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**COMPETITION COMMISSION OF INDIA**

**Case No. 78 of 2011**

**In Re:**

**M/s Reliance Big Entertainment Private Limited**

**Informant**

**And**

**Tamil Nadu Film Exhibitors Association**

**(now known as Tamil Nadu Theatre Owners Association) Opposite Party**

**CORAM**

**Mr. Ashok Chawla  
Chairperson**

**Dr. Geeta Gouri  
Member**

**Mr. Anurag Goel  
Member**

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

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

**Mr. S. L. Bunker  
Member**



### **Order under Section 27 of the Competition Act, 2002**

1. The present information was filed under section 19(1)(a) of the Competition Act, 2002 ('the Act') by M/s Reliance Big Entertainment Private Limited ('the informant') against Tamil Nadu Film Exhibitors Association ('the opposite party'/ TNFEA) (now known as Tamil Nadu Theatre Owners Association) alleging *inter alia* contravention of the provisions of sections 3 and 4 of the Act.

2. Facts, as stated in the information, may be briefly noted.

3. The informant is a company incorporated under the provisions of the Companies Act, 1956 and is stated to be engaged *inter alia* in the business of production and distribution of cinematographic films.

4. The opposite party is a trade association registered under the provisions of the Tamil Nadu Societies Registration Act, 1975. The association is stated to have control over the film exhibitors/ theaters in the State of Tamil Nadu, who are its members.

5. The facts giving rise to filing of the present information may be noted below:

5.1 As per the agreement dated 28.07.2011 between the informant and M/s Balaji Real Media Private Limited, the informant was entitled to distribute a film titled *Osthi* in Tamil language, which was a remake of Hindi film *Dabbang*. The film was scheduled for release on 08.12.2011.



सत्यमेव जयते



Fair Competition for Greater Good

5.2 The informant granted the said exclusive distribution rights of the film for the Territory of Tamil Nadu, Kerala and Karnataka to M/s Kural TV Creations Pvt. Ltd., *vide* an agreement dated 09.09 2011, executed between the informant and M/s Kural TV Creations Pvt. Ltd. ('M/s Kural TV').

5.3 Further, the informant assigned the Satellite Rights of the said film to M/s Sun TV Network Ltd. ('M/s Sun TV'), *vide* an agreement dated 18.11.2011.

5.4 However, on 29.11.2011, the informant received an e-mail of even date from Shri T. Rajhentherr, MD of M/s Kural TV informing the informant that the opposite party association has decided not to screen the said film in any of the screens of its members since the said film's Satellite Rights were granted to M/s Sun TV. Alongwith this e-mail, Shri T. Rajhentherr also annexed a copy of the letter dated 24.11.2011 issued by the opposite party association to its theatre members. In this e-mail, Shri T. Rajhentherr expressed inability to block and book the theaters because of the same.

5.5 The informant had also received an e-mail dated 29.11.2011 from Shri Ashok Kumar of M/s PVR Cinemas, which is stated to be one of the members of the opposite party association wherein Shri Ashok Kumar forwarded the letter dated 24.11.2011 addressed to it by the opposite party association asking PVR Cinemas to check with the opposite party association before confirming the said film and another film *viz.* *Mambttiyan*.

5.6 The informant further avers that it learnt from various newspaper articles that M/s Sun TV owed some money to few of the members of the opposite party association and in order to recover this money from M/s Sun TV, the opposite party association decided to ban all the films which are either



produced or distributed by M/s Sun TV or even the films whose Satellite Rights are granted to M/s Sun TV.

5.7 The informant lastly stated that banning its said film in the theatres in Tamil Nadu just because the Satellite Rights of the said film were granted to M/s Sun TV was highly unfair and clearly in contravention of the provisions of the Act.

5.8 Thus, the informant alleged that the opposite party association was acting *mala fide* and in an arbitrary manner by boycotting the said film of the informant with an effort to secure a claim of its members against a third party *i.e.* against M/s Sun TV. The informant has averred that it is not related in any manner whatsoever with the dues payable by M/s Sun TV to the members of the opposite party association. Hence, the informant alleged that the act of the opposite party association to ban the said film of the informant is in clear abuse of dominant position.

6. Based on the above averments and allegations, the informant has made the following prayers in the information:

(i) The opposite party be restrained and be ordered to cease and desist from compelling its members for not dealing with the film (*Osthi*) of the informant and forthcoming films of the informant.

(ii) The opposite party be restrained and be ordered to cease and desist from not allowing the release and exploitation of the said film and forthcoming films of the informant.

(iii) The opposite party be restrained from imposing any unfair and unjustified restrictions on release and exploitation of the informant's said film and forthcoming films.



सत्यमेव जयते



Fair Competition for Greater Good

(iv) The opposite party be restrained from entering into any anti-competitive agreements with its members such as the letters dated 24.11.2011 issued by it to its members.

(v) The opposite party be restrained from abusing its dominant position in a manner to harm and hurt the informant's interest.

(vi) Pass such other and further order as the Commission may deem fit and proper in the circumstances of the case.

7. The matter was considered by the Commission in its ordinary meeting held on 08.12.2011 and *vide* its order of even date, the Commission, after considering all the facts and material on record, noted that M/s Sun TV owed money to the members of the opposite party association and in order to recover this money, the opposite party resorted to arm twisting tactics and threatened that theatres associated with it would not exhibit the film with which M/s Sun TV was associated. Thus, the Commission found sufficient *prima facie* material to order investigation against the opposite party in respect of contravention of the provisions of section 3(3) of the Act. Accordingly, the Director General (DG) was directed to investigate into the matter.

8. *Vide* a separate order of even date, the Commission disposed of the application of the informant seeking interim relief by holding that though the action of the opposite party seemed to be anti-competitive, it was only the investigations which would reveal as to which of the theatres of Tamil Nadu were members of the opposite party association and; to what extent the dictates of the opposite party were being followed by them. Accordingly, the application moved under section 33 of the Act seeking interim relief was rejected.



9. The DG, after receiving the directions from the Commission, investigated the matter and submitted an investigation report to the Commission on 30.03.2012.

10. The Commission in its ordinary meeting held on 17.04.2012 considered the investigation report submitted by the DG and decided to forward copies of the investigation report to the parties including the office-bearers of TNFEA for filing their replies/ objections to the report of the DG. The Commission further directed the opposite party to file its Profit & Loss Account/ Annual Balance Sheets/ Turnover for the financial years 2008-09, 2009-10 and 2010-11. The Commission also directed the parties to appear for oral hearing, if so desired.

11. The DG in the report concluded that TNFEA is the biggest and most powerful association of cinema theatre owners in Tamil Nadu, with about 80-90% exhibitors as its members, and has complete control over the film exhibition business through its members in the State of Tamil Nadu. The opposite party was found to enjoy a position in the market of film exhibition in Tamil Nadu that enabled it to take decisions to control the market and restrict the services in the market for the producers and distributors. The association was further found to impose restrictions on the members from dealing with or co-operating with the films or producers to settle the disputes of its members. The investigation also revealed that the opposite party has taken decision to impose ban on the films which have dealings with M/s Sun TV and directed its members to not screen the film unless the payment to its members are made by M/s Sun TV.

12. The DG, based on the evidences gathered during the course of investigation, concluded that the opposite party had issued direction to its members against exhibition of the film *Osthe*. The video clip of the press conference of General Secretary of the association held on 03.12.2011, the



documentary evidences furnished by the distributors, newspaper reports as well as the minutes of meetings were found to confirm that the opposite party indulged in the impugned conduct not only against the informant but also against other producers. The investigation revealed that the decision to not screen the film *Osthe* of the informant affected adversely the distributors and producers as they were not able to book the theatres on account of the ban of TNFEA. The ban was lifted on 06.12.2011 and then only the distributor could negotiate and book the film which was slated for release on 08.12.2011.

13. Based on the above, it was concluded by the DG that the decisions and conduct of TNFEA in respect of the boycott against film *Osthe* and other films dealt by Sun TV were in contravention of the provisions of section 3(3)(b) of the Act.

14. TNFEA filed its objections to the report of the DG. At the outset, it was pointed out that the informant has not approached the Commission with clean hands in as much as the informant on the one hand is claiming membership of six out of seven Tamil Nadu film distributors associations and on the other hand he is not following the decision/ policy agreed under settlement dated 23.12.1992 and 11.01.1993 which envisage that any dispute will be decided in terms of clause 13 of settlement dated 11.01.1993. As such, it is argued that the present information is not maintainable before the Commission. Reference is also made to GO (Ms.) No. 260 dated 19.10.1994 issued by Government of Tamil Nadu to argued that the Committee constituted thereunder is competent to decide the disputes between the distributors and the exhibitors of films. It was argued that the informant sold the film to M/s Kural TV on minimum guarantee basis and M/s Kural TV collected huge advances from theater owners which is prohibited under the Settlement. Having flouted the Settlement norms and having resorted to the Commission by filing the present information, the informant is abusing the process of law. It was also pointed out that the informant made a profit of 9.5



सत्यमेव जयते



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crores from sale of theatrical and satellite rights of the film *Osthe* and, as such, it has not suffered any loss.

15. It was further submitted by the opposite party association that the informant failed to produce any letter issued by TNFEA banning release of the film *Osthe*. It was also submitted that the informant's sister concern M/s Big Cinemas has controlling interest in 21 cinemas in Tamil Nadu, yet it screened the film in only 12 cinemas. It was pointed out that the information did not disclose any material towards restriction.

16. Assailing the report of the DG, it was argued that instead of investigating the information forwarded by the Commission, the DG referred to previous orders of the Commission which were delivered in a different legal matrix. It was alleged that the DG did not inquire the settlements and the circulars of the State Government of Tamil Nadu during investigation. It was also alleged that the DG recorded the statements of interested persons at the instance of the informant.

17. Objection was also taken to the reliance by the DG upon the transcript of the press conference of the General Secretary of the opposite party association without verifying about the original CD as well as the mode of transcript. It was submitted that the language of the transcript of the CD is inadmissible under law as the same cannot be in such a fluent language. Grievance was also made of the fact that the DG did not inquire about the resolution dated 24.11.2011 which was issued in respect of two films viz. *Osthe* and *Mambttiyan*, solely in respect of tax exemption as both the films are in Tamil language and not otherwise.

18. Objection was further made on the ground that the DG proceeded on the basis of facts of other cases which were not related to the facts of the present case and as such the report is without jurisdiction. Allegations were



also made about the collusion between the informant, M/s Kural TV and M/s Sun TV in filing the instant information. The DG recorded the statements of interested parties at the instance of the informant without verifying and/ or cross-checking their statements as no supporting documents were placed on record by these persons.

19. Lastly, it was submitted that it was an admitted fact that the film *Osthe* was dully exhibited at its pre-fixed schedule. As a result, the film was exhibited by more than 416 theaters in the State of Tamil Nadu out of the total 622 theaters and, as such, no loss was caused. Objection was also taken to the fact that the DG did not enquire about the genuineness of the press conference conducted by the General Secretary of the association and further whether the same was conducted in his personal capacity or under the authority of any resolution passed by the opposite party association.

20. The opposite party association also denied having used any forcible measures to recover the dues of its members payable by M/s Sun TV.

21. An additional affidavit dated 27.12.2012 was also filed by Shri R. Panneerselvam, Secretary, TNFEA on behalf of the opposite party association bringing on record certain additional facts and pleas. It was argued that the film *Osthe* was released in more than 425 screens which is indicative of the fact that the opposite party association neither boycotted nor indulged in any anti-competitive conduct in release of the said film. It was argued that it was the informant who had delayed release of the film as it failed to release the essential key for the film distributors to play the film and caused loss to the exhibitors who were ready to play the film at 11:30 AM on 08.12.2011. The informant released/ authorized the license key only after 2:00 PM on 08.12.2011, contends the opposite party association. Objection was also taken to the delayed submission of the investigation report by the DG.



22. It was sought to be canvassed by the opposite party association that the entire case of the informant rested on the letter issued by the opposite party association to its members dated 24.11.2011 which requested all the members to contact the opposite party association head office before exhibiting the films *Osthe* and *Mambttiyan*, which is alleged to be anti-competitive. The opposite party association, however, submitted that the letter merely put the films on a watch-list and the same was in no way restrictive of any business or trade. It was contented that the Tamil Nadu Government had enunciated a policy of giving 30% Entertainment Tax benefits to the films on certain conditions and therefore it was paramount duty of the opposite party association to inform its members that the Government was not in favour of giving Entertainment Tax benefits to films made from other language such as *Osthe* which is a remake of the Hindi Film *Dabbang*. This was sought to be advanced as the entire intent behind the letter of the opposite party association.

23. The informant also filed an affidavit dated 19.06.2012 in response to the queries raised by the Commission during the course of the hearings. It was averred therein that the informant was a presenter and worldwide distribution rights-holder of the film *Osthe* which was slated for release on 08.12.2011. The informant thereafter concluded an agreement with M/s Kural TV by which all the distribution rights of the film for the territories of Tamil Nadu, Kerala and Karnataka were assigned by the informant to M/s Kural TV for a Minimum Guarantee amount of Rs. 20,00,00,000/- thereby entitling/ authorizing M/s Kural TV to book and block theatres in the assigned territories and enter into agreements with sub-distributors/ exhibitors for release of the film at various theaters across the assigned territories. It was during the course of this activity of trying to enter into deals with sub-distributors, M/s Kural TV became aware of the opposite party's notice to theater-owners due to a decision taken by the opposite party to effectuate a ban against all films produced/ distributed by M/s Sun Pictures or films whose satellite rights are owned/ bought by M/s Sun TV; and that a letter to that effect was issued on



PVR on 24.11.2011 by the opposite party to restrain them from exhibiting the film *Osthe* so as to blackmail the informant to cancel its satellite broadcast deal of the film with M/s Sun TV. This decision to effectuate a ban by the opposite party on any film of which satellite rights were owned/ bought by M/s Sun TV was also publicized widely by the opposite party across all media platforms.

24. It was further deposed in the additional affidavit that the film was only released on a few screens in the territory of Tamil Nadu on its first day and that too on compromised commercial terms and also missed out on all the opening shows in the territory of Tamil Nadu due to the ban imposed by the opposite party. It was averred that ideally in case of films which are to be released in Tamil Nadu, the distributor needs to get theatre confirmations a week in advance of a film's release so that the film gets a proper release on maximum number of screens in a territory to maximize its exploitation and earn profits. The distributor enters into deals with sub-distributors on either a minimum guarantee or advance basis. The bargaining power of a distributor in negotiating deals with sub-distributors is solely dependent on negotiating deals well in advance. However, in the present case, due to the ban imposed by the opposite party from 24.11.2011, the sub-distributors in the areas of City, North Arcot, South Arcot, Coimbatore, TT, TK, Madurai, Salem, Chengalpeth comprising the distribution territory of Tamil Nadu, did not come forward to enter into agreements with the distributor or agree to pay any guarantee amounts/ other monetary consideration to M/s Kural TV for releasing the film in the territory of Tamil Nadu.

25. Finally, it was averred that when the opposite party gave an oral direction to grant 60 days grace period to M/s Sun Pictures to settle its dues with the exhibitors in the territory just before the release of the film on 08.12.2011, M/s Kural TV was left with no option but to deal directly with the exhibitors, instead of distributors in the territory, to confirm deals with



these exhibitors for almost 400 screens in the territory in a span of the afternoon of 08.12.2011 so that the film may release on its scheduled release date on 08.12.2011. It is argued that it is not humanly possible to conclude deals for close to 400 screens in the span of one afternoon and therefore only few deals happened on that date allowing the film to release on a few screens and even the deals agreed upon at that time were on compromised commercials terms with less monetary consideration to M/s Kural TV and compromised revenue sharing terms *etc.* resulting in a situation where M/s Kural TV could not even manage to collect the entire minimum guarantee amount payable to the informant or strike a deal where it would be able to earn some profits from the exploitation of the distribution rights of the film. The film missed out on all the opening shows in the territory of Tamil Nadu on 08.12.2011 on all the screens. Furthermore, the film did not release on many screens on 08.12.2011 and the number of screens increased on 09.12.2011 as deals were concluded for many screens only on Friday in the areas of Thiruvarur, Aranthangi, certain theaters in Coimbatore, areas of Erode, Avinashi, Virudhnagar, Aruppukottai, and Rajapalayam. For areas such as Aandipatti, Bodi, Periyakulam, Karaikudi in Madurai and the areas of Thirpur, Udumalai, Vellankoil, Ooty, Mettupalayam, Muthur, Kavunthapadi, Neelambur in Coimbatore area, deals were concluded with exhibitors to screen the film as late on Saturday *i.e.* 10.12.2011 and the film was not screened in these areas on either 08.12.2011 or 09.12.2011 and was screened only on 10.12.2011.

26. The Commission has perused the information, report of the DG, objections of the opposite party to the report of the DG, affidavits and other material available on record. The Commission also heard the counsel for the appearing parties.

27. The issue projected in the present information lies in a very narrow compass.



28. The informant was a presenter and worldwide distribution rights-holder of film *Osthe* which was slated for release on 08.12.2011. The informant concluded an agreement with M/s Kural TV whereby and whereunder all the distribution rights of the film for the territories of Tamil Nadu, Kerala and Karnataka were assigned by the informant to M/s Kural TV for a Minimum Guarantee of Rs. 20,00,00,000/- thereby entitling/ authorizing M/s Kural TV to book and block theatres in the assigned territories and enter into agreements with sub-distributors/ exhibitors for release of the film at various theaters across the assigned territories. It was during the course of this activity of trying to enter into deals with sub-distributors that M/s Kural TV allegedly came to know of the opposite party's notice to theater-owners to restrain them from exhibiting the film *Osthe* with a view to force the informant to cancel its satellite broadcast deal of the film with M/s Sun TV. This appeared to the informant, from newspaper articles, on account of the dues owed by M/s Sun TV to the members of the opposite party association. This decision to effectuate a ban by the opposite party association on any film of which satellite rights were owned/ bought by M/s Sun TV was also stated to be publicized widely by the opposite party association across all media platforms.

29. Before scrutinizing the aforesaid conduct of the opposite party association under the relevant provision of the Act, it would be apposite to appreciate the documents/ evidences gathered by the DG during the course of the investigation in this regard.

30. The informant submitted the following documents/ evidences before the DG to establish the restrictions imposed by the opposite party against the film *Osthe*:



सत्यमेव जयते



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(i) Letter dated 24.11.2011 issued to M/s PVR Cinema asking to consult before dealing with films *Osthe* and *Mambattiyan*.

(ii) E-mail of the distributor M/s Kural TV dated 29.11.2011 mentioning that '*there is a meeting conducted by the Tamil Nadu Theatre Association for the second time yesterday regarding the Sun issue. The theatre association has decided not to screen the films whose satellite rights are bought by M/s Sun TV. They have issued letters to all the theatre owners not to screen Osthe until the issue gets sorted. So please talk to M/s Sun TV and get the issue solved at the earliest as we cannot block and book the theatres*'.

(iii) Copies of newspaper reports mentioning the decision of opposite party association against film *Osthe* and M/s Sun TV.

(iv) Letter written by the informant to M/s Sun TV for settling the dispute with the TNFEA.

(v) Video clip of press conference of Shri Panneerselvam, General Secretary of TNFEA on the issue held on 03.12.2011. During the press conference, the General Secretary categorically stated about the decision of TNFEA for not allowing the film *Osthe* to be screened in Tamil Nadu.

(vi) An affidavit of the informant submitted on 13.03.2012 in support of the allegation levelled narrating the detailed account of the conduct of the opposite party association.

31. In view of the above documents/ evidences adduced by the informant in support of its averments and allegations, the DG summoned the General Secretary of the TNFEA to confront him with such documents/ evidences besides seeking clarification thereon. On the date so fixed, Shri Rm. M. Annamalai, President appeared in place of General Secretary before the DG.



When confronted with the video of press conference of Shri Panneerselvam, General Secretary of TNFEA, Shri Annamalai responded as follows:

*I have seen the video of press conference. Regarding the statement of Shri Panneerselvam given on 03.12.2011 during the press conference, I have to consult with Shri Panneerselvam, who is not feeling well. I will consult with him and give the correct position in a written submission by 29.03.2012.*

32. When pressed further by the DG:

*Q. 9 Whether you were aware about the above mentioned press conference of Shri Panneerselvam. The informant has also submitted the copies of press reports of this press conference mentioning the boycott of film Osthe. Please explain as to why on the basis of evidences, the decision and conduct of your association should not be treated as a restriction on the release of film in the territory I controlled by your association.*

*Ans: I was not aware of the press conference given by Shri Panneerselvam. The picture Osthe had been released on the scheduled date fixed by the producer I and distributor. There was no delay in the release of Osthe. We have informed our members to consult with us regarding the film Osthe before I release, because of the tax relief certificate.*

33. In this connection, it is instructing to note that the transcript of the press conference of Shri Panneerselvam, General Secretary of TNFEA held on 03.12.2011 is quite revealing:

*My warm regards to the members of media and film industry gathered here. We are gathered together to discuss a new crisis which has emerged in the industry and am here to give my views regarding the same.*



सत्यमेव जयते



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*On 09.11.2011, an emergency meeting was held of the Tamil Nadu Exhibitor's Association. In that meeting a discussion took place of the dues owed by Sun Pictures to the exhibitors in Tamil Nadu on account of films being Endhiran, Mapillai, Vettikaran, Sura and Ninaitheley Innikkum. The exhibitors had paid additional deposit against these films to Sun Pictures. So the exhibitors had asked a refund of the additional deposit from Sun Pictures and Sun Pictures has inordinately delayed this refund. Therefore, we had to take a decision not to allow the exhibition of any films released by Sun Pictures or films whose satellite rights have been sold to Sun TV Network Ltd by producers.*

*We had informed the public through newspapers and television announcements about this decision of the Tamil Nadu Exhibitor's Association. However despite this information being available with Reliance, on 18.11.2011 Reliance went ahead and sold the satellite rights of their film Osthe to Sun TV Network Ltd. We have therefore decided not to allow the film Osthe to be screened in Tamil Nadu and we have informed this decision to our members. Meanwhile, Reliance has issued a notice to Sun TV Network Ltd giving them 48 hours' notice to obtain NOCs from the respective theatre-owners.*

*They have also informed Sun TV Network Ltd in that same letter that the satellite rights of Osthe has been sold to Sun TV Network Ltd on the assurances given by Sun TV Network Ltd to Reliance that they will settle the dues with the theatre owners. Therefore, it is evident in the letter that Sun TV Network Ltd has agreed with Reliance that there are dues owed by Sun Pictures to the theatre-owners.*

*We also wish to bring to your notice an erroneous notification issued by the Producer's Council today, which mentions that the members of the Tamil Nadu Exhibitors Association attended the meeting of the Producer Council and in the meeting mentioned that there is no decision regarding the non-screening of the film Osthe. The notification also says that Mr. Jayakumar of the Tamil*



*Nadu Exhibitor's Association has signed the notification on behalf of the Tamil Nadu Exhibitors Association. We wish to reiterate that as per the rules of our Association, only the General Secretary or the President of the Association has been authorized to issue circular/notices or take any decisions and our Vice-President or other officer of a junior rank have no authority and have not been delegated with any such authority on these matters.*

*We are not even aware of how our letter-pad has reached the Tamil Nadu Producer's Council. We are not sure if the letter is fabricated. Mr. S.A. Chandrasekhar, President of the Tamil Nadu Producer's Council is a very responsible person and knows all the rules so we do not know how he has accepted the signature of Mr. Jayakumar on the notification. Mr. S. A Chandrasekhar is aware who is the President and the General Secretary of the Tamil Nadu Exhibitor's Association. There have been many instances when we have had joint meetings with Mr. S. A Chandrasekhar in the past. Despite all this we are not sure why Mr. Jayakumar was invited by Mr. S.A. Chandrasekhar for the meeting. We believe that Mr. Chandrasekhar has gone down in stature by inviting Mr. Jayakumar for the meeting. Is he planning to split our Association? Even if he is planning to split, we would say he is day-dreaming. Despite all this we are very clear that we will not allow screening of Osthe and we are not going to go back on it and we wish to inform you about it. We are going to take legal action against Jayakumar for using our letterhead without our authorization. We also take this opportunity and strongly protest the actions of Mr. S. A. Chandrasekhar. We would also not allow him to indulge in such practices in the future. Cinema is one big family and if there is a split in the family it affects everyone. Therefore our decision to not cooperate with the release of Osthe and Mambattayan produced by Thyagrajan remains unchanged.*

34. A bare perusal of the transcript of the press conference of Shri Panneerselvam, General Secretary of TNFEA held on 03.12.2011 leaves no manner of doubt that TNFEA took a conscious decision not to allow



exhibition of films *inter alia* whose satellite rights have been sold to M/s Sun TV as some dues were allegedly owed by M/s Sun Pictures to the exhibitors in Tamil Nadu who were members of TNFEA. In particular, it is evident that TNFEA decided not to allow the film *Osthe* for screening in Tamil Nadu as the satellite rights thereof were sold to M/s Sun TV.

35. While deposing on behalf of TNFEA before the DG, Shri Rm. M. Annamalai, President, TNFEA neither disputed nor repudiated the statements made by Shri Panneerselvam, General Secretary of TNFEA in the press conference held on 03.12.2011. From the depositions made before the DG, it appears that Shri Annamalai was evasive and feigned ignorance while deposing before the DG. Even after seeking time to state the position of the opposite party, the same was not submitted.

36. As noted by the DG, the opposite party was not able to furnish any comment on the statements made by Shri Panneerselvam, General Secretary of TNFEA in the press conference held on 03.12.2011 despite grant of sufficient time after the examination of Shri Rm. M. Annamalai, President, TNFEA on 21.03.2012. He sought time for submission of comments. The Office of the DG communicated that the reply should be submitted by 29.03.2012. However, no explanation/ reply was furnished. From this, the DG rightly concluded that the opposite party had no plausible explanation of its conduct and its decision not to screen the film *Osthe* stood established.

37. In the objections to the report of the DG, TNFEA took exception to the reliance placed upon the transcript of the press conference of the General Secretary of the opposite party association without verifying about the original CD as well as the mode of transcript. Such a plea is thoroughly misplaced. It may be noted that the video of the press conference of Shri Panneerselvam, General Secretary of TNFEA held on 03.12.2011 was shown to Shri Rm. M. Annamalai, President, TNFEA during recording of his statement. After



सत्यमेव जयते



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watching the video, Shri Annamalai sought time to state position on the issue, which was not done.

38. In such circumstances, when the statements made by Shri Panneerselvam, General Secretary of TNFEA in the press conference held on 03.12.2011 were not denied or disputed or repudiated, it does not lie in the mouth of the opposite party association to take such pleas.

39. Apart from the above, the DG also gathered other evidences including the letter dated 24.11.2011 issued by TNFEA to M/s PVR Cinemas asking it to contact the Head Office of TNFEA before exhibiting the film *Osthe*. The explanation advanced by TNFEA was that the letter merely put the films on a watch-list and was in no way restrictive of any business or trade. It was contented that the Tamil Nadu Government had enunciated a policy of giving 30% Entertainment Tax benefits to the films on certain conditions and therefore it was paramount duty of the opposite party association to inform its members that the Government was not in favour of giving Entertainment Tax benefits to films made from other language such as *Osthe* which is a remake of the Hindi Film *Dabbang*. This was sought to be advanced as the entire intent behind the letter of the opposite party association.

40. These pleas are an after-thought and are not supported by any documentary evidence or other material placed on record. In light of the statements made Shri Panneerselvam, General Secretary of TNFEA in the press conference held on 03.12.2011 which were not denied or disputed or repudiated by the opposite party, the Commission has no hesitation in holding that these pleas are also baseless and deserve to be rejected.

41. On a careful examination and analysis of the material on record, the Commission holds that the impugned conduct of the opposite party association was anti-competitive in as much as it limited/ controlled the supply/ provision



of services being in contravention of the provisions of sections 3(3) (b) read with section 3(1) of the Act.

42. The Commission notes that in terms of the provisions contained in section 3(1) of the Act, no enterprise or association of enterprises or person or association of persons can enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. Section 3(2) of the Act declares that any agreement entered into in contravention of the provisions contained in sub-section (1) shall be *void*. Further, by virtue of the presumption contained in subsection (3), 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, shall be presumed to have an appreciable adverse effect on competition.

43. Thus, in case of agreements as listed in section 3(3) of the Act, once it is established that such an agreement exists, it will be presumed that the agreement has an appreciable adverse effect on competition; the onus to rebut this presumption would lie upon the opposite party.

44. In the present case, the opposite party association could not rebut the said presumption. It has not been shown by the opposite party association how



the impugned conduct resulted into accrual of benefits to consumers or made improvements in production or distribution of goods in question. Further, the opposite party could not explain as to how the said conduct did not foreclose competition.

45. Resultantly, the Commission is of the view that the impugned conduct of the opposite party association was anti-competitive being in contravention of the provisions of sections 3(3) (b) read with section 3(1) of the Act.

### **ORDER**

46. The Commission directs the opposite party to cease and desist from indulging in such anti-competitive conduct in future.

47. As regards penalty under section 27 of the Act, the Commission notes that such anti-competitive acts and conduct need to be penalized which could act as a deterrent in future for any other association which engages in such type of actions. In the instant case, as brought out earlier, the opposite party association instead of co-operating with the investigations raised technical and frivolous pleas before the DG and sought time to state the position, which was never done. In such a situation, it would be a misplaced sympathy to take any lenient view in the matter. The impugned act of the opposite party did disturb the freedom of trade which the Commission is bound to ensure and sustain in the markets. It is on record that the opposite party gave an oral direction to grant 60 days *grace* period to M/s Sun Pictures to settle its dues with the exhibitors in the territory just before the release of the film on 08.12.2011. Thus, it cannot be ruled out that such belated action compromised commercial and revenue sharing terms *etc.*



48. The Commission is also not oblivious of the fact that in the recent past, the Commission had occasion to examine the conduct of trade associations operating in film industry involving the analogous issues. The Commission *vide* its order dated 16.02.2012 in case Nos. 52 and 56 of 2010 imposed penalty upon the film associations @ 10% of their respective average receipts income. Besides, the Commission also issued *inter alia* the following directions to be observed by the film trade associations:

(a) The associations should not compel any producer, distributor or exhibitor to become its member 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 and;

(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.

49. Taking into consideration the above factors, the Commission has bestowed its thoughtful consideration on the issue of quantum of penalty. Considering the totality of facts and circumstances of the present case

including the nature of contravention, the Commission decides to impose a penalty on the opposite party at the rate of 10 % of its average turnover which has been calculated as per the Income/ Receipts of the association as evidenced by Income and Expenditure Accounts for the relevant last 3 years which were submitted by the association:

S. No.	Name	Receipts/ Income for 2008-09	Receipts/ Income for 2009-10	Receipts/ Income for 2010-11	Average of Three Years Receipts/ Income	Penalty @ 10% of Average Receipts/ Income
1.	TNFEA	Rs. 839,779.71	Rs. 151,699.57	Rs. 250,312.00	Rs. 413,930.42	Rs. 41393.04

50. The directions contained in para 46 above, should be complied with immediate effect and the opposite party is also directed to file an undertaking to this effect within a period of 30 days from the date of receipt of this order.

51. The Commission also directs the opposite party to deposit the penalty amount within 60 days of receipt of this order.

52. Before parting with this order, the Commission observes that it is not oblivious of the important role played by trade and professional associations in promoting both the interests of their members and the industries they serve. The efforts of these organizations can contribute to improving the quality, variety, and availability of products and services in the marketplace. Although the anti-trust laws are not an impediment to appropriate association activity, trade associations and their members must be fully aware of the types of conduct these laws proscribe when carrying out an association's programs and activities.

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



सत्यमेव जयते



Fair Competition for Greater Good

**Sd/-**  
**(Ashok Chawla)**  
**Chairperson**

**Sd/-**  
**(Geeta Gouri)**  
**Member**

**Sd/-**  
**(Anurag Goel)**  
**Member**

**Sd/-**  
**(M. L. Tayal)**  
**Member**

**Sd/-**  
**(S.N. Dhingra)**  
**Member**

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

New Delhi

Date: 05/11/2013