers of Commerce (hereinafter referred to as “the Opposite Party No.8”), Eastern India Motion Picture Association (hereinafter referred to as the “Opposite Party No.9”), Eastern India Motion Pictures Association (hereinafter referred to as “the Opposite Party No.10”), Andhra Pradesh Film Chamber of Commerce (Opposite Party referred to as “the Opposite Party No.11”), Nepal Motion Picture Association (hereinafter referred to as “the Opposite Party No. 12”), Orissa Film distributors Syndicate (hereinafter referred to as “the Opposite Party No.13”), The Chennai Kanchipuram Thiruvallur (hereinafter referred to as “the Opposite Party No.14”), Indian Motion Picture Distributor’s Association(hereinafter referred to as “the Opposite Party No.15”), Bihar & Jharkhand Motion Pictures Association (hereinafter referred to as “the Opposite Party No.16”), Indian Film Exporters Association (hereinafter referred to as “the Opposite Party No.17”) and Eros International Limited (hereinafter referred to as “the Opposite Party No.18 or Eros”) alleging *inter alia* contravention of the provisions of sections 3 and 4 of the Act by the opposite parties.

2. Facts of the case, in brief, are as under:

2.1 As per the informant, it is a company incorporated under the provisions of the Companies Act, 1956 and *inter alia* carrying on the business as a Production House engaged in the production and distribution of cinematographic films. The Opposite Party No. 1 is a company carrying on business of distribution and exhibition of feature films and the opposite party Nos. 2 to 17 are associations of distributors who are trade bodies registered under the Societies Registration Act or under the Trade

Union Act of their respective States. The Opposite Party No. 18 is a company carrying on business of distribution of feature films.

- 2.2 The informant has stated that as per the practice prevalent in the film-industry a distributor is normally required to register a film through the distributors' Association for the territory in which the distributor is carrying on business and after registration is done, distributor is allowed to book theaters for release of the feature films. Ordinarily, unless registration is done through the distributors' Associations, theatrical booking is not allowed.
- 2.3 As per the informant, in India, an exhibitor cannot be approached directly unless the trade body of the local association of distributors and exhibitors in that territory registers the film for exhibition in the territory in which that association/ trade body has control. Every association formulates the byelaws governing its functioning and regulates the film distribution in such territory for maintaining the distribution market.
- 2.4 The informant has alleged that these Associations make it compulsory for every film distributor to become their member and/ or register its film with the Associations before the exhibition of such films. A distributor who refuses to become a member of the Association and/ or refuses to register his film with the Association is not allowed to distribute and exhibit its film in the territory which is regulated by such association. It is alleged that the Associations enforce such compulsion on distributors by threatening their members consisting of cinema distributors and exhibitors of serious consequences for exhibiting films of a distributor who is not a member of any of the Associations or whose film is not registered with the respective Association. The cinema exhibitors are unwilling to take the risk of exhibiting the film of a distributor who is not a member of the Association or whose film is not registered with the Association.
- 2.5 The informant has also alleged that by compelling the distributors to become their members, the Associations strengthen their dominant position and impose undue and unfair restrictions against the various stakeholders in the film industry. The informant has also alleged that the Associations are acting like a cartel of distributor members for the benefit of their members at the cost of imposing undue restrictions

against the others who are not their members such as the directors and producers of the films.

- 2.6 The informant has further alleged that even when the distributors have only acquired the theatrical distribution rights of the film, these Associations make those distributors sign their standard form of registration which has clauses putting an undertaking on the distributors not to exploit the other rights of such film for certain period *e.g.* (i) satellite rights will not be exploited for certain period, (ii) home video rights will not be exploited for certain period, *etc.* The informant has stated that the distributors of the films have no choice but to sign these forms.
- 2.7 As per the informant, it had produced a film “Khatta Meetha” and appointed the Opposite Party No. 1 as one of the distributors. Due to some dispute over the realization of the dues, the account between the Opposite Party No. 1 and the informant was not settled.
- 2.8 The informant has submitted that the Opposite Party No. 1 issued letters to the informant demanding payment on account of alleged under-recoveries as allegedly due to it. The Opposite Party No. 1 had claimed that it was entitled to recovery of a sum of Rs. 61, 41, 894/- (Rupees Sixty One Lacs Forty One Thousand Eight Hundred Ninety four only) and interest towards un-recouped and unrecovered advance out of the advance amount of Rs. 2, 15 00, 000/- (Rupees Two Crores Fifteen Lacs only) paid by it to the informant. As per the informant, it had disputed the claim of the Opposite Party No. 1 in its reply to the demand letters issued by the Opposite Party No. 1.
- 2.9 The informant has alleged that the Opposite Party No. 1 purported to file a false complaint against it with the Opposite Party No. 2. On 12.02.2012, the Opposite Party No. 2 issued a letter to the informant enclosing therewith a copy of the complaint filed by the Opposite Party No. 1 .As per the informant, it had duly replied to the said letter issued by the Opposite Party No. 2 and contended that it has no jurisdiction in the matter and also denied the false claims of the Opposite Party No. 1.

- 2.10 As per the informant, it produced another feature film 'Rockstar' and appointed the Opposite Party No. 18 as distributor of the said film. The picture was slated for release on 11.11.2011. As per the informant, when the Opposite Party No. 18 was trying to negotiate for the booking of theaters for the said film, it was informed to the Opposite Party No. 18 by the Opposite Party No. 2 that the said film could not be registered as the same film had already been registered in its record in the name of one M/s Puri Sons and secondly, it was stated that the association had received a complaint against the informant. The Opposite Party No. 2 had also issued a circular dated 24.10.2011 to its members regarding the claim of M/s Puri Sons.
- 2.11 The informant has contended that M/s Puri Sons had informed to the Opposite Party No. 2 *vide* letter dated 28.10.2011 that they had already relinquished their rights in respect of the said film for the East Punjab territory.
- 2.12 The informant has further alleged that in spite of the fact that M/s Puri Sons had confirmed that they had relinquished all their rights in respect of the film Rockstar, the Opposite Party No. 2 refused to register its film on the pretext of alleged pending claims of the Opposite Party No. 1. The informant apprehended that since the Opposite Party No. 1 distributes feature films all over India, It might have already filed similar complaints with other Associations *viz.* the Opposite Party Nos. 3 to 17 who would also not permit to register the said feature film in their territories.
- 2.13 The informant has submitted that the opposite parties by virtue of their position of strength are able to compel the distributors to become their members and be obliged to abide by unfair and discriminatory restrictions imposed by them against non-members in order to fulfill the demands of their members. As per the informant, the act of non-registering its film by the opposite parties is prohibited by section 4(2) (a) of the Act read with section 19 of the Act. Further, the consequence of impugned action of the Opposite Party Nos. 2 to 17 is denial of market access to the informant under section 4(2)(c) of the Act by denying registration of the film in the respective territories of the Opposite Party Nos. 2 to 17.
- 2.14 The informant has also alleged that the Opposite Party Nos. 2 to 17, in addition to the contravention of provision of section 4 of the Act, had also contravened section

3(3) with section 3(1) and 3(2) by entering into an anti-competitive agreement with members in the form of circulars and directives with a view to limit or control the production, supply, market or provision of services. The Opposite Party Nos. 2 to 17 had also contravened the provisions of section 3 (4) of the Act by refusing to deal in respect of distribution of goods and by promoting exclusive supply/ distribution agreement.

3. The Commission considered the information in its meeting held on 18.11.2011 and after forming a view that there exists a *prima facie* case under section 26 (1) of the Act directed the DG to conduct an investigation into the matter and submit a report.
4. The Commission *vide* order dated 18.11.2011 dismissed an application filed by the informant under section 33 of the Act seeking interim relief on the ground that the application had become infructuous since the film was actually released on the appointed date in most parts of the country.
5. The DG after receiving the order of the Commission investigated the matter and submitted an investigation report dated 25.05.2012 to the Commission. The findings in the DG report, in brief, are as under:
 - 5.1 For the purpose of investigation, the DG adopted the methodology of issuing probe letters to the opposite parties for furnishing the relevant information. Letter was also issued to the informant asking it to file certain details supporting the allegation made by him. The DG has also referred to the order dated 16.02.2012 of the Commission in case No. 25, No. 41, No. 45, No. 47, No. 48, No. 50, No. 58 and No. 69 of 2010 and the Commission's order dated 16.02.2012 in Case Nos. 52 and 56 of 2010.
 - 5.2 As per DG report, a number of complaints against the film trade associations have been received in the Commission alleging the violations of the provisions of Act. Prior to this case, reports in 16 such cases had been submitted on the anti-competitive conduct of these Associations. The Commission has also passed the orders in most of those cases. The facts relating to the role of these associations, their functions, modus operandi, territories and rules and regulations had been

mentioned in detail in all the earlier reports as well as in the orders of the Commission.

5.3 The DG report has mentioned about the territories and other details of film associations functioning in India, the details regarding their incorporation and the area of operation is as under:-

Sl. No.	Name of the Association	Date of Incorporation/ Act Under which formed	Circuit/ Territories
1.	Northern India Motion Pictures Association, Jalandhar	50 years back/ Registered u/s 25 of Companies Act	Punjab, Haryana, J&K, Himachal Pradesh, Chandigarh (UT)
2	Bihar & Jharkhand Motion Pictures Association, Patna	1987/ The Companies Act, 1956	Entire State of Bihar & Jharkhand
3	Central Circuit Cine Association, Indore/ Bhusawal/ Jaipur	1952/ The Companies Act, 1913	M.P., Rajasthan, Chhattisgarh and part of Maharashtra (Vidarbha & Khandesh region)
4	Motion Pictures Association, Delhi	More than 50 years/ Registered u/s 25 of Companies Act	Delhi, Uttar Pradesh, Uttarakhand
5	Film Distributors' Association (FDA), Ernakulam	1987/ Regd. Societies Registration Act, 1955	State of Kerala
6	The Karnataka Chamber of Commerce (KFCC), Bengaluru	1944/ Karnataka Societies Registration Act	Mysore territory and most of the parts of Karnataka
7	(a) Telangana Telugu Film Distributors Association, Secunderabad (b) Andhra Pradesh Film	1999/ Andhra Pradesh Public Societies Registration Act, 1350	Nizam area of Andhra Pradesh, Maharashtra and Karnataka

	Chamber of Commerce		
8	Eastern India Motion Pictures Association, Kolkata	1945/ Registered u/s 25 of Companies Act 1956	West Bengal, Odisha States
9	Utkal Cine Chamber of Commerce	1993/ Certificate of registration Act 1860	State of Odisha
10	Indian Motion Picture distributors Association, Mumbai		Gujarat, Goa & Maharashtra (except some part under Vidarbha region) and parts of Karnataka
11	(a) South India Film Chamber of Commerce (b) Film Distributors Association, Kerala	Registered under the societies Act.	Tamilnadu, Kerala

5.4 DG has reported that the aforesaid associations mainly consist of the persons engaged in the business of film distribution and exhibition in their territories. However, some of the associations accept the producers also as their member. These associations have their Memorandum and Articles of Association and rules/byelaws to conduct their business as well as to regulate all the activities associated with film distribution business. Their sources of income are mainly generated by way of contributions from members, annual fees, registration fees, arbitration charges, and penalties/ fines recovered from producers and members.

5.5 The DG has also reported that the informant in this case has made 18 parties as opposite parties. However, the details filed by the informant do not specifically reveal any anti-competitive conduct against the opposite parties except the Opposite Party Nos. 1 and 2. The Opposite Party Nos. 3 to 17 have been made opposite parties on the apprehension that they might interfere with the release of the film 'Rockstar' in their respective territories. However, the Opposite Party Nos. 3 to 17 in their replies denied imposing any restriction on the release of 'Rockstar'.

- 5.6 As per the DG report, during the release of film 'Rockstar' two different issues came before the Opposite Party No. 2 – one relating to the distribution rights between M/s Puri Sons and M/s Eros and the other relating to the un-recouped amount of M/s PVR against the informant.
- 5.7 After examining all the facts of the case, the DG has reported in his report that the distribution rights of the film 'Rockstar' for East Punjab territory were registered in favour of M/s Puri Sons, Jalandhar in September, 2011 *i.e.* much before the release date of the film. However, on 24.10.2011 M/s Puri Sons complained to the Opposite Party No. 2 that the Opposite Party No. 18 was approaching the exhibitor members for booking of the film 'Rockstar' in East Punjab territory. On this complaint, the Opposite Party No. 2 issued a letter to the Opposite party No. 18 to stop such practice. The Opposite Party No. 2 has stated before the DG that in order to safeguard the rights and title of its distributor member and to avoid any dispute between members, it had issued letter dated 24.10.2011 to the Opposite Party No. 18 requesting them to stop approaching exhibitor members for booking the film 'Rockstar', as the film was registered in the name of M/s Puri Sons. Thereafter, the issue of distribution rights of 'Rockstar' got settled between M/s Puri Sons and the informant, and M/s Puri Sons relinquished the distribution rights of the said picture for the assigned territory and intimated the Opposite Party No. 2 *vide* their letter dated 28.10.2011.
- 5.8 On the basis of above facts, the DG has reported that the action of the Opposite Party No. 2 regarding distribution rights of 'Rockstar' on the complaint of its member appears to be justified. When the informant had already granted distribution rights to M/s Puri Sons and the same was already registered with the Opposite Party No. 2, the claim of rights by another distributor in the same territory without any communication or notice created confusion in the territory of the Opposite Party No. 2. On the basis of the facts as enumerated above, the DG was of the view that the action of the Opposite Party No. 2 in issuing letters to the members and the concerned persons in this regard did not attract any anti-competitive element. As such no restriction on the distribution either directly or indirectly was imposed by the Opposite Party No. 2 by way of its letter dated 24.10.11 regarding the distribution rights of film 'Rockstar'.

- 5.9 The DG has further examined the circular of the same date *i.e* 24.10.2011 issued by the Opposite Party No. 2 to its members informing that it had received a complaint from the Opposite Party No. 1 against informant with regard to picture 'Khatta Meetha' and the same was being processed. As per the DG report, the purpose of issuing this circular was to caution its member against the informant and its forthcoming picture 'Rockstar'. The issue of distribution rights of 'Rockstar' got settled between M/s Puri Sons and the informant and M/s Puri Sons issued NOC to the Opposite Party No. 2 on 28.10.2011 in this regard. When the distribution rights got settled and the Opposite Party No. 18 acquired the distribution rights and applied for registration for distribution in the territory of East Punjab on 02.11.2011, the Opposite Party No. 2 issued another letter on 04.11.2011 to the Opposite Party No. 18 and kept the registration pending on the plea that the informant had an outstanding liability of Rs. 64, 03, 679/- to the Opposite Party No. 1.
- 5.10 The DG has further reported that the Opposite Party No. 2 has defended its conduct on the pretext that one of its objectives as enunciated in clause 3(g) (v) of its Memorandum of Association is to settle the business disputes of its members. In due pursuit of the said objective, it is the duty of the Association to help the members to resolves the disputes/ differences between its members who submit themselves to its jurisdiction of the arbitration.
- 5.11 As per the DG report, the investigation has revealed that the dispute relating to outstanding amount was raised before the Opposite Party No. 2 way back in the month of January, 2011 by the Opposite Party No. 1 *vide* its letter dated 27.01.2011.the Opposite Party No. 2 on receipt of said letter from the Opposite Party No. 1 issued a letter to the informant on 12.02.2011 seeking comments on the claim of the Opposite Party No. 1. The informant in response to above, replied to the Opposite Party No. 2 *vide* letter dated 08.03.2011 mentioning that the complaint filed by the Opposite Party No.1. was false and also that as per the agreement of film "Khatta Meetha", the Opposite Party No. 2 had no jurisdiction for assuming the role of arbitration on the monetary claim of the Opposite Party No.1.

5.12 The DG has also reported that the Opposite Party No. 2 started its action in this matter only when the film 'Rockstar' was nearing its release. Had there been a sincere approach by way of arbitration as claimed by the Opposite Party No.2, some action or initiative should have been taken between March 2011 and October 2011. As per DG report, the documents submitted by the Opposite Party No. 2 as well as by the Opposite Party No. 1 did not reflect any fresh correspondence for recovery of its outstanding money in the month of October 2011.

5.13 On the basis of the above facts and circumstances, the DG has reported that the Opposite Party No. 2 as a matter of practice as already found on many earlier occasions in the cases investigated by his office started the tactic of threatening the non-registration of film and interfering in the release of film to settle the dispute relating to outstanding amount of its member. As per the DG report, *vide* its confidential circular circulated amongst its member dated 24.10.2011, the Opposite Party No. 2 mentioned that a "*complaint has been received from M/s PVR Pictures Ltd. against Shree Ashtavinayak Cine Vision Ltd., with regard to picture 'Khatta Meetha'. The complaint is being processed.*" On the basis of the said letter, the DG came to the conclusion that it is clear that the Opposite Party No. 2 started processing the complaint dated 27.01.2011 of PVR only on 24.10.2011 by way of intimating all the members about the complaint.

5.14 As per the DG report, on 04.11.2011, the Opposite Party No. 2 issued letter to Eros directing them to resolve the matter relating to the claim of the Opposite Party No. 1 and deposit the amount immediately on receipt of the letter to enable them to process the pending application of registration. This letter was an indirect threat to the film distributor and producer to follow the diktat of the Opposite Party No. 2 or to face the consequences. Thus, the Producer settled its dispute by making payment to the Opposite Party No. 1 before the release of film and only after issue of the NOC letter from the Opposite Party No. 1 on 10.11.2011 the film was released smoothly.

5.15 The DG has further reported that the Opposite Party No. 1, as a member of the Opposite Party No. 2, was fully involved in the decision making against the informant. The facts gathered indicate that the Opposite Party No. 1 persuaded the

Association to resort to anti-competitive conduct against the informant. In the letter written by the Opposite Party No. 1 on 27.01.2011 to the Opposite Party No.2, it had mentioned that *Please ensure that the picture Run Bhola Run is not registered or allowed to be released till the settlement of our claim in 'Full and Final'*. As per the DG report, although the Opposite Party No. 1 in its individual capacity had no role in controlling the film distribution market in the territory of the Opposite Party No. 2 but, its role in decision making process of the anti-competitive conduct cannot be denied. By suggesting the Association to not allow the release of the film of the informant, by invoking its decision to not register or release a film is a violation of the provisions of Act. The investigation also revealed that only after settlement of claim of the Opposite Party No. 1 by the informant and issue of no objection letter on 10.11.2011, the film could be released on 11.11.2011. Thus the circumstances clearly indicate that the informant was pressured by refusing to register the film in the territory of the Opposite Party No.2. As per the DG report, the Opposite Party No. 1 in its reply has claimed that the Commission directed the Informant to pay un-recouped advances along with the interest to the Opposite Party No.1. The order u/s 33 of the Act on this case was passed by the Commission on 18.11.2011, whereas the payment was made by the informant to the Opposite Party No. 1 on 10.11.2011 *i.e.* one date before the release of film. Further, in the order of the Commission, no such direction to the informant regarding making payment to the Opposite Party No. 1 could be noticed. In the order, while deciding the case on the request for interim relief, the Commission opined that there would not be any irreparable loss if the informant deposits the amount with the Opposite Party No. 2 (not to the Opposite Party No.1) till the adjudication of the claim. Thus, apparently wrong facts have been quoted by the Opposite Party No. 1 in its reply to justify its conduct. As per DG report, the facts and circumstances of the case clearly show that the payment made by the informant to the Opposite Party No. 1 to secure the smooth release of the film in the territory of the Opposite Party No.2.

5.16 The DG has further reported that all the opposite parties in their replies have denied that any restriction on release of the film "Rockstar" was imposed by them and the film was released in their territories on the date of its original release *i.e.* 11.11.2011 without any interference from their side. On the basis of the replies filed by the opposite parties, documents available on record and the other relevant facts and

evidence, DG has also reported that no anti-competitive conduct against the other parties (the Opposite Party Nos. 3 to 18) against the informant in respect of film 'Rockstar' has been found.

5.17 As per the DG report, the conduct and bylaws of the Opposite Party No. 2 have been found to be restrictive in nature, the Opposite Party Nos. 1 and 2 have violated the provisions of section 3(3) (b) of the Act by imposing restriction on the release of film 'Rockstar'. The Memorandum and Articles of Association and rules of the opposite party associations relating to compulsory registration of films, prohibiting dealing with non-members and imposing hold-back period of release of films, *etc.* are restrictive in nature and in violation of the provisions of section 3(3)(b) of the Act. As per DG report, the opposite party associations are deciding not to have any dealing with a person who does not agree with the directions of the Associations. Thus, based on the practices adopted and rules and regulations framed by the opposite party associations, DG has reported that the opposite party associations are involved in anti-competitive conducts in the film distribution business in their respective territories.

5.18 As per the DG report, after conducting the inquiries, examining the clauses of Articles of Association, replies received from the opposite parties, information received from the informant and its analysis with reference to the reply received from the opposite parties, it is found that opposite parties are found to have indulged in anti-competitive conduct of giving directions to its members and putting restrictions on the release of films, and controlling the film distribution business. The conduct of the Opposite Party Nos. 1 and 2 was found to be in violation of the provisions of section 3(3)(b) of the Act on the basis of their decision to impose restriction on the informant.

5.19 The DG has concluded in his report that the Opposite Party No.1 is not a trade association of film distributors, and therefore it has no role and capacity to individually restrict the market of film distribution in the territory of the Opposite Party No. 2. However, the investigation has clearly revealed that the M/s PVR Pictures Ltd. being a member of the Opposite Party No.2, was involved in the decision making process of the anti-competitive conduct of the Opposite Party No. 2 against

the informant. The Opposite Party No. 1 has been found to make written request to the Opposite Party No. 2 to not allow the release of one of films of the informant to recover its outstanding money. The conduct of M/s PVR Pictures is therefore found to be in violation of the provisions of section 3(3) (b) of the Act.

5.20 The DG has also reported that the Opposite Party No. 2 invoked the decision to refuse registration and release of the film 'Rockstar' unless the payment of its member was settled. It had issued circulars and letters among its members and the distributor of film 'Rockstar' to this effect. Further, the following rules/ byelaws of the association already mentioned in the earlier reports in Case Nos. 25/2010, 52/2010 and 56/2010 have also been found to be in violation of the provisions of the Act:

- i. Restriction on members to deal with non-members – The provisions mentioned in rule 16(a) of Regulations imposes restriction on its members on dealing with non-members.
- ii. As per the provisions of rule 22 members are prohibited to release/ screen/ book the picture unless it is registered.
- iii. As per the registration form it is mandatory to undertake that the film cannot be released on satellite/ television before expiry of one year.
- iv. Restrictions on selling video/ CD rights before two weeks from the theatrical release of the film in the country.
- v. Restrictions on selling and/ or disposing of TV rights of the film for release in India and not before six month from the premier theatrical release of the Film in India.

5.21 On the role of Motion Picture Association (MPA), Delhi, Central Circuit Cine Association (CCCA), Karnataka Film Chamber of Commerce (KFCC), Eastern India Motion Pictures Association (EIMPA), Guwahati and Kolkata and Andhra Pradesh Film Chamber of Commerce (APFCC), the DG has reported that although no anti-competitive conduct against the informant or against the release of the film 'Rockstar' has been found in the instant case but, their rules and byelaws relating to

the membership, registration of film withholding of release on TV, CD, DVD *etc.* are found to be anti-competitive which were already highlighted in the investigation reports of the earlier cases.

- 5.22 Further, on the role of Telangana Telugu Film Distributors Association (TTFDA) (the Opposite Party No.5), Telangana Film Chamber of Commerce (TFCC) (the Opposite Party No.6) Film Distributors Association (FDA), Kerala (the Opposite Party No. 7), India Motion Pictures Distributors Association (IMPDA), Mumbai (the Opposite Party No.15) and Bihar and Jharkhand Motion Pictures Association(BJMPA) (the Opposite Party No.16), Orissa Film Distributors Syndicate (the Opposite Party No.13), Chennai Kanchipuram Thiruvallur District Film Distributors Association (the Opposite Party No.14), Indian Film Exporters Association (the Opposite Party No.17) and M/s Eros International Media Ltd. (the Opposite Party No. 18), the DG has reported that no anti-competitive conduct or practice has been found against these parties in this case.
- 5.23 On the role of M/s Nepal Motion Pictures Association, Kathmandu (the Opposite Party No. 12), the DG has reported that no details against the Opposite Party No. 12 have been submitted by the informant. The informant was requested to submit details of role of the Opposite Party No.12 in film distribution as well as its conduct against the release of Hindi movies. However, nothing has been furnished by the informant. Further, the letters issued to Nepal Motion Picture Association at its address “Bishal Nagar, Kathmandu, Nepal”, as provided by the informant, has remained un-complied with.
6. The Commission considered the matter in its meeting held on 05.06.2012 and decided to send copies of the investigation report to the informant, the Opposite Party No. 1, the Opposite Party No. 2 and the office- bearers of the Opposite Party No. 2 for filing their reply/ objection on the DG report. The Commission also directed the said opposite parties to file their Profit & Loss Account and Balance Sheet for the last three years along with the reply to the DG report. The Commission further directed the office- bearers of the Opposite Party No. 2 to file their Profit & Loss Accounts and Balance Sheets for the last three years of the enterprises which their represented.

7. In response to the notice sent by the Commission, the Opposite Party No. 1 filed its comments/ objections dated 06.08.2012 to the DG report. The relevant contentions of the Opposite Party No. 1, in brief, are as under:
- 7.1 As per the reply of the Opposite Party No. 1, the dispute between the informant and it was a commercial dispute hence; the Commission has no jurisdiction to entertain the present matter. The Opposite Party has relied upon the order passed by the Commission in the cases of *M/s Mittal Auto Sales and Service v. Global Automobiles*, *Ravi Suri v. M/s Today Homes & Infrastructure Pvt. Ltd.* and *Eastman Cast & Forge Ltd. v. Exact Developers & Promoters Pvt. Ltd.*
- 7.2 As per the contention of the opposite party, the movie 'Rockstar' was released on the slated date of release as noted by the Commission in its order under section 33 dated 18.11.2011 and hence, no cause of action lies. The opposite party has further submitted that the DG's investigation has failed to reveal the fact that the movie 'Rockstar' was registered on 14.11.2011 with Opposite Party No. 2 three days after its release and non-registration of a film could not have had any effect on the release of the movie or otherwise.
- 7.3 The opposite party has submitted that the allegation of the informant centered on the repayment of Rs. 61, 41,894.00 (Rupees Sixty One Lakhs Forty One Thousand Eight Hundred and Ninety Four Only) plus interest towards the un-recouped and unrecovered advance amount of Rs 2, 15, 00,000.00 (Two crores fifteen Lakhs) which had been alleged to have been paid earlier by the Opposite Party No. 1 to the Informant prior to the releases and exhibition of film Khatta Meetha. As per the opposite party, despite its repeated request, the informant failed to repay the amount. As per the answering opposite party, being helpless in recovering the outstanding from the informant, it filed its grievance before the Opposite Party No. 2.
- 7.4 The answering opposite party has contended that the DG in the report did not take into consideration the complete facts of the dispute but only relied upon the last paragraph of letter dated 27.01.2011 which was issued by it to the Opposite Party No. 2 raising its grievance of outstanding towards the informant. As per the Opposite Party No. 2, the Opposite Party No. 2 is an independent adjudicatory body which

settles the dispute in the industry. Clause 3 (g) (v) of the Memorandum of Association of the Opposite Party No. 2, authorizes it to arbitrate and settle disputes of its members. The clause also mentions that in case of any dispute between members of the Association and between all persons engaged in production, distribution and exhibition of the Indian Film Industry, such person could file their grievance with it for resolution of its issues.

- 7.5 The answering opposite party has also claimed that informant has been a habitual defaulter and opposite party has been facing similar problems with the informant. The opposite party informed that there have been various media reports about film Financer Raju Shah moving court against the informant over dues worth Rs 36 crores and dishonored cheques worth Rs 8 crores. Eros too had filed a winding up petition before the High Court of Bombay against the informant over dues amounting to Rs 8 crores.
- 7.6 As per the opposite party, there has been a continuous correspondence by it to the Informant for the recovery of outstanding dues and it had also sent a letter dated 30.08.2011 to the informant requesting in for the repayment of the recouped and refundable advance amount for the film Khatta Meetha. However, the DG in its report has stated that the documents provided by it and the Opposite Party No. 2 did not reflect any fresh correspondence for recovery of its outstanding money in the month of October 2011. This proved that the DG did not go into the background of this case and conducted his investigation superficially.
- 7.7 The answering opposite party has further contended that the DG did not consider the past disputes between it and the informant relating to films 'Blue' and 'Dabangg'. In the absence thereof, the report did not accurately capture the series of events leading to the filing of the present Information which would have amply demonstrated that the same is misplaced and mala- fide.
- 7.8 The opposite party has also submitted that the film namely Run Bholu Run, which was mentioned in letter dated 27.01.2011 issued by it to be the Opposite Party No. 2, has not been released as yet hence, there is no question whether there was any problem in the registration or release on the said film.

7.9 As per the contentions of the answering opposite party, despite various probe notices issued by the DG to the informant and a proposal for initiating penalty proceedings under Section 43 of the Act against the informant, the informant did not appear before the DG or the Commission. The Opposite Party No.1 provided the requisite information and evidence that proved that the filing of the Information by the informant was with a mala- fide intention to avoid paying the amounts due to it.

7.10 On the issue of film 'Rockstar' produced by the informant and distributed by Eros, the opposite party has submitted that the DG's report stated that the Opposite Party No. 2 issued a circular to all its members dated 24.10.2011 mentioning that a complaint had been received from it against the informant regarding film 'Khatta Meetha'. The DG concluded that the Opposite Party No. 2 started processing the complaint dated 27.01.2011 only on 24. 10. 2011 by way of intimating all the members about the complaint. The opposite party has alleged that DG has overlooked the following considerations while arriving at its conclusions:-

- a) The Opposite Party No. 2's primary objective as an association is to safeguard the interests of its members;
- b) The rationale of the circular dated 24.10.2011 was that the Opposite Party No. 2 did not want its other members to face problems with the informant similar to the issues the opposite party no. 1 was facing.
- c) The reason for the circular being issued in October despite the opposite party 's request in January was that this was the first film that the informant was producing after 'Khatta Meetha' and prior to October, the need for cautioning the members did not arise.

7.11 The answering opposite party has admitted that film Rockstar was earlier given for distribution to M/s Puri Sons but thereafter, it was given for distribution to Eros. As per the answering opposite party, on receipt of application from Eros dated 02.11.2011 for registration, the Opposite Party No. 2 intimated Eros *vide* letter dated 04.11.2011, that there was an outstanding claim of the Opposite Party No. 1 against

the informant and the application for registration was pending. The DG has found the aforesaid letter of the Opposite Party No. 2 to be an indirect threat to follow its directions. The Opposite Party No. 1 has also submitted that there was no direction or threat by the Opposite Party No. 2 to clear the dues and the conclusion by DG being an indirect threat is long drawn. The Opposite Party has informed that the members register their films to protect their prints from piracy/ intellectual property theft, disputes in relation to distribution/ exhibitions etc. Registration of a movie does not impact the release of movie.

7.12 The Opposite Party No. 1 has further submitted that Eros has not alleged anything against the Opposite Party No. 2 nor has made any complaint regarding noncooperation from various exhibitors for the release of the film "Rockstar". As per the Opposite Party No. 1, the circular of registration of the film 'Rockstar' was issued by the Opposite Party No. 2 only on 14.11.2011 *i.e.* three days after the date of its release. Therefore, no restriction was imposed on the members of the Opposite Party No. 2 for not to screen an un-registered film. The film was released on all its cinemas on the same day as the worldwide release. The answering opposite party has relied on the advertisement issued by Eros in Punjab Kesari in Jalandhar dated 06.11.2011 wherein names of various cinemas (single screens and multiplex chains including PVR) where the film was screened were mentioned.

7.13 The answering opposite party has also submitted that the Opposite Party No. 2 has never imposed any restriction on its members for not screening an unregistered film. Some of the unregistered films with NIMPA which were exhibited are:-

- a) Agent Vinod-Eros
- b) Char Din Ki Chandani-Reliance
- c) Dangerous Ishq-Reliance
- d) House Full-Eros
- e) Tor Mitra di(Punjabi)

7.14 As per the answering opposite party, the only allegation against it in the DG report relates to its letter dated 27.01.2011 issued to the Opposite Party No. 2, and the Commission in its order dated 18.11.2011 under Section 33 of the Act has already highlighted that the above cause of action arose early in 2011 and the informant

approached Commission at the eleventh hour; therefore, there was no irreparable loss being caused to the informant.. In the absence of a finding that there was limitation of production, supply, markets, technical development, investment or provision of services qua the informant itself; the possibility of there being an AAEC does not arise.

7.15 The answering opposite party has also contended that the DG has also failed to establish in the course of its investigation that it had exercised or even had the ability to influence the decisions of the Opposite Party No. 2. The reliance of the DG on several proceedings before Commission was entirely misplaced since none of the facts in issue in those proceedings were similar to the allegations leveled against OP in the instant proceedings and hence, the findings arrived at in those proceedings would not apply to the instant matter. The differences from the instant proceedings are:-

- A. Registration with the Opposite Party No. 2 is not necessary as several movies which have been exhibited without being registered.
- B. The DG has wrongly and without any basis interpreted the meaning of the circular of the Opposite Party No. 2 to its members to be coercive in nature. It was only to bring to the knowledge of its members that a dispute was pending.
- C. Also, there has been no evidence lead by the informant to show that it suffered any monetary losses nor was there any allegation of discrimination against its movie on the basis of regional bias because of non-registration.

7.16 As per the answering opposite party, DG has not considered the following facts before arriving at the conclusion that it had violated Section 3(3) of the Act:-

- a) That the facts of the present case are different with that in Case No. 25 of 2010 and Nos. 52/56 of 2010 suggesting that the findings of the Commission in these cases cannot apply to the instant case;
- b) That owing to a lack of examination of factors laid out in Section 19(3), there is no finding in respect of AAEC being caused or likely to be caused by any joint decision (if any) of members of the association;
- c) That the membership to the association is voluntary and is not a pre-requisite for exhibition of a movie;

- d) That the ultimate purpose of the existence of an association like the Opposite Party No. 2 is to serve as a mediator in resolution of disputes of its members;
- e) That in the presence of a platform such as the Opposite Party No.2, the producers are aware of the distinct distributors, thereby making the coordination process for the producers and distributors facile in order to get their movie registered;

7.17 The answering opposite party has relied upon the order of the Commission in case of the Consumer *Online Foundation v. Tata Sky Ltd. & Others* (Case No. 02/2009.) wherein it was discussed that, *"The definition of "cartel" under section 2 (b) of the Act has the phrase "by agreement amongst themselves" as its fulcrum. For any "practice" to be considered as concerted action, the facts must be counterpoised on that fulcrum of "by agreement amongst themselves". Such "agreement" should not be adduced, assumed or arrived at through eliminative or wishful reasoning but must be concluded through amassment of undisputable evidences. The establishing of joint mens rea of non-competition is imperative.* This is absent in the instant case.

7.18 The answering opposite party has further relied upon the case of Sugar Mills (Case No. 01/2010) wherein it was held that since the investigation did not establish foreclosure of any competition as outlined in Section 19(3)(c) or that any competitor was driven away from the market as mentioned in Section 19(3)(b), no adverse appreciable effect could be inferred.

8. The Opposite Party No. 2 on 23.07.2012 has also filed its reply/ objections to the DG report. The relevant contentions of the Opposite Party No. 2, in brief, are as under:

8.1 The answering opposite party has submitted that pattern of film trade and business is very different from an ordinary sale of goods or services, the answering opposite party has highlighted pattern of film trade and business in India.

8.2 The answering opposite party has also submitted that it is a non-profitteering body for promoting art, culture, charity, commerce *etc.* and solely uses their funds to promote their objects which are duly approved by Company Law Board. It has been functioning as a Domestic Tribunal for around 55 years. The territories of the

Opposite Party No. 2 are Punjab, Haryana, Jammu and Kashmir, Himachal Pradesh and Chandigarh (UT). The membership to the Association is fully and completely voluntary and no coercion or force is exercised by the Opposite Party No.2, on any one to take its membership. Further not only distributors and exhibitors but Producers in their capacity as distributors are also the members of the Opposite Party No.2.

- 8.3 The answering opposite party has further submitted that under Article 3 (v) of its Memorandum of Association, it is mandated for settlement of disputes. It Acts like a domestic Arbitral Forum to settle the disputes amongst members and between all persons engaged in the production, distributors and exhibition of the Indian Film Industry and to arbitrate *etc.* with others to avoid unnecessary litigation. It has submitted that the Opposite Party No. 2 is not doing any business or profiteering and whole purpose and aim is to help members to avoid long litigations
- 8.4 The Opposite Party No. 2 has further contended that it is a non-commercial organization and none of its acts can cause infringement of Section 3 or 4 of the Competition Act, 2002.
- 8.5 The Opposite Party No. 2 has also submitted that the DG has not filed the documents supplied by it to the DG during the course of the Investigation. These documents are (1) Agreement between Ashtavinayak and M/s Puri Sons, Jalandhar for assignment of distribution right, dated 13.09.2010, (2) Circular by the Opposite Party No. 2 informing its members regarding distribution rights vested with Puri Sons, dated 24.10.2010, (3) Letter to the Opposite Party No. 2 by Puri Sons that distribution rights vested with them, dated 24.10.2011, (4) Letter from Puri Sons intimating the Opposite Party No. 2 of relinquishment of their distribution rights and circular issued by the Opposite Party No. 2 that the picture was deregistered from the name of Puri Sons, dated 28.10.2011, (5) the informant assigned rights to Eros. and application from Eros received, dated 04.11.2011, (6) the Opposite Party No. 2 informed Eros that claim of Rs. 64,03,879 was received from the Opposite Party No.1, dated 04.11.2011, (7) Eros issued separate notices to the Opposite Party No. 2 not to pursue the claim of the Opposite Party No.1, Eros wrote to the Opposite Party No. 2 that claim against the informant had been settled with the Opposite

Party No. 1 dated 05.11.2011 and 11.11.2011, (8) Eros requested for registration of the film in their name, name registered and circular issued, intimation of registration sent to Eros dated 11.11.2011 and 14.11.2011 and (9) the Opposite Party No. 2's circular intimating that picture registered in favour of Eros dated 14.11.2011.

- 8.6 As per the opposite party, the very fact that the informant settled the dispute with Puri Sons and the Opposite Party No. 1 itself shows that the Opposite Party No. 2 was acting within its Memorandum and Articles, thus saving the parties of long drawn out, costly litigation in civil course.
- 8.7 Further, the DG has not taken into consideration that the informant concealed that it had already assigned the distribution rights of the film to M/s Puri Sons way back on 13.09.2010, and despite continuance of assignment in favour of Puri Sons, it had again assigned on 18.02.2010 to Eros.
- 8.8 On the conduct of the informant, the answering opposite party has relied upon the judgment of the Hon'ble Supreme Court in *S.P. Chengalvaraya Naidu (Dead) by L.R.s. v. Jagannath (Dead) by L.R.s & Ors.* 1993 (2) BC 546 (SC).
- 8.9 The answering opposite party has also relied upon the advertisement issued by Eros in Punjab Kesari in Jalandhar dated 06.11.2011 wherein names of various cinemas (single screens and multiplex chains including PVR) where the film was screened were mentioned. On the basis of said advertisement, the answering opposite party has contended that there was no restriction on its part on the releases of film Rock Star in the relevant territory.
9. The Commission considered the matter in its meetings held on 24.07.2012 and 09.08.2012. Mr. Vikarm Mehta, Advocate, Shri Ashwani Matta, Senior Advocate and Ms. Mala Goel, Advocate appeared and advanced arguments on behalf of the informant, the Opposite Party No. 1 and the Opposite Party No. 2 respectively.
10. The counsels appearing on behalf of the Opposite Party Nos. 1 and 2 contended that the instant case could not be treated with the earlier cases as the Opposite Party No. 1 and many other exhibitors had released the movie Rock Star in the area controlled by the

Opposite Party No. 2 even without registration of the film with the Opposite Party No. 2. Ms. Mala Goel, Advocate appearing on behalf of the Opposite Party No. 2 has also argued that it had neither asked its members not to release the film nor issued any caution letter to its members. Ms. Goel has further argued that the Opposite Party No. 1 neither persuaded other members of the Opposite Party No. 2 not to exhibit the film of the informant nor involved in the decision making process of the Opposite Party No. 2 and therefore, it had no role in controlling or restricting the film exhibition in the territory of the Opposite Party No. 2.

11. Shri Ashwani Matta, Senior Advocate appearing on behalf of the Opposite Party No. 1 has argued that since it was not a party in the earlier cases, it was not appropriate on the part of the DG to rely on the findings of the previous cases. Shri Matta has also contended that findings of the DG report were based on the presumption and without support of any material evidence. He has also refuted the findings of the DG with regard to applicability of section 3(3) (b) of the Act on the ground that the Opposite Party Nos. 1 and 2 were not doing similar business or trade and therefore, they did not restrict or limit the market.
12. Shri Vikram Mehta, Advocate appearing on the behalf of the informant has argued that the findings in the DG report are good and sound. Countering the arguments of the Opposite Party No. 1 and the Opposite Party No. 2, he submitted that the Opposite Party No. 2 allowed release of its film only after payment to the Opposite Party No. 1 was made. He stated that the Opposite Party No. 2 has only allowed four films to be released during the year without registration.
13. Before proceeding further, it may be pointed out that in the present case the DG found the conduct of M/s PVR Pictures *i.e.* the Opposite Party No. 1 in contravention of the provisions of section 3(3)(b) of the Act as it was found to make written request to the Opposite Party No. 2 for not allowing the release of one of films of the informant to recover its outstanding money. The Commission observes that the said conduct of the opposite party No. 1 in writing such letters to the association in its effort to secure its alleged outstanding dues cannot be *per se* termed as anti-competitive. Furthermore, the opposite party No. 1 in its individual capacity is not in a position to control the business of distribution and exhibition of films and as such the Commission is of the

opinion that in the factual matrix of the case as projected, it is unnecessary to examine in detail or to proceed further against M/s PVR Pictures in the present case.

Issues

14. The Commission has carefully considered the information, the DG report, the evidence collected by the DG, the documents filed by the informant and the opposite parties as well as the replies filed by the opposite parties. The Commission notes that following issue arise for determination in the case under consideration:

Whether various acts and conduct of OP2 are anti-competitive as alleged in the information and found by the DG in his investigation report in terms of section 3 (3) read with section 3 (1) of the Act?

Determination of issue

Whether various acts and conduct of OP2 are anti-competitive as alleged in the information and as found by the DG in his investigation report in terms of section 3 (3) read with section 3 (1) of the Act?

15. The allegation of the informant is that the OP 2 on the saying of OP1 did not register its film Rockstar in its territory on the pretext that certain monetary claim of one of its member *i.e* OP1 was outstanding towards the informant and it had received a complaint from OP1. The informant had further alleged that the other associations named in this case were also involved in the anti-competitive activities by imposing restrictions on the producers/ distributors regarding release of the films, compulsory membership, compulsory registration of films, pressuring the distributors/ producers to settle the dispute with their members and restriction on satellite release *etc.*
16. On the basis of the facts and evidence gathered during the course of investigation, it was noted by the DG that OP1 and OP2 had violated the provisions of Section 3(3) (b) of the Act. The DG did not find any violation of the provisions of the Act by the other OP associations in this case. The DG has also reported that the other associations against whom the informant has alleged anti-competitive conduct were not found to be

imposing any restriction on the release of the film Rockstar. However, the DG has reported that the conduct of these associations including the OP2 had already been investigated by his Office and declared anti-competitive by the Commission in Case Nos. 25/2010, 52/2010, 56/2010 and 56/2011.

17. At the outset, it may be pointed out that aforesaid conduct of the trade associations has already been declared anti-competitive by this Commission in the case Nos.52/2010, 56/2010, 25/2010 and 56/2011. Apart from imposing the penalties on the associations involved in those cases, the Commission had also ordered the concerned associations to cease and desist from such type of anti-competitive practices. The Opposite Party No.2 was also one of the opposite parties in case Nos. 25/2010 and 52/2010.
18. In view of the above and as the informant has not provided any evidence against these associations, the Commission holds that the Opposite Party Nos. 3 to 18 have not imposed any restriction on the release of the film Rockstar and, as such, their conduct need not attract the attention of the Commission any further in this case.
19. Now, coming to the issue as to whether various acts and conduct of the Opposite Party No. 2 are anti-competitive as alleged in the information and as found by the DG in his investigation report in terms of section 3 (3) (b) read with section 3 (1) of the Act, the Commission notes that the DG has reported that the allegations in the instant case are similar to case Nos. 52/2010, 56/2010 and No. 25/2010 where one of the Associations threatened the producers to make the payment of the outstanding amount of its member failing which the film may not be released in its territory.
20. The issue under discussion requires examination of two aspects. One is related to the complaint dated 24.10.2011 filed by M/s Puri sons with the Opposite Party No. 2 and the other is related to the complaint filed by the Opposite Party No. 1 to the Opposite Party No. 2. First, the complaint filed by M/s Puri Sons may be examined and discussed. As per the investigation of the DG, the information and the replies filed by the opposite parties, the film Rockstar was earlier given for distribution to M/s Puri Sons by the informant but the film was also given for distribution to M/s Eros *i.e.* the Opposite Party No. 18. On M/s Puri Sons filing a complaint with the Opposite Party No. 2 regarding the same, the Opposite Party No. 2 issued a circular to its member

cautioning them in the matter and also issued a letter to M/s Eros to stop approaching the exhibitors for exhibition of the said film. However, the informant settled the matter with M/s Puri Sons and rights of the said film were relinquished by M/s Puri Sons in favor of M/s Eros. M/s Puri Sons *vide* its NOC dated 28.10.2011 also intimated the Opposite Party No.2 regarding its no objection for the registration of the said film in favor of M/s Eros.

21. The Commission notes that no anti- competitive conduct can be attributed to the Opposite Party No.2 when it issued the letter dated 24.10.2011 to M/s Eros and its members thereby intimating them that it had received a complaint from M/s Puri Sons regarding registration of film in its favour for the same territory. The said conduct of the Opposite Party No. 2 is justified as registration of film simultaneously with two distributors would have caused confusion in the minds of exhibitors and could have also raised dispute between the informant, M/s Eros and M/s Puri Sons. Otherwise also, the Commission observes that the said conduct of the Opposite Party No. 2 has not resulted into any kind of restriction on the distribution of the film Rockstar in any manner.
22. In view of the above discussion, the Commission is of the considered opinion that no contravention of the provisions of section 3 of the Act is made out against the Opposite Party No. 2 on this count.
23. Now, the complaint filed by the Opposite Party No. 1 with the Opposite Party No. 2 may be examined to ascertain any anti-competitive conduct in this process. In this regard, the Commission observes that it is the admitted case of the Opposite Party Nos. 1 and 2 that the Opposite Party No.1 had filed a grievance with the Opposite Party No. 2 *vide* its letter dated 27.01.2011 for some of its alleged outstanding dues pending with the informant. The relevant portions of this letter are reproduced hereunder:

*“We had acquired the distribution/ exhibition & exploitation rights of the above referred picture **Khatta Meetha** for the territory of East Punjab from M/s Shree Ashtavinayak Cine Vision Limited *vide* agreement dated 22.06.2010 on Refundable Advance basis.*

The film was released in the above circuit on and from 23.07.2010 along with all India Release. The film was not accepted by the audiences and therefore met with unsatisfactory result leaving a huge amount of Rs. 61, 41, 895/- towards un-recouped/ unrecovered advance amount out of the total advance amount of Rs. 2, 15, 00, 000/- paid to the producers in account of the said circuit of East Punjab. The said payment is not being refunded to us by the producers, in spite of our repeated requests and notices.

We therefore file our claim against the producers M/s Shree Ashtavinayak cine Vision Limited, Mumbai, its directors for a sum of Rs. 61, 41, 895/- plus interest of Rs. 2, 60, 484/- calculated up to 31.12.2010 plus Claim Fees of Rs. 1500/- total amounting to Rs. 64, 03, 879/- (Rupees Sixty four lac three thousand eight hundred seventy nine only). Our claim shall be applicable against their forth coming picture Run Bhola Run releasing from 4th of Feb. 2010 onwards and any future production of M/s Shree Ashavinayak Cine Vision Limited, Mumbai , its directors, wherever involved directly or indirectly, which please note.

You are requested to please look into the matter immediately and please ensure that the picture Run Bhola Run is not registered or allowed to be released till the settlement of our claim in full and final.”

24. A bare perusal of the said letter reflects that the Opposite Party No. 1 had requested the Opposite Party No. 2 for ensuring that the upcoming film of the informant viz. Run Bhola Run should not be registered as certain dues of the Opposite Party No. 1 were outstanding towards the informant.
25. On receipt of the said complaint, the Opposite Party No. 2 issued a letter dated 12.02.2011 to the informant seeking its comments. The informant, in response to the said letter, replied that the Opposite Party No. 2 has no jurisdiction to look into the matter. Thereafter, when another film of the informant viz. Rockstar was slated for release and the distributor M/s Eros filed application for registration (after the settlement of dispute with M/s Puri Sons) with the Opposite Party No. 2, the Opposite

Party No. 2 issued a circular dated 24.10.2011 to its members. The contents of the said circular are reproduced herein below:

“A complaint has been received from M/s PVR Pictures Ltd. against M/s Shree Ashtavinayak Cine Vision Ltd. with regard to picture ‘Khatta Meetha’. The complaint is being processed”.

26. The Opposite Party No. 2 also issued a letter dated 04.11.2011 to M/s Eros directing it to resolve the matter relating to the claim of the Opposite Party No. 1 and to deposit the amount immediately on receipt of the said letter for enabling it to process the pending application for registration. The contents of the said letter are reproduced hereinbelow:

“Please refer your application for registration of the above picture dated 04.11.2011. In this context, we write to inform you that the picture stands registered with us in favour of M/s Purisons, Jalandhar who has relinquished the rights and the liabilities of the picture has been called the last date of which is 08.11.2011. Moreover, there is a claim of M/s PVR Pictures Ltd, Jalandhar against M/s Shree Ashtavinayak Cine Vision Ltd, Chennai for Rs. 64, 03, 879/- inclusive of interest upto 31.12.2010, who is the producer of the above picture. You are requested to please resolve the matter and deposit the amount with us immediately on receipt of this letter to enable us to proceed further. Meanwhile, your application for registration of picture ROCKSTAR is lying pending with us at your risk, cost and responsibility which please note. ”

27. *Ex facie*, the contents of the aforesaid letter reveal that it was issued to pressurize the informant to settle the matter with the Opposite Party No. 1. On this aspect, it was submitted on behalf of the Opposite Party No. 2 that clause 3(g) (v) of its Memorandum of Association provides for settlement of business disputes of its members. The Opposite Party No. 2 has also pleaded that it was working like an arbitral forum to settle the disputes between its members. The plea is misconceived and not tenable. The Commission is of the view that the Opposite Party No. 2 in the garb of acting as an arbitral forum for its members cannot engage itself in a conduct which is contrary to the provision of the Act.

28. The Commission also observes that the information was filed on 04.11.2011 by the informant and the case was fixed for hearing on 08.11.2011. The film ROCKSTAR was released on 11.11.2011 and the outstanding dues were paid by the informant to the Opposite Party No. 1 on 10.11.2011 *i.e.* one day before the release of the film *vide* a banker cheque dated 09.11.2011 of Rs 73, 96,266.00(Seventy-three lakh ninety-six thousand two hundred sixty-six). However, the film was registered with the Opposite Party No. 2 after three days of its release. In its reply/ objection to the DG report, the Opposite Party Nos. 1 and 2 claimed that the Commission while hearing the case on 09.11.2011 directed the informant to repay the un-recouped advance along with the interest to PVR Pictures. In this connection, the Commission notes that the order under section 33 of the Act in this case was passed by the Commission on 18.11.2011 whereas the payment was made by the informant to PVR on 10.11.2011 *i.e.* one day before the release of the film. Further, in the order of the Commission, no such direction to the informant regarding making payment to the Opposite Party No. 1 was issued.
29. The Opposite Party Nos. 1 and 2 have also contended that the film was released without registration with the Opposite Party No. 2 and the registration was done three days after the release. Thus, it is sought to be contended that there was no restriction on their part on the release of the film. The Commission notes that the main grievance of the Opposite Party No. 1 was the outstanding amount towards the informant and not the registration of the film. The circular dated 24.10.2011 and the letter dated 04.11.2011 issued by the Opposite Party No. 2 to its members and M/s Eros respectively, reflect that the Opposite Party No. 2 had an objective of settling the dispute between the Opposite Party No. 1 and the informant by the adopting the pressure tactics of keeping the registration of the film pending. The Commission *vide* its orders in Case Nos. 25/2010, 52/2010 and 56/2010 has held that the compulsory registration of the film with the concerned trade associations is anti-competitive in terms of the provision of section 3 of the Act. The orders in the said cases were passed on 16.02.2012 and the Opposite Party No. 2 was also one of the opposite parties therein. The Commission further notes that the outstanding dues were cleared by the informants on 10.11.2011 and the film was slated for release on 11.11.2011. In these circumstances, the Commission is of the view that since the compulsory registration of the film with the trade association was declared anti-competitive only on 16.02.2012,

there was an in-built pressure on the distributor to register its film with the concerned association as the film could not have been released without registration. In the aforesaid factual scenario, the Commission is of the view that the argument that there was no restriction on the release of the film Rockstar is misconceived and it is held that the conduct of the Opposite Party No. 2 in issuing the circular dated 24.10.2011 and the letter dated 04.11.2011 to its members and M/s Eros respectively is restrictive in nature.

30. It may be further noted that provisions of section 3(3)(b) read with section 3(1) of the Act stipulate that the acts and conduct specified therein raise a presumption of appreciable adverse effect on competition. However, the parties against whom such presumptions are raised are free to rebut the same with their own sets of evidences and arguments. In the present case, the Opposite Party No. 2 has not been able to dispute the facts of the case regarding issuing of circular and letters by them relating to the registration of film and the settlement of the dispute between the informant and the Opposite Party No. 1.
31. Notwithstanding the above presumption, the DG analyzed the factors enumerated in section 19(3) of the Act in detail to determine whether the agreement has an appreciable effect on competition. In this regard, the Commission notes that the opposite party No. 2 has not been able to refute the competition assessment conducted by the DG.
32. The Commission has already observed in Case Nos. 25/2010 and 52/56/2010 that the activities of an association may benefit their members and also play a significant role in encouraging and enforcing codes of ethics. These activities may include keeping association members informed of trade developments, improving the quality of products, and working together at improving trade and industry laws. Cooperation, education and information exchanges through trade associations may also lead to technological advancements.
33. On the facts of the present case, the Commission observes that the acts and conduct of the Opposite Party No. 2 do not bring in any improvement in production or supply of films in any manner or bring any technological improvements.

34. In view of the above, the Commission holds that the acts and conduct of the Opposite Party No. 2 instead of bringing in pro-competitive effects have caused appreciable adverse effect on competition.
35. As noted by the Commission in Case Nos. 1/ 2009, 25/2010, 52/2010 and 56/2010, activities of film associations which limit supplies of films are anti-competitive under section 3(3)(b) read with section 3(1) of the Act .Besides, penalties were also imposed in those cases.
36. In light of the foregoing, the Commission holds that the Opposite Party No. 2 has contravened the provisions of section 3(3)(b) read with section 3(1) of the Act.

Order under section 27 of the Act

37. The Commission directs the Opposite Party No. 2 to cease and desist from the practices of pressurizing the distributors to settle the monetary disputes with its members. Further, as the opposite party No. 2 has already been directed in Case Nos. 25, 52 and 56 of 2010 *inter alia* to suitably modify its 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.
38. It may be pointed out that NIMPA was also 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; and conduct of issuing letters threatening non-registration of film if previous claims are not settled *etc* were found to be anti-competitive. Accordingly, the Commission apart from issuing a cease and desist order, ordered modification of the said by-laws in the said case. A penalty of Rs. 2,84,501 was also imposed upon NIMPA. In Case Nos. 52 and 56 of 2010, in which NIMPA was one of the opposite parties, as similar issues were involved, the Commission did not impose any penalty upon NIMPA. In the present case also, the acts and conduct of the opposite parties including NIMPA are found to be similar as in Case Nos. 25, 52 and 56 of 2010. Specifically, letters were

issued by NIMPA to the producers for pressurising the parties to settle the dispute with the members. In the letter, it was clearly indicated that registration of the film in question shall be kept pending till the time the disputed amount is deposited. As such, the conduct of NIMPA in the present case also is similar to its conduct in the other cases and emanates out of its offending by-laws which were directed to be modified in those cases. It may be pointed out that NIMPA has already complied with the order of the Commission in Case No. 25 of 2010 imposing penalty and an appeal against the said order is pending before COMPAT. As the Commission did not find it appropriate to impose penalty upon NIMPA in Case Nos. 52 and 56 of 2010 as a penalty was imposed upon it in the previous case *i.e.* Case No. 25 of 2010, it is unnecessary to impose any penalty upon NIMPA in the present case as well.

39. The directions in para 37 above, should be complied with immediate effect and the opposite party No. 2 is also directed to file an undertaking to this effect within a period of 30 days from the date of receipt of this order.
40. The Secretary is directed to communicate this order as per regulations to all the concerned parties.

Sd/-
R. Prasad
(Member)

Sd/-
Geeta Gouri
(Member)

Sd/-
HC Gupta
(Member)

Sd/-
Anurag Goel
(Member)

Sd/-
M. L. Tayal
(Member)

Sd/-
Justice (Retd.)S.N.Dhingra
(Member)

Sd/-
Ashok Chawla
(Chairperson)