

Competition Commission Of India

Case No. 56/2010

3rd November, 2010

SunShine Pictures Pvt. Ltd

Informant

Motion Pictures Association and Others

Opposite Parties

Order under Section 33 of the Competition Act, 2002

1. This order shall dispose of the prayer of the informant for passing interim order under section 33 of the Competition Act, 2002 (hereinafter referred to as the 'Act').

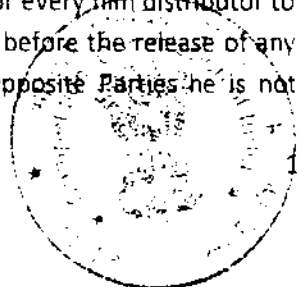
Facts

2. The SunShine Pictures Pvt. Ltd. ('the Informant') filed information, against Motion Pictures Association ('the MPA'), Northern India Motion Pictures Association ('the NIMPA'), Central Circuit Cine Association ('the CCCA'), Telengana Telugu Film Distributors Association ('the TTFDA'), Film Distributors Association (Kerala) ('the FDA') and Karnataka Film Chamber of Commerce ('the KFCC') alleging contravention of section 3 & 4 of the Competition Act, 2002.

3. The facts in brief, as stated in the information are as under :-

3.1 The Informant is a company registered under the Companies Act, 1956, and is inter alia engaged in the business of production and distribution of cinematographic films. The Opposite Parties are the trade bodies/associations having control over the entire film distribution market in their respective territories and they have distributors and exhibitors in their respective territories as their members.

3.2 As per the averments, the Opposite Parties have made it mandatory for every film distributor to become their member and/or register his film with the respective association before the release of any film for exhibition. If any distributor refuses to register his film with the Opposite Parties he is not



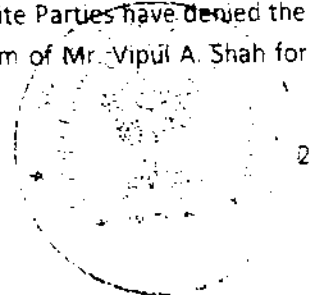
allowed to distribute and exhibit his film in the concerned territories. In order to enforce their directives on the distributors the Opposite Parties threaten their members, who are both distributors and exhibitors, of serious consequences for exhibiting films of a distributor who is not a member of their associations or if his film is not registered with them. By such conduct of the Opposite Parties the distributors are deprived of their fundamental right to business if they choose not to become members of the Opposite Parties and the producers are deprived of their right to business if they do not register their films with the Opposite Parties.

3.3 Although there is no statutory requirement which makes it obligatory for the distributors either to become members of the Opposite Parties or to register their films with them but the Opposite Parties by virtue of enjoying a dominant position in their respective territories are able to affect and dominate the cinema exhibitors in their favour. The Opposite Parties by abusing their dominant position are imposing unfair and unreasonable restrictions by compelling the distributors to become their members and/or to get their films registered with them.

3.4 The Informant has acquired the entire exploitation rights for the film "Action Replay" directed by Mr. Vipul A. Shah and produced by his proprietary concern "Block Buster Movie Entertainers" vide an assignment agreement dated 14th June 2009 as amended by the agreement with the producer dated 15th May 2010. By virtue of the rights acquired under the agreement, the Informant is entitled to exploit the said film not only in theatres across the country and overseas but also on all other platforms of exploitation such as music rights, satellite rights, home video rights, etc. in the entire world in perpetuity.

3.5 The Informant in order to exercise his right, engaged PVR Pictures Limited as distributors for the theatrical exploitation of the said film vide an agreement dated 30th August 2010 for India and Nepal. As per the terms of the agreement the PVR has agreed to pay a refundable advance amount to the Informant and after recoupment of this refundable advance by PVR alongwith its expenses and distribution commission from the exploitation of the said film the PVR is required to give the overflow amount to the Informant. However, in the event of PVR not been able to recoup the refundable advance alongwith its expenses and distribution commission, the deficit in the same is payable by the Informant to PVR.

3.6 Consequent upon the agreement when PVR approached the Opposite Parties for registration of the said film for exhibition in their respective territories, the Opposite Parties denied the registration of the said film citing the reason that the said film belongs to Mr. Vipul A. Shah who owes certain sums of money to some of their members in respect of his film 'London Dreams' and unless the claims of their members are settled, the film cannot be registered for release. The Informant has received a letter dated 21.10.2010 from PVR wherein it has been clearly stated that the Opposite Parties have denied the distribution of said film in pursuance of their directives not to accept any film of Mr. Vipul A. Shah for exhibition in their respective territories.



3.7 According to the Informant the Opposite Parties are acting malafidely and in an arbitrary manner in order to boycott all films of Vipul A. Shah with an effort to secure certain monetary claims of some of their members in respect of the film "London Dreams" directed by Vipul A. Shah and produced by Headstart Film Pvt. Ltd. It has also been stated that the disputed claims have not been adjudicated by any court of law and also there is no privity of contract between the Informant and those distributors-members of the Opposite Parties who are claiming their dues against Mr. Vipul A. Shah, Headstart Films Pvt Ltd., Raksha Entertainment Pvt Ltd. and Eros International.

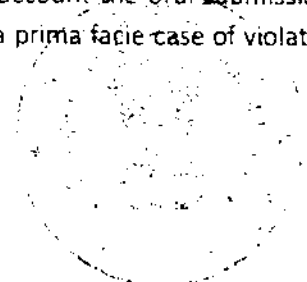
3.8 It has been stated by the Informant that though Mr. Vipul A. Shah is a majority share holder in the Informant company but his proprietary concern 'Blockbuster Movie Entertainers' which has produced the film 'Action Replayy' has nothing to do with the Informant company and is a separate legal and business entity. Moreover the rights of the said film 'Action Replayy' had been acquired by the Informant much prior to release of the film 'London Dreams'

3.9 According to the Informant Opposite Party No. 4 has issued a circular dated 5th May 2010 to all its members interalia calling upon them not to release the said film "Action Replayy" in its territory unless the claims of its members for the film "London Dreams" are settled. Opposite party No. 5 has also issued a similar circular to all its members on 13 August 2010 calling upon them not to distribute any films of Headstart Films Private Limited, Eros International, Mr. Vipul Shah and Raksha Entertainment Private Limited in Kerala. In the additional affidavit of Mr. Ashok Kumar Mehra, Managing Director of the Informant company filed on 25.10.2010 it has also been stated that PVR Pictures Ltd. has received a written communication from Opposite Parties no. 1 & 3 refusing registration and distribution of the aforesaid film 'Action Replayy' in their territories.

3.10 It has also been alleged that in addition to the contravention of provisions of section 4 of the Competition ACT, 2002, the Opposite Parties have also contravened the provisions of section 3(3) read with section 3(1) & (2) by entering into an anti-competitive agreement with their members, in the form of circulars and directives, with a view to limit or control the production, supply, markets or provision of services. The Opposite Parties have also contravened the provisions of section 3(4) by refusing to deal in respect of distribution of goods and by promoting exclusive supply/distribution agreement.

ORDER UNDER SECTION 26 (1) OF THE ACT

4. After giving thoughtful consideration to all the facts and circumstances of the case and examining the relevant aspects involved therein and the material filed by the Informant and the replies filed on behalf of Opposite Parties No.1, 2 & 3 and also after taking into account the oral submissions made by the parties, the Commission formed an opinion that there exists a prima facie case of violation



of section 3 & 4 of the Act and referred the matter to Director General for investigation under 26 (1) of the Act vide its order dated 03.11.2010.

5. In the information itself, the Informant has prayed for passing an interim order under section 33 of the Act to restrain the Opposite Parties from abusing their dominant position by imposing any restrictions in relation to release and exploitation of the Informant's film 'Action Replayy', 'Kuch Love Jaisa', 'Darr', 'Pyaar Ka U Turn', 'Attack' and 'Singhh is Kingg-2'. However, during the hearing on 03.11.2010 Shri Ashwani Matta, Senior Advocate for the Informant restricted his prayer for interim relief in relation to the film 'Action Replayy' only.

6. On the direction of the Commission dated 29.10.2010, notices were issued to the Opposite Parties to file their replies/objections against the prayer of interim relief made by the Informant. In response to the notices the Opposite Parties No.1, 2 & 3 filed their replies and Informant also filed additional affidavit alongwith annexures on 02.11.2010. Inspite of being served, the other Opposite Parties did not file any reply.

7. The matter was considered by the Commission in its meeting held on 03.11.2010. Shri Ashwani Matta, Senior Advocate appeared for Informant and Shri C.D. Singh, Shri Rajender Agarwal, Ms. Sangeeta Kumar, Advocates appeared for Opposite Parties No.1, 2 & 3 respectively and made oral submissions on the prayer for interim order made by the Informant.

8. The Commission has carefully considered the prayer for interim order made by the Informant alongwith the material filed by it as well as the replies filed by the Opposite Parties. The Commission has also taken into account the oral submissions made by the advocates of the respective parties on 03.11.2010.

CONTENTIONS OF THE INFORMANT

9. Shri Ashwani Matta, Senior Advocate for Informant reiterated the allegations made in the information and additional affidavits filed on 25.10.2010 and 02.11.2010 as described above. Additionally, he has made following contentions :-

9.1 The Opposite Parties are abusing their dominant position by not allowing the release and exploitation of the film 'Action Replayy' which emanates from the non-registration of the said film by the Opposite Parties. This fact is clearly established from the various circulars issued by the Opposite Parties as well as the letter and affidavit of Informant's distributor PVR Pictures Ltd. .

9.2 The Opposite Parties by virtue of their position of strength are able to compel the distributors to become their members and to abide by the unfair and discriminative restrictions imposed by them. By such conduct of the Opposite Parties, the Informant's fundamental right to free trade & profession has been limited and restricted and therefore the illegal conduct of the Opposite Parties needs to be stopped immediately.



9.3 The Informant has established all the three necessary ingredients for issuing an interim order in his favour under section 33 of the Act. From the allegations supported by the material filed by the Informant a prima facie case is made out in favour of the Informant and balance of convenience also lies in its favour. The Informant has acquired rights to exploit the film commercially for huge sum of money (Rupees Sixty Crores) and if the Opposite Parties are not restrained from carrying on their malafide practice, grave irreparable loss, harm and injury would be caused to the complainant which is extremely difficult to quantify in terms of money.

9.4 It was contended by Shri Ashwani Matta that the Informant has acquired certificate from Censor Board and film 'Action Replayy' is scheduled to be released on 05.11.2010 and in view of the urgency the interim order to be passed in favour of the Informant.

CONTENTIONS OF THE OPPOSITE PARTIES

10. It was contended on behalf of NIMPA (Opposite Party No.2) that it is a company incorporated under Companies Act and all the distributors and exhibitors of East Punjab comprising of Haryana, Punjab, Jammu & Kashmir, Himachal Pradesh and Chandigarh are the members of this Association. NIMPA has made membership rules as well as acquiring rules and it acts in accordance with the rules, regulations and by-laws framed by it. According to its rules & regulations unless any film which is acquired by its member is registered with it the same cannot be released or exhibited in the territory of East Punjab. These Rules have been framed for the benefit of all the members and for the film trade in general. Even the Informant has not alleged that the Association is acting against its rules & regulations.

11. It was also contended that admittedly Shri Vipul A. Shah is liable to pay a sum of Rs.1,06,78,916/- to M/s Knock Associates, who is one of the members of the NIMPA, in respect of his film 'London Dreams' and enforcing of the lawful claim of its members against the registration of film 'Action Replayy' cannot said to be violative of either section 3 or section 4 of the Act. In fact the present information has been filed by the Informant only in order to circumvent and avoid the lawful liability towards the members of NIMPA. This position becomes clear from the fact admitted by the Informant that Shri Vipul A. Shah is a majority share holder in the Informant Company.

12. It has been further contended that the registration of the film has been applied by PVR Pictures Pvt. Ltd. who is distributor as well as member of NIMPA but neither he has filed the information before the Commission nor he has been made a party in the information and therefore the Informant has not locus to file the present information.

13. The advocates on behalf of other Opposite Parties have also advanced similar contentions. It has been urged before the Commission that since Mr. Vipul A. Shah has not settled the claims of some members of the Opposite Parties the film 'Action Replayy' has not been registered by them as admittedly this film has not only been produced by his proprietary concern 'Blockbuster Movie Entertainers' but is being marketed by his shadow company Sunshine Pvt Ltd. the Informant in the present case.



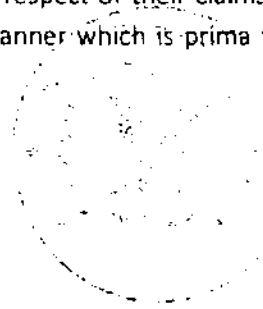
14. On the strength of the arguments advanced on behalf of the Opposite Parties it has been urged that no case is made out to warrant issuing of interim orders under section 33 of the Act and prayer of the Informant in this regard should be dismissed.

Decision of the Commission

15. The law on the grant of the interim relief is well settled by the Hon'ble Supreme Court and various other Hon'ble High Courts. For granting interim relief, the facts and circumstances of the case have to be carefully considered with reference to the various factors viz. existence of prima facie case, balance of convenience and irreparable loss.

16. Recently, the Hon'ble Supreme Court in Civil appeal No. 7779/2010 entitled as "Competition Commission Vs. Steel Authority of India Ltd." decided on 09.10.2010, held that during an inquiry and where the Commission is satisfied that an act has been committed and continues to be committed or is about to be committed in contravention of the provisions of Section 3 and 4 of the Act, it may issue an order temporarily restraining the party from carrying on such act, until the conclusion of such inquiry or until further orders, without giving notice to such party where it deems necessary. It was further held that the Commission, while recording a reasoned order, inter alia, should : (a) record its satisfaction (which has to be of much higher degree than formation of a prima facie view under Section 26(a) of the Act) in clear terms that an act in contravention of the stated provisions has been committed and continues to be committed or is about to be committed; (b) it is necessary to issue order of restraint and (c) from the record before the Commission, there is every likelihood that the party to the *lis* would suffer irreparable and irretrievable damage, or there is definite apprehension that it would have adverse effect on competition in the market.

17. It is undisputed fact that the Opposite Parties have issued directions to refuse the registration of the film 'Action Replayy' on the ground of past dues of some of their members against Mr. Vipul A. Shah in respect of his film 'London Dreams'. It is the contention of the Opposite Parties that they are well within their rights to take such course of action which is in conformity with their rules and regulations. However, it is clear that refusal to grant registration of the film would result into denial of exhibition of the film at all in the respective territories of the Opposite Parties and such decision of the Opposite Parties in form of directives contained in circulars issued by them is prima facie in the nature of limiting the distribution and exhibition of the film 'Action Replayy' which is violative of section 3 of the Act. Even otherwise it is not the case that only those distributor or exhibitor members of the Opposite Parties are not willing to let the film exhibited unless their past dues with Mr. Vipul A. Shah are settled. The conduct of the Opposite Parties cannot be justified in view of the fact that the disputed claims of some of their members have not been adjudicated by any competent authority or court of law. It is also evident that the members of the Opposite Parties are at liberty to seek legal recourse in respect of their claims but existence of past dues cannot empower the Opposite Parties to act in a manner which is prima facie anti-competitive in nature.



18. In the instant case from the contentions raised by the rival parties as well as the material available on record it is also apparent at this stage that the Opposite Parties are enjoying monopoly with regard to distribution and exhibition of films in their respective territories and by compelling the distributors to become their members and to register their films with the association before their films are permitted to be exhibited are imposing conditions which prima facie, appear to be discriminatory and unfair. The Opposite Parties have also not been able to show any legal sanctity for such conduct.

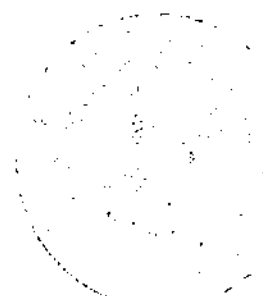
19. In view of the foregoing discussion, the informant has made out a prima facie case in its favour to the satisfaction of the Commission. Undisputedly the Informant has spent huge amount of money in acquiring the exploitative rights of the film and if no injunction is pass there will be unforeseen financial repercussion as the potential earning from the film in the respective territories of Opposite Parties can never be accurately estimated and the Informant may not be adequately compensated even if the matter is decided in its favour at the conclusion of the proceedings. With regard to the balance of convenience, the Commission is of the opinion that the same is also in favour of the Informant because by not granting interim relief as prayed by the Informant the interest of the Opposite Parties may not be impacted so adversely and seriously as that of the Informant.

20. In view of the above discussion and on examining the entire material available on record, the Commission is of the view that the opposite parties by their action/conduct are continuing to contravene the provisions contained in Section 3 & 4 of the Act.

21. All the necessary conditions for granting the interim relief has held by the Supreme Court in the above mentioned judgments are found to be satisfied in the present case and, therefore the prayer for the grant of interim relief deserves to be allowed.

22. On taking into account the totality of circumstances, the entire material on record and the submissions made by the parties, the Commission passes the following order:

- (a) The opposite parties Motion Pictures Association, Northern India Motion Pictures Association, Central Circuit Cine Association, Telengana Telugu Film Distributors Association, Film Distributors Association (Kerala) and Karnataka Film Chamber of Commerce are hereby restrained from refusing registration of the film 'Action Replayy' to PVR Picture Pvt. Ltd. on the ground of past claims of some of their members against Mr. Vipul A. Shah.
- (b) The interim order shall remain effective till further orders.
- (c) Secretary is directed to inform the parties accordingly.



23 It is clarified that nothing stated in this order shall tantamount to final expression of opinion on the merits of the case and the observations made herein shall not affect or influence the investigation or future proceedings in any manner.

Certified true copy

Harish Ahuja

4/11/2010

HARISH AHUJA
Dy Director (FA)
Competition Commission of India
Govt of India
New Delhi-110086