

BEFORE THE COMPETITION COMMISSION OF INDIA

COMPLAINT NO. \_\_\_\_\_ OF 2010

In the matter of:

Sunshine Pictures Pvt Ltd

... Complainant


\_Versus


Motion Pictures Association & Ors

... Respondents

INDEX

<u>Sr.No.</u>	<u>Particulars</u>	<u>Pages</u>
1	MEMO OF PARTIES.	A-B
2	COMPLAINT UNDER SECTION 4 OF THE COMPETITION ACT, 2002 READ WITH SECTION 19(1)(a) OF THE COMPETITION ACT, 2002 WITH AFFIDAVIT AND BOARD RESOLUTION	1-27.
3	LIST OF EXHIBITS	28 (PAGES 1-8)

  
(AMEET NAIK)  
FOR NAIK PARANJPE & COMPANY,  
ADVOCATE FOR THE COMPLAINANT  
ADVOCATES AND SOLICITORS,  
116-B, MITAL TOWERS,  
NARIMAN POINT,  
MUMBAI - 400 021

Filed by  
  
(RISHI AGRAWALA)  
ADVOCATE FOR THE COMPLAINANT  
For AGARWAL LAW ASSOCIATES  
34, BABAR LANE (FF)  
BENGALI MARKET,  
NEW DELHI  
Ph:23354330/ 237381 22  
Ph.233505841

A

BEFORE THE COMPETITION COMMISSION OF INDIA

COMPLAINT NO. \_\_\_\_\_ OF 2010

**MEMO OF PARTIES**

**Sunshine Pictures Pvt. Ltd.** (formerly known as **Energetic Films Pvt. Ltd.**), a company incorporated under the Companies Act, 1956 having its registered office at 303A, Patel Industrial Estate, B-40, New Link Road, Andheri (West), Mumbai – 400 053. ]...Complainant

7. Motion Pictures Association, having office at 52/55 Mangal Market, Bhagirath Palace, Chandani Chowk, Delhi - 110006 ]
8. Northern India Motion Pictures Association, having office at Post Box No-79, no. 48, Pratap Road, Jalandhar City. ]
9. Central Circuit Cine Association, having office at Walkat Jin Compound, Plot No.5, Morshi Road, Amravati - 444 601 and Municipal Park, Post Box No. 64, Bhusawal - 425 201. ]
10. Telangana Telugu Film Distributors Association, having office at No. 7-2-610/5, 2<sup>nd</sup> floor, Hemaji ]

B

- Building, Rashtrapati Road, Secundrabad - 500 |  
003. |
11. Film Distributors Association (Kerala), Reg. No. |  
480/87, Door No. CC41/1604, A, Soapnam |  
Square, Arangath Cross Road, Kochi - 682 018. |
12. The Karnataka Film Chamber of Commerce ]...Respondents  
having its registered office at 28, 01<sup>st</sup> main,  
Crescent Road, High Grounds, Bangalore 560  
001.

Filed by



(AMEET NAIK)  
FOR NAIK PARANJPE & COMPANY,  
ADVOCATE FOR THE COMPLAINANT  
ADVOCATES AND SOLICITORS,  
116-B, MITAL TOWERS,  
NARIMAN POINT,  
MUMBAI - 400 021

(RISHI AGRAWALA)  
ADVOCATE FOR THE COMPLAINANT  
For AGARWAL LAW ASSOCIATES  
34, BABAR LANE (FF)  
BENGALI MARKET,  
NEW DELHI  
Ph:23354330/ 237381 22  
Ph.233505841



BEFORE THE COMPETITION COMMISSION OF INDIA

COMPLAINT NO. \_\_\_\_\_ OF 2010

**Sunshine Pictures Pvt. Ltd.** (formerly known as **Energetic Films Pvt. Ltd.**), a company incorporated under the Companies Act, 1956 having its registered office at 303A, Patel Industrial Estate, B-40, New Link Road, Andheri (West), Mumbai - 400 053. ]...Complainant

1. Motion Pictures Association, having office at 52/55 Mangal Market, Bhagirath Palace, Chandani Chowk, Delhi - 110006
2. Northern India Motion Pictures Association, having office at Post Box No-79, no. 48, Pratap Road, Jalandhar City.
3. Central Circuit Cine Association, having office at Walkat Jin Compound, Plot No.5, Morshi Road, Amravati - 444 601 and Municipal Park, Post Box No. 64, Bhusawal - 425 201.
4. Telangana Telugu Film Distributors Association,

2

- having office at No. 7-2-610/5, 2<sup>nd</sup> floor, Hemaji ]  
Building, Rashtrapati Road, Secundrabad – 500 003. ]
5. Film Distributors Association (Kerala), Reg. No. ]  
480/87, Door No. CC41/1604, A, Soapnam Square, ]  
Arangath Cross Road, Kochi – 682 018. ]
6. The Karnataka Film Chamber of Commerce having its ]  
registered office at 28, 01<sup>st</sup> main, Crescent Road, High ]...Respondents  
Grounds, Bangalore 560 001.

**COMPLAINT UNDER SECTION 4 OF THE COMPETITION  
ACT, 2002 READ WITH SECTION 19(1)(a) OF THE  
COMPETITION ACT, 2002.**

**MOST RESPECTFULLY SHEWETH:**

**A. STATEMENT OF FACTS:**

1. The Complainant is the Company incorporated under the Companies Act, 1956 and engaged in the business of production and distribution of cinematographic films.
2. The Respondent Nos.1 to 6 are the trade bodies / associations registered under the Societies Act /Trade Union Act. These Respondents have control over the entire film distribution market in their respective territories. They have distributors and the exhibitors in their respective territories as their members. They enforce their directives by threatening expulsion of its



members from the association which would automatically result in stoppage of business and competition with such expelled members.

3. The film business involves various stages including pre-production, production, post-production, distribution and exhibition. Although distribution and exhibition are the end points in the value chain of film business, they are of utmost importance. With regard to film distribution, typically a distributor acquires distribution rights from the producer and recovers costs from the revenues arising from exhibition of the film. The distributor may acquire rights with regard to a particular territory or worldwide depending on the commercial arrangement between the producer and the distributor and the arrangement between the producer and the exhibitor may vary such as it may be: (i) on outright sale basis where the producer sells the distribution rights for a fixed consideration for fixed territory for a fixed period; or (ii) on minimum guarantee basis where the distributor pays certain minimum guarantee amount to the producer which is non-refundable and after recovery of this minimum guarantee amount alongwith its agreed commission from the exploitation, the distributor then shares the overflow (excess) amount with the producer on an agreed ratio; or (iii) on a refundable advance basis where the distributor pays certain advance amount to the producer which is refundable by the producer if the distributor does not recover the same from the exploitation and after recovery of this advance amount alongwith its agreed commission from the exploitation, the distributor then shares the overflow (excess) amount with the producer on an



4

agreed ratio. Distributors are therefore very important link between the producer and the ultimate patrons / consumers and hence the last link in the film exploitation chain which takes the films to the people.

4. Before a film is released, no distributor knows the fate of the film. The distributor therefore undertakes the risk to acquire distribution rights of a film by making payment of substantial consideration. He then makes copies of the film on the basis of estimates and expend huge sums of money on publicity, advertising, marketing, cost of print and other distribution costs. The distributor then enters into agreements with various sub-distributors and these sub-distributors then enter into agreements with various film exhibitors which includes owners and operators of theatres and multiplexes and also enters into various agreements in relation to exploitation of films on other diverse platforms. However, as the business in India goes, 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. This is not a legal necessity but enforced by these business associations. But such prior registration can be abused by the associations in various situations.
5. Every film distribution territory (as understood in the film trade) has a trade body / association which formulate the bye-laws governing the functioning of such association and regulates the film distribution business in such territory for maintaining the distribution market. The Respondent Nos.1 to 6 are such trade bodies / associations which govern the film distribution business in



5

their respective territories. The following is the table regarding the territories controlled by the Respondents which is the relevant market for the present case:

**Film Distribution Territories in India under the control of the Respondents**

<b><u>Respondent Nos</u></b>	<b><u>Name of the Association</u></b>	<b><u>Circuit</u></b>	<b><u>Territories Included in the Circuit</u></b>
<b>1</b>	Motion Pictures Association, Delhi.	<b>Dehi &amp; U.P</b>	Entire State of Delhi and Uttar Pradesh
<b>2</b>	Northern India Motion Pictures Association, Jalandhar City.	<b>East Punjab</b>	Political States of Punjab, Haryana, Himachal Pradesh, Jammu & Kashmir and the Union Territory of Chandigarh.
<b>3</b>	Central Circuit Cine Association,	<b>1) C.P. Berar 2) Rajasthan</b>	<u>C.P. Berar</u>



	Bhusawal.	<b>n</b>	Part of Maharashtra and Madhya Pradesh including cities of Akola, Amravati, Jabalpur.  <u>Rajasthan</u>  Includes entire political State of Rajasthan
<b>4</b>	Telangana Telugu Film Distributors Association, Secundrabad.	<b>Nizam Circuit</b>	Part of Karnataka, Maharashtra and Andhra Pradesh including cities of Hyderabad, Aurangabad, Mahbubnagar
<b>5</b>	Film Distributors Association (Kerala), Kochi.	<b>Kerala &amp; Tamil Nadu Circuit</b>	Entire Political State of Kerala & Tamil Nadu
<b>6</b>	The	<b>Mysore</b>	Part of Karnataka State.

	Karnataka Film Chamber of Commerce, Bangalore	<b>Circuit</b>	District including Bangalore, Bellary, Chickmagalur, Mysore, Chitradurga and other nearby areas.
--	--	----------------	--

Also annexed hereto as **Exhibit- 'A'** is the map of India showing the film distribution territories in India. It is pertinent to note that the Respondents are voluntary organizations and not statutory bodies. Most of the Respondents are the societies registered under the Societies Registration Act, 1860.

6. The Respondents make it compulsory for every film distributor to become their member and/or register his film with the Respondents before the exhibition of such film. A distributor who refuses to become a member of the Respondents and/or refuses to register his film with the Respondents is not allowed to distribute and exhibit his / its film in the territory which is governed / regulated by such Respondent. The Respondents enforce such compulsion on distributors by threatening their members both cinema distributors and exhibitors of serious consequences for exhibiting films of a distributor who is not a member of any of the Respondents or whose film is not registered with the Respondents. On account of such threats, the cinema

exhibitors who are neutral parties, are unwilling to undertake the risk of exhibiting the film of a distributor who is not a member of the Respondents / whose film is not registered with the Respondents.

7. The Distributors are therefore deprived of their fundamental right to business if they choose not to become members of the Respondents and the Producers are deprived of their fundamental rights in the event if their films are not registered by the Associations like the present Respondents, which does not allow the distribution of the non-registered films in their respective territories. It is pertinent to note that there is no statutory prescription which makes it obligatory for the distributors to become members of the Respondents or register their films with any associations. However, the Respondents being trade bodies / associations enjoy a position of strength in the territory which they seek to regulate and by virtue of such position of strength are able to affect and dominate the cinema exhibitors in their favour.
8. By compelling the distributors to become their members, the Respondents strengthen their dominant position and impose undue and unfair restrictions against the various parties in the film industry.
9. By virtue of compelling all the distributors to become their members, these associations like the present Respondent become more dominant and they in itself form a cartel of their distributor members, which cartelization acts only for the benefits 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. The Complainant further states that even when the



distributors have only acquired the theatrical distribution rights of the film, these Respondent 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 Complainant states that the distributors of the films have no choice but to sign these forms even when they don't have any control over other rights of such film other than theatrical exploitation rights.

**The facts giving rise to filing of this complaint by the Complainant are as follows:**

10. The Complainant herein has acquired the entire exploitation rights for the film "Action Replayy" directed by Mr. Vipul A. Shah and produced by his proprietary concern "Block Buster Movie Entertainers", starring Mr. Akshay Kumar, Aishwarya Rai and others (**said "Film"**) vide an agreement dated 14<sup>th</sup> June 2009 as amended by an agreement dated 5<sup>th</sup> May, 2010 (hereinafter collectively referred to as "**said Assignment Agreement**") from one Block Buster Movie Entertainers a proprietary concern of Mr. Vipul Shah who is the producer of the said Film. The Complainant craves leave to refer to and rely upon these agreements (said Assignment Agreement) and undertakes to produce the same before this Hon'ble Commission as and when required, since the copies are not annexed with this complaint due to confidentiality of



the commercials agreed between the Complainant and the producer of the said Film. The Complainant states that by virtue of the rights acquired under this Agreement, the Complainant can exploit the said Film not only in theatres across the country and overseas but on all other platforms of exploitation such as music rights, satellite rights, home video rights, etc. in the entire World in perpetuity.

11. The Complainant, by virtue of being entitled to exploit the said Film on all platforms, engaged PVR Pictures Limited as a distributor for the theatrical exploitation of the said Film vide an agreement dated 30<sup>th</sup> August 2010 for India & Nepal (hereinafter "**said Distribution Agreement**"). The understanding between the Complainant and PVR Pictures Ltd. (hereinafter "**PVR**") is that PVR has agreed to pay a refundable advance amount as agreed thereunder to the Complainant and after recoupment of this refundable advance amount by PVR alongwith it's expenses and distribution commission from the exploitation of the said Film, PVR has agreed to give the overflow amount to the Complainant. However, it is further agreed between PVR and the Complainant that in the event if PVR is unable to recoup it's refundable advance alongwith its expenses and distribution fee, the deficit in the same is payable by the Complainant to PVR. The Complainant craves leave to refer to and rely upon the said Distribution Agreement and undertakes to produce the same before this Hon'ble Commission as and when required, since the copy of this agreement is not annexed with this complaint due to confidentiality of the commercials agreed between the Complainant and PVR.



12. Thereafter, PVR in accordance with this agreement approached distributors in various territories for the purposes of exhibition of the said Film. However, PVR Pictures Ltd., is being denied the registration of the said Film for distribution in their respective territories by the present Respondents by citing the reason that the said Film belongs to Mr. Vipul Shah since the credits of the said Film show "A Vipul Amritlal Shah film". In this regard, PVR Pictures Limited has conveyed to the Complainant that there are directives from the present Respondents not to accept any film of Mr. Vipul Shah to be displayed or exhibited in their territories. The Complainant has received a letter dated 21<sup>st</sup> October, 2010 from PVR, wherein PVR has very clearly and categorically stated to the Complainant that the Respondent associations have denied the distribution of the said Film in their respective territories. Hereto annexed and marked as "**Exhibit- B**" is a copy of the letter dated 21<sup>st</sup> October, 2010 sent by PVR to the Complainant.
13. In this regard, the Complainant submits that the Respondents film distributors' associations are acting malafidely and in an arbitrary manner in order to boycott all films of Mr. Vipul Shah with an effort to secure certain claims of some of their members in respect to the film "London Dreams". The Complainant states that these claims have not been tested before any court of law and more so when there is no privity of contract between the Complainant and the distributor members of the present Respondents, who are claiming their dues against Mr. Vipul Shah amongst Headstart Films Pvt. Ltd., Raksha Entertainment Pvt. Ltd. and Eros International.



14. The Complainant states that Mr. Vipul Shah is the majority shareholder in the Complainant Company alongwith one M/s Cinema Capital Venture Fund, a venture capital fund registered with the Securities and Exchange Board of India (SEBI) under the Venture Capital Fund Regulations, 1996 with the object of inter alia investing in media companies engaged in the production, distribution and marketing of entertainment software content including motion pictures in India and worldwide and comprises of over 1000 individual and corporate investors. The Complainant further states that Mr. Vipul Shah was a director of the film "London Dreams" wherein 'Headstart Films Pvt. Ltd.' was the producer. Mr. Vipul Shah's proprietary concern "Blockbuster Movie Entertainers" is engaged in the production of films, which has nothing to do with the present Complainant which is a separate legal and business entity.
15. The Complainant states that the present Complainant and Mr. Vipul Shah are separate legal entities though Mr. Vipul Shah alongwith others is the shareholder of the Complainant and no claim against a shareholder can bind the Complainant company or can be invoked against the Complainant company for any films having no relationship with the said film "London Dreams", in the absence of any contract / agreement between the Complainant and the said members of the present Respondents.
16. The entire case of the Respondents for refusing to allow exhibition of the film "Action Replayy" is alleged to be based upon certain monetary claims of some of the distributors against Headstart Films Private Limited, Eros



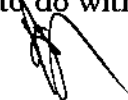
International, Mr. Vipul Shah and Raksha Entertainment Pvt. Ltd., in respect of the said film "London Dreams", produced by M/s Headstart Films Private Limited and directed by Mr. Vipul Shah which was released on 30.10.2009 and has no concern with the present film "Action Replay". The rights of the film "Action Replay" had been acquired in perpetuity by the present Complainant way back on 14<sup>th</sup> June, 2009 under a valid agreement between the producers of the said Film i.e. Block Buster Movie Entertainers and the present Complainant, much prior to the release of the film "London Dreams". The Complainant craves leave to refer to and rely upon these agreements and undertakes to produce the same before this Hon'ble Commission, as and when required.

17. The Complainant further states that the Complainant has however annexed two circulars issued by the Respondent Nos. 4 and 5, viz: (i) a circular dated 5<sup>th</sup> May, 2010 issued by the Respondent No. 4 to all its member interalia calling upon them not to release the said Film "Action Replay" in its territory unless the claim of it's member for the film "London Dreams" is settled, and (ii) a circular bearing No. 16/2010-2011, dated 13<sup>th</sup> August, 2010, issued by the Respondent No. 5 to all its members calling upon them not to distribute in Kerala, any films of Headstart Films Private Limited, Eros International, Mr. Vipul Shah and Raksha Entertainment Pvt. Ltd. Hereto annexed and marked as "**Exhibit- C**" and "**Exhibit- D**" are the circulars dated 5<sup>th</sup> May, 2010 and 13<sup>th</sup> August, 2010, issued by the Respondent No. 4 and the Respondent No. 5, respectively.





18. The Complainant states that the said Film "Action Replayy" is a totally new commercial product distinct and separate from "London Dreams". It has in fact no concern with either Eros International or Raksha Entertainment Pvt. Ltd. or Headstart Films Pvt. Ltd. and any claim by any distributor against any of these parties including Mr. Vipul Shah in respect of "London Dreams" cannot be allowed to reflect upon the commercial exploitation of the film "Action Replayy". The present Respondents, however in order to coerce Mr. Vipul Shah, are demanding the claims of their members against any and all the films with which Mr. Vipul Shah is associated, without following any legal or judicial process and even without such claims of the distributor members of the present Respondents being proved before a court of law. The said Respondent associations have employed an ingenious methodology or device of directing all their distributor and exhibitor members, not to exhibit / distribute any film related to "Mr. Vipul Shah" or other parties involved in the above so called dispute in any of the theaters without the claim made by their distributor members being settled first in monetary payment.
19. The Complainant states that this cartelized form of association of distributors in the form of the present Respondents deserves to be broken up. Extra constitutional powers have been reposed in the hands of a body of persons in the form of a cartel who then abuse its dominant position in the territory it controls by issuing directives. Fundamental Rights protected under the Constitution of India are then affected. The freedom to deal with distributors and exhibitors who have nothing to do with the dispute or chain of one of the



distributor with one party involved in the film is illegally violated. Distributors cannot be allowed to bye-pass judicial process through cartelized association by threatening to boycott one person from dealing with others. The Complainant states that the Complainant has acquired the exploitation rights of the said Film "Action Replayy" for a sum of Rs. 60 crores and not even a single claim is made by any party against the present Complainant prior to or after the purchase of these rights on 14<sup>th</sup> June, 2009. However, the Complainant states that now since the said Film is slated for release in theatres on 5<sup>th</sup> November, 2010, the distributor members of the Respondents have suddenly become active and have started pressurizing the Complainant by refusing to register its said Film distributed through PVR and thereby not allowing their distributor / exhibitor members to exhibit the said Film without first settling the stale and un-adjudicated claims of their members in respect of the film "London Dreams". The Complainant states that the validity of these claims of the distributor members of the Respondents, itself is doubtful and not decided by any court of law. In any case, the Complainant states that the commercial exploitation rights of the said Film "Action Replayy" are owned by the Complainant and the theatrical distribution rights have been licensed by it to PVR Pictures Ltd. on a refundable advance basis and therefore they both have no organic or inorganic connection with respect to any claims of the members of the present Respondents against the film 'London Dreams'.

20. The Complainant states that in a similar case before this Hon'ble



Commission, it has in fact restrained Film Distributors Association (Kerala) from imposing any restriction, direct and indirect, preventing distributors / exhibitors in relation to exhibition of the film "Anjana Anjani" of Eros International in the State of Kerala if the theater owners are willing and desirous to exhibit the said film. Once this Hon'ble Commission has come to a conclusion in favour of Eros International in Complaint No. 52 of 2010 as regards the said circular, the same deserves to be followed for the present Complainant.

21. The Complainant states that the distributor members of the present Respondents have not initiated any legal action against either against Eros International, Headstart Films Pvt Ltd, Raksha Entertainment Pvt Ltd or Mr.Vipul Shah but instead have filed their claims with their respective associations i.e. the present Respondents who act as a cartel to dictate their terms without having any legal authority in an unconstitutional manner and against the provisions of the Competition Act, 2002.
22. It is apparent from the aforesaid that the Respondents have abused their position of strength and dominance in the film distribution territory which they regulate by imposing undue and unfair restrictions on the film distributors and exhibitors and by not allowing its members to exhibit / distribute the said Film. Such abuse of dominant position by the Respondents will cause significant and irreparable loss to the Complainant. This attitude of the Respondents cannot be permitted by



this Hon'ble Commission and the Respondents ought to be restrained from imposing any unfair restrictions on the film distributors / exhibitors who are willing to exhibit / distribute the said Film. It is apparent that the intention of the Respondents is to abuse their dominant position in a manner to somehow undermine the Complainants' rights to carry on their business and commercially exploit their films, more particularly the said Film.

23. The Complainant submits that the Respondents cannot misuse their dominant position of being able to compel its distributor and exhibitor members not to deal with the films of any producer / distributor who do not comply with their directives, much less when the same amounts to breach and violation of fundamental right to carry on free trade and profession. This act itself would be against fair practices since it would result in skewing of competition which is prohibited by law.
24. The Complainant states that by imposing unfair and unjustified restrictions in the manner indicated above, the Respondents have curtailed the Complainants' right to free trade and profession and thereby violated the fundamental right of the Complainants' to carry on their trade and profession.
25. In the case of Mehboob Productions vs. Motion Picture Associations, the Hon'ble Delhi High Court observed that if a trade body as a matter of fact enjoys a discretionary power which puts it in a position to prevent a person from exercising his means of livelihood then some duty is



owned by it to that person as regards the employment of that power. If there is an abuse of monopoly power over a person's means of livelihood, the court is not powerless to circumscribe the unfettered right of an association to exclude a person from the membership of the association.

**B. CONTRAVENTION OF COMPETITION ACT 2002.**

- i) Section 4 of the Competition Act, 2002 ("Act") prohibits the abuse of dominant position. In the present case the dominant position is that of the Respondents who by virtue of their position of strength are able to compel the distributors to become their members and be obliged to abide by the unfair and discriminatory restrictions imposed by them against their non-members in order to fulfill the demands of their members. By the impugned action of the Respondents not to allow the registration and thus exhibition of the Complainant's said Film in their territories, the Complainant's fundamental right to free trade and profession has been limited and restricted as well as damaged by the Respondents which is prohibited by Section 4(2)(a) of the Act.
- ii) The consequence of impugned action of the Respondents is denial of market access to the Complainant under Section 4(2) (c) by denying registration of the said Film in the respective territories of the Respondents.



- iii) Such unfair and unjustified restrictions cannot be permitted by this Hon'ble Commission because the Respondents have a dominant position.
- iv) The Respondent enjoys a dominant position by virtue of being a trade body / association and by being able to dictate terms to the cinema exhibitors / distributors. The Respondents are therefore in a position of strength which enables them to operate independently of competitive forces and to adversely affect the interest of the film distributors / exhibitors. Therefore, the present complaint is maintainable before this Hon'ble Commission under Competition Act, 2002.

**C. SUCCINCT NATURE OF PRESENT COMPLAINT AND CAUSE OF ACTION.**

- i) The cause of action for filing the present complaint first arose when the Respondent No. 5 vide its Circular dated 13<sup>th</sup> August, 2010 bearing No. 16/2010-2011 addressed to all its members, asking them not to commit any film for distribution in Kerala belonging to Mr. Vipul Shah, Raksha Entertainment Pvt Ltd, Headstart Films Pvt Ltd and Eros International.
- ii) The specific cause of action for filing of the present Complaint arose when the All India Theatrical Distributor of the said Film viz PVR Pictures Ltd applied for registration of the Complainant's said Film



with the present Respondents between 15<sup>th</sup> to 19<sup>th</sup> October 2010, when none of the Respondents registered the said Film with them stating that the said Film belongs to Mr. Vipul Shah and unless and until the claims of their members are settled by Mr. Vipul Shah, Raksha Entertainment Pvt. Ltd., Headstart Films Pvt Ltd and Eros International, the said Film cannot be registered by the Respondents. The cause of action is a continuing one because the said Film is slated for release on 5<sup>th</sup> November 2010 and there is very little time left with the Complainant and its all India theatrical distributor PVR Pictures Ltd since the publicity and marketing of the said Film has already been started in the respective territories of the Respondents since 23<sup>rd</sup> September, 2010.

- iii) This illegal and malafide conduct of the Respondents is prohibited by the Competition Act 2002 as being an abuse of the dominant position. The Respondents are in a dominant position because they are trade bodies and associations who enjoy a position of strength and dominance.

**D. GROUND FOR INTERIM RELIEFS.**

- i) The Complainant submits that the Respondents are continuing with the abuse of their dominant position by not allowing the release and exploitation of the said Film in their



respective territories by not allowing its members to exhibit / distribute the said Film which emanates from the non-registration of the said Film by the Respondents.

- ii) The Respondents by virtue of their position of strength are able to compel the distributors to become their members and be obliged to abide by the unfair and discriminatory restrictions imposed by them. By the impugned action of the Respondents the Complainant's fundamental right to free trade and profession has been limited and restricted as well as damaged by the Respondents which is prohibited by Section 4(2)(a) of the Act. The conduct of the Respondents is therefore ex-facie illegal and the same needs to be stopped immediately.
- iii) The complainant submits that the entire balance of convenience lies in favour of the Complainant. In case the Respondents are not restrained from carrying on their malafide and fraudulent campaign to fulfill the demands of their members by imposing unfair restrictions on the film producers / distributors / exhibitors impairing their fundamental right to free trade and profession, grave irreparable loss, harm and injury would be caused to the Complainant which is extremely difficult to quantify in terms of money. The complainant therefore submits that the prima





facie case is in favour of the complainant and against the Respondents. The Respondents would lose nothing if their false campaign is stopped at the outset.

- iv) The complainant, therefore, submits that this Hon'ble Commission may pass an ex-parte ad interim order in favour of the Complainant under Section 33 of the Competitive Act, 2002 restraining the Respondents, their servants and agents, from abusing their dominant position as prohibited by Section 4 of the Competition Act by imposing any restrictions in relation to release and exploitation of the Complainant's film "Action Replayy" starring Akshay Kumar, Aishwarya Rai Bachchan & Ors. slated for release on 5<sup>th</sup> November, 2010 and the forthcoming films of the Complainant viz. (i) film "Kuch Love Jaisa", starring Rahul Bose, Shefali Shah & others, directed by Barnali Ray Shukla and slated for release in January, 2011, (ii) film "Darr" (tentative title), starring John Abraham, Genelia D'Souza, directed by Nishant Kamat, slated for release in end 2011, (iii) film "Pyaar Ka U Turn", starring Abhishek Bachchan, directed by Vipul Shah, (iv) film "Attack", directed by Murgadass, and (v) "Singhh is Kingg - 2", directed by Mr. Vipul Shah; until the enquiry is complete and until further orders is passed by this Hon'ble Court.



**FINAL PRAYER**

In view of the above the complainant most respectfully and humbly prays that

- a) The Respondents be restrained and be ordered to cease and desist from compelling it's members for not dealing with the said Film ("Action Replayy") of the Complainant and forthcoming films of the Complainant viz. (i) film "Kuch Love Jaisa", starring Rahul Bose, Shefali Shah & others, directed by Barnali Ray Shukla and slated for release in January, 2011, (ii) film "Darr" (tentative title), starring John Abraham, Genelia D'Souza, directed by Nishant Kamat, slated for release in end 2011, (iii) film "Pyaar Ka U Turn", starring Abhishek Bachchan, directed by Vipul Shah, (iv) film "Attack", directed by Murgadass, and (v) "Singhh is Kingg - 2", directed by Mr. Vipul Shah;
- b) the Respondents be restrained and be ordered to cease and desist from not allowing the registration of the said Film and forthcoming films of the Complainant viz. (i) film "Kuch Love Jaisa", starring Rahul Bose, Shefali Shah & others, directed by Barnali Ray Shukla and slated for release in January, 2011, (ii) film "Darr" (tentative title), starring John Abraham, Genelia D'Souza, directed by Nishant Kamat, slated for release in end 2011, (iii) film "Pyaar Ka U Turn", starring Abhishek Bachchan, directed by Vipul Shah, (iv) film "Attack", directed by



- Murgadass, and (v) "Singhh is Kingg - 2", directed by Mr. Vipul Shah, in their respective territories just to fulfill the demands of their members;
- c) the Respondents be restrained from imposing any unfair and unjustified restrictions on release and exploitation of Complainant's said Film and forthcoming films of the Complainant viz. (i) film "Kuch Love Jaisa", starring Rahul Bose, Shefali Shah & others, directed by Barnali Ray Shukla and slated for release in January, 2011, (ii) film "Darr" (tentative title), starring John Abraham, Genelia D'Souza, directed by Nishant Kamat, slated for release in end 2011, (iii) film "Pyaar Ka U Turn", starring Abhishek Bachchan, directed by Vipul Shah, (iv) film "Attack", directed by Murgadass, and (v) "Singhh is Kingg - 2", directed by Mr. Vipul Shah, which impairs the fundamental rights of the Complainant of free trade and profession;
- d) the Respondents be restrained from abusing their dominant position in a manner to harm and hurt the Complainant's interest;
- e) Pass such other and further order as this Hon'ble Commission may deem fit and proper in the circumstances of the case.


#### **INTERIM PRAYER**


It is therefore most respectfully and humbly prayed that this Hon'ble Commission under section 33 of the Competition Act, 2002 during the pendency of the present complaint may be pleased to -



- (a) restrain the respondent from abusing their dominant position as prohibited by Section 4 of the Competition Act by imposing any restrictions in relation to release and exploitation of the Complainant's film "Action Replayy" starring Akshay Kumar, Aishwarya Rai Bachchan & Ors. and for the forthcoming films of the Complainant viz. (i) film "Kuch Love Jaisa", starring Rahul Bose, Shefali Shah & others, directed by Barnali Ray Shukla and slated for release in January, 2011, (ii) film "Darr" (tentative title), starring John Abraham, Genelia D'Souza, directed by Nishant Kamat, slated for release in end 2011, (iii) film "Pyaar Ka U Turn", starring Abhishek Bachchan, directed by Vipul Shah, (iv) film "Attack", directed by Murgadass, and (v) "Singhh is Kingg - 2", directed by Mr. Vipul Shah; until the enquiry is complete and until further orders is passed by this Hon'ble Commission;
- (b) Pass such other and further order as this Hon'ble may deem fit and proper in the circumstances of the case.

Filed by

  
 (AMEET NAIK)  
 FOR NAIK PARANJPE & COMPANY,  
 ADVOCATE FOR THE COMPLAINANT  
 ADVOCATES AND SOLICITORS,  
 116-B, MITAL TOWERS,  
 NARIMAN POINT,  
 MUMBAI - 400 021

  
 (RISHI AGRAWALA)  
 ADVOCATE FOR THE COMPLAINANT  
 For AGARWAL LAW ASSOCIATES  
 34, BABAR LANE (FF)  
 BENGALI MARKET,  
 NEW DELHI  
 Ph:23354330/ 237381 22  
 Ph.233505841

## BEFORE THE COMPETITION COMMISSION OF INDIA

COMPLAINT NO. \_\_\_\_\_ OF 2010

In the matter of:

**Sunshine Pictures Pvt. Ltd.**

(formerly known as 'Energetic Films Pvt. Ltd.'),

. . . Complainant

Versus

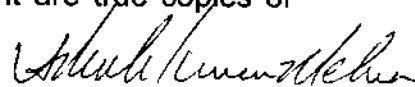
Motion Pictures Association &amp; Ors.

. . . Respondent

**AFFIDAVIT**

I, Mr. Ashok Mehra, Managing Director, authorised signatory of the complainant company having its registered office at 303A, Patel Industrial Estate, B-40, New Link Road, Andheri (West), Mumbai – 400 053 do hereby solemnly affirm and state as under:

1. I am the Managing Director and authorised signatory of the complainant company and I am well conversant with the facts and circumstances of the case and duly authorised to swear the present affidavit.
2. I say that I have read and understood the contents of the accompanying complaint and say that the facts stated therein are true and correct to my information as derived from the records of the case of the complainant company.
3. I say that the annexures Exhibits to the complainant are true copies of their respective originals.

  
 DEPONENT
**Verification:**

I, the above named deponent do hereby solemnly verify on this \_\_\_\_ day of October 2010 that the facts stated hereinabove are true and correct to my knowledge and no part of it is false and nothing material has been concealed therefrom.

  
 DEPONENT

# SUNSHINE PICTURES PRIVATE LIMITED

27

**Certified true copy of the Resolution passed by the Board of Directors of Sunshine Pictures Private Limited by Circulation on 21<sup>st</sup> October, 2010**

---

"**RESOLVED THAT** Shri Ashok Kumar Mehra, Managing Director of the Company, be and is hereby authorized on behalf of the Company to sign, verify and file a complaint before the Competition Commission of India against various film distributors' associations in India; and to appear before the Competition Commission of India and or any other court including any High Court and to sign and verify Vakalatnama's, all such affidavits and pleadings as may be required and to engage any counsel, pleader, advocate, notary, to execute decree and to do all such acts necessary for and on behalf of the Company.

"**RESOLVED THAT** the Company do hereby authorize Mr. Ashok Kumar Mehra, to sign and execute agreements, file, documents, undertakings, declaration, Vakalatnams; written statements, affidavits, suits, appeals, applications, replications, replies, rejoinders, to authorize advocates to make statements, to make submissions and representations; to appear before any statutory authority or courts or commission and to do or cause to be done all such things as may be necessary with respect to the matter of Sunshine Pictures Pvt. Ltd. Vs. Motion Pictures Association & Ors. before the Competition Commission.

**Certified to be True**

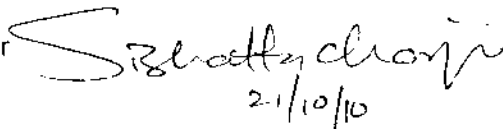
**For Sunshine Pictures Private Limited**



Chairman

Place: Mumbai  
Date: 21/10/2010

Director

  
21/10/10

## BEFORE THE COMPETITION COMMISSION OF INDIA

COMPLAINT NO. \_\_\_\_\_ OF 2010

In the matter of:

Sunshine Pictures Pvt Ltd

... Complainant

\_Versus


Motion Pictures Association &amp; Ors


... Respondents

**LIST OF DOCUMENTS**

<b><u>Sr.No.</u></b>	<b><u>Particulars</u></b>	<b><u>Pages</u></b>
1.	<b>Exhibit - 'A'</b> A copy of map India showing the film distribution territories in India.	1
2.	<b>"Exhibit - B"</b> ; A copy of the letter dated 21 <sup>st</sup> October, 2010 sent by PVR to the Complainant.	2-4
4.	<b>Exhibit - C</b> : A copy circulars dated 5 <sup>th</sup> May, 2010 issued by the Respondent No. 4.	5-7
3.	<b>"Exhibit - D"</b> A copy of the is the circulars dated 13 <sup>th</sup> August, 2010, issued by the Respondent No. 5.	8

Filed by

  
 (AMEET NAIK)  
 FOR NAIK PARANJPE & COMPANY,  
 ADVOCATE FOR THE COMPLAINANT  
 ADVOCATES AND SOLICITORS,  
 116-B, MITAL TOWERS,  
 NARIMAN POINT,  
 MUMBAI - 400 021

  
 (RISHI AGRAWALA)  
 ADVOCATE FOR THE COMPLAINANT  
 For AGARWAL LAW ASSOCIATES  
 34, BABAR LANE (FF)  
 BENGALI MARKET,  
 NEW DELHI  
 Ph:23354330/ 237381 22  
 Ph.233505841

BEFORE THE COMPETITION COMMISSION OF INDIA

[illegible]

The following are the results of the study:



PVR  
PICTURESExhibit-B

2

21st October, 2010

Sunshine Pictures Pvt Ltd  
303 A, Patel Industrial Estate,  
B-40, New Link Road, Andheri (W),  
Mumbai 400 053

Dear Sir,

Re: Registration of the film "Action Replayy" starring Akshay Kumar, Aishwarya Rai and others.  
Ref: Distribution agreement dated 30th August, 2010.

We wish to inform you about the status of registration of your film titled "Action Replayy" (said "Film") starring Akshay Kumar, Aishwarya Rai and others and directed by Mr. Vipul Shah.


Please note that we have applied for registration of the said Film with all the distributors Associations in India. However, the some of the distributors associations have denied registration of your said Film stating the reason that their members have certain monetary claims against Headstart Films Private Limited, Eros International, Mr. Vipul Shah and Raksha Entertainment Pvt. Ltd. with respect to the cinematographic film "London Dreams", starring Salman Khan, Ajay Devgan & others, produced by Headstart Films Private Limited and directed by Mr. Vipul Shah.

The following distributors associations have specifically denied the registration of the said Film, viz.:

1. Motion Pictures Association, Delhi.
2. Northern India Motion Pictures Association, Jalandhar City.
3. Central Circuit Cine Association, Bhusawal.
4. Telangana Telugu Film Distributors Association, Secunderabad.
5. Film Distributors Association (Kerala), Kochi.
6. The Karnataka Film Chamber of Commerce, Bangalore.

As per these associations, since the said Film "Action Replayy" is produced by Mr. Vipul Shah, they will not permit the same to be released in their territory unless and until claims of their members against Headstart Films Private Limited, Eros International, Mr. Vipul Shah and Raksha Entertainment Pvt. Ltd. with respect to the cinematographic film "London Dreams" are cleared. Please find enclosed herewith the letter dated 15-10-2010 received from CCCA, Bhusawal denying the registration of the said Film.

In this regard, we sincerely request you to take urgent steps to ensure that the said Film is registered with these associations, Unless the said Film is



# Telangana Telugu Film Distributors Association

(Registered Under the A.P. Public Societies Registration Act, 1350 Fasli - 557 of 1989)

# 7-2-610/5, 2nd Floor, Hemaji Building, Rashtrapathi Road, Secunderabad - 500 003.

President :

**UNIL NARANG**

Hon. Secretary :

**V. L. MALLIKARJUN**

Ref.: Circular No.8/2010-11.

Date.....**25.05.2010.**

## VERY IMPORTANT CIRCULAR

Sub: Release of the forthcoming Hindi Picture Titled "ACTION REPLAY" Starring Akshay Kumar, Aishwarya Roy and others produced and directed by Sri Vipul Amritlal Shah - for the entire Andhra and Old Nizam Area which includes all districts of Marathwada Region, All Districts in the Nizam Area including Raichur District including Gangavathi and Koppal Districts and North Karnataka State which includes Gulbarga and Bidar Districts to be released shortly - Reg.

Ref: Complaint Lodged by M/s. Sahyog Films, Secunderabad towards Refund of Advance for the Film "LONDON DREAMS" for Nizam And Andhra Area account - Reg.

...

M/s. Sahyog Films, Secunderabad lodged a complaint with our Association on 30.03.2010 towards the refund of advance for the Film "LONDON DREAMS" for Nizam and Andhra Area account. M/s. Sahyog Film had entered into an agreement dated 15.10.2009 for the above film with M/s. Head Start Films Pvt. Ltd., M/s. Raksha Entertainment Pvt.Ltd., and Sri Vipul AmritlalShah (Confirming Party) for the Territory of Nizam and Andhra Areas. They have paid a sum of Rs.90,00,000-00 (Rupees Ninty Lakhs only) to the master distributors namely M/s. Raksha Entertainment Pvt. Ltd., According to the agreement if this amount is not recovered in 90 days of the release of the above, three parties have agreed to pay back the unrecouped advance along with interest. M/s. Sahyog Films, Secunderabad had submitted a detailed statement of account and according to which they are claiming the refund of advance for Rs.30,32,749-00. They have also enclosed the copy of the Triparty Agreement dated 21.10.2009 and another copy of the ratified agreement dated 15.10.2009. In the Triparty Agreement it is very clearly mentioned about the liability for repayment to M/s. Sahyog Films, Secunderabad. Our Association after receiving the complaint have gone through

# Telangana Telugu Film Distributors Association

(Registered Under the A.P. Public Societies Registration Act, 1350 Fasli - 557 of 1989)

7-2-610/5, 2nd Floor, Hemaji Building, Rashtrapathi Road, Secunderabad - 500 003.

President :  
JNIL NARANG

Hon. Secretary :  
V. L. MALLIKARJUN

Ref. :

:: 2 ::

Date.....

the complaints and all the relevent records were examined from all aspects. Accordingly our Association addressed letters to M/s. Head Start Film Pvt. Ltd., Mumbai, M/s. Raksha Entertainment Pvt. Ltd., Mumbai and Sri Vipul Amritlal Shah requesting all the parties individually to settle the entire amount of refundable advance as per the statement of account issued by M/s. Sahyog Films, Secunderabad. In the mean time a public notice was issued on 02.04.2010 by M/s. Apte & Co., Advocates and Solicitors on behalf of M/s. Head Start Films Pvt. Ltd., Mumbai informing that the refund of amount shall be irrevocably, exclusively and entirely borne paid and discharged by Sri Vipul Amritlal Shah and Sri Paramjit Singh and M/s. Geetha Balla Singh. In addition to the above public notice, M/s. Raksha Entertainment Pvt. Ltd., Mumbai, addressed a letter to M/s. Sahyog Films, Secunderabad along with a notarized Copy of the agreement between Raksha Entertainment Pvt. Ltd., Mumbai, and Sri Vipul Amritlal Shah confirming that all amounts refundable in respect of the said picture 'London Dreams' shall be paid by Sri Vipul Amritlal Shah. The Copy of the said public notice dated 02.04.2010 and the copy of the letter received from M/s. Raksha Entertainment, Mumbai dated 13.04.2010 was forwarded to Sri Vipul Amritlal Shah. Further our Association vide letter No. 199, dated 31.03.2010 has informed that our Association has fully scrutinised the entire transactions relating to the complaint submitted by Sahyog Films, Secunderabad and that it was proved beyond any doubt that Sri Vipul Amritlal Shah is legally and morally responsible for the repayment of the above mentioned amount. Please note that the Triparty Agreement dated 21.10.2010 and the agreement dated 15.10.2009 has been endorsed by all parties in legal non-judicial stamp paper. Sri Vipul Amritlal Shah in his letter dated 10.4.2010 has sent some documents and other papers relating to the corporate structure of M/s. Eros U.K/U.A.E/India and Head Start Films Pvt. Ltd., Though he has sent the copies for our information, our Association feels that it is purely a internal matter. However in his letter dated 10.04.2010,

# Telangana Telugu Film Distributors Association

(Registered Under the A.P. Public Societies Registration Act, 1350 Fasli - 557 of 1989)

# 7-2-610/5, 2nd Floor, Hemaji Building, Rashtrapathi Road, Secunderabad - 500 003.

President :  
SUNIL NARANG

Hon. Secretary :  
V. L. MALLIKARJUN

Ref. : Date.....

:: 3 ::

Sri Vipul Amritlal Shah, in page No.4 clearly has stated that he had signed the agreement dated 23.10.2009 only in good faith to ensure that all the timelines were met and that the said film was released on schedule. This point is another proof that he responsible for the repayment of the above mentioned amount.

Now in the matter of dispute between Sahyog Films, Secunderabad against Sri Vipul Amritlal Shah, our Association unanimously decided to request all the Film Distributors NOT TO RELEASE THE SAID PICTURE "ACTION REPLAY" FOR THE AREAS AS MENTIONED ABOVE TILL THE DISPUTE IS FULLY SETTLED TO M/s.SAHYOG FILMS, SECUNDERABAD FOR A TOTAL SUM OF RS.30,32,749/-.

The Distributor members are appealed once again NOT TO CONTRAVENE the decision of the Association and co-operate ethically to honour it.

  
(V.L. MALLIKARJUN)  
Hon. Secretary


Exhibit-8

FILM DISTRIBUTORS ASSOCIATION (KERALA)  
REG. NO. ER-480/87  
DOOR NO. 41/1604 A, SOPANAM SQUARE  
ARANGATH CROSS ROAD, KOCHI - 18

Mobile : 98470 55299  
Phone : 2367066  
Fax : 2352224

Circular No. 16/2010-2011  
(for circulation among our Members only)  
Date : 13.08.2010

TO  
ALL MEMBERS

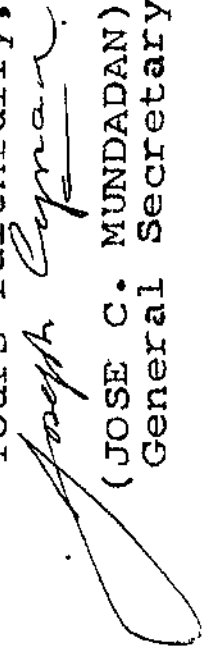
Dear Sirs,

Please do not commit any picture from the following parties  
for distribution in Kerala.

- 1) Mr. Vipul A. Shah, Block Buster Movies Enterprises, Bombay
- 2) M/s. Raksha Entertainment (P) Ltd., "
- 3) " Headstar Films (P) Ltd., "
- 4) " Eros International, "

This is to safeguard the interest of our members. Please  
co-operate.

Thanking you,

Yours faithfully,  
  
(JOSE C. MUNDADAN)  
General Secretary

PVR

registered with these associations, no distributor or exhibitor will take your said film in their respective territories for exploitation and distribution, and the same will not be exhibited in these territories on your cost and risk. Please note that since huge amounts have been spent on the marketing, and publicity of the said film which is scheduled for release on 5<sup>th</sup> November 2010; there will be huge losses caused to us as well as to you, if the said Film is not registered with the aforesaid association which control majority of the territory in Indian Film Market.

In the absence of the registration in the said territories, no cinema as a policy is ready to book the said film, As you must be aware there is another big film releasing on the same date, they are getting a lead over us and all Cinema as a policy is ready to book the said film, as you must be aware there is another big film releasing on the same date, they are getting a lead over us and all cinema's are being signed by them. You are requested to take the matter in utmost urgency and take the measure required to counter the same.

We therefore request you to urgently take action in this regard to resolve the issue of non-registration of the said film with these associations.

Yours faithfully,

For  
PVR PICTURES LIMITED

Head Distribution-Worldwide  
Date:

A

**Central Circuit Cine Association**

Admin. Office, "Film Bhawan", Near Rani Sati Mandir, Y.N. Road, Indore - 3

Date : October 15, 2010

**Confidential &  
for members only.****All Exhibitor Members  
C.C.C.A.****Re. : Picture ACTION REPLAY for C.P., C.I., Rajasthan.**

The exhibitor members are informed that the Rule 5[a] of Rules for Registration of a Picture stipulates that the picture should be registered in favour of the distributor/s for C.P., C.I. and Rajasthan prior to entering into an agreement and/ or exhibitor of the picture else for violation of the said rule 5[a] it attracts penalty of upto Rs 1 lakh as provided for under Rule 23[a].

The exhibitor members of C.P., C.I. and Rajasthan are requested to note that the picture ACTION REPLAY produced by Shri Vipul Amrutlal Shah under the banner of M/s Blockbuster Movie Entertainers, Mumbai is not eligible for registration for C.P., C.I. and Rajasthan in favour of the distributors for settlement of the following pending claims as under:

01. C.No.P-01/2010 : M/s Kasat Films, Amravati V/s
- 01. M/s Headstart Films Pvt.Ltd., Mumbai
  - 02. M/s Raksha Entertainment Pvt.Ltd., Mumbai
  - 03. Shri Vipul Amrutlal Shah, Mumbai
- Picture LONDON DREAMS for C.P. Berar

Claim for refund of unrecouped advance of Rs.39,04,704.08 + 16% Interest + CF  
Rs.19,524/- + 3% Collection charges.

02. C.No.P-02/2010 : M/s Marudhar Entertainment Pvt.Ltd., Jaipur V/s
- 01. M/s Headstart Films Pvt.Ltd., Mumbai
  - 02. M/s Raksha Entertainment Pvt.Ltd., Mumbai
  - 03. Shri Vipul Amrutlal Shah, Mumbai
- Picture LONDON DREAMS for Rajasthan

Claim for refund of unrecouped advance of Rs.66,63,705.02 + 16% Interest + CF  
Rs.33,349/- + 3% Collection charges.

In view of the same, the exhibitor members of C.P., C.I. and Rajasthan are advised to take a careful note of the circular prior to entering into agreement and/ or screening of the picture ACTION REPLAY with the concerned distributors to avoid violation of Picture Registration Rule 5[a] and the resultant penalty thereof as provided for under Rule 23[a] as stated hereinabove.

Members are requested to make a careful note of the above and act accordingly.

By order,  
For C.C.C.A.

  
Secretary