



COMPETITION COMMISSION OF INDIA

Case No. 97 of 2016

In re:

**K Sera Sera Digital Cinema Ltd.
Unit No. 101 A & 102, First Floor,
Plot No. B 17, Morya Landmark – II,
Andheri (West), Mumbai – 400053**

Informant

And

- 1. Pen India Ltd.
Pen House, Bungalow No. 3, Asha Colony,
Juhu Tara Road, Juhu, Mumbai- 400049**

Opposite Party No. 1
- 2. Bound Script Motion Pictures Pvt. Ltd.
4th Floor, Khair House,
Above Abhudyaya Bank,
Sherly Rajan Road,
Bandra West, Mumbai- 400050**

Opposite Party No. 2
- 3. UFO Moviez India Ltd.
Valuable Techno Park,
Plot No. 53/1, Road No. 7,
Opposite of Akruti Trade Center, MIDC,
Marol, Andheri East, Mumbai- 400093**

Opposite Party No. 3
- 4. Real Image Media Technologies Pvt. Ltd.
Aver Palza, B/13, 4th Floor,
Opposite of Citi Mall, Link Road,
Andheri West, Mumbai- 400053**

Opposite Party No. 4



सत्यमेव जयते



CORAM

Mr. Devender Kumar Sikri

Chairperson

Mr. S. L. Bunker

Member

Mr. Sudhir Mital

Member

Mr. U. C. Nahta

Member

Appearances:

*For the Informant: Shri Rachit Batra, Advocate; Shri Sushil Shukla, Advocate;
and Shri Babul Biswas, Advocate.*

*For OP 1: Shri Rishi Agrawala, Advocate; Shri Mayank Sapre, Advocate; and
Shri Rahul Mehta, Advocate.*

For OP 2: None

*For OP 3: Shri Gopal Jain, Sr. Advocate; Shri Karan S. Chandhiok, Advocate;
Ms. Kalyani Singh, Advocate; Ms. Chinmayee Chandra, Advocate;
Shri Aroon Menon, Advocate; Ms. Mahima Singh, Advocate; and
Shri Amit Thukral, V. P.(Legal Affairs).*

*For OP 4: Shri Bharat Budholia, Advocate; Ms. Anisha Chand, Advocate; Ms.
Smita Andrews, Advocate; and Shri Deepak Hirani, V. P.
(Corporate Affairs).*



सत्यमेव जयते



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

1. Under the provisions of Section 19(1) (a) of the Competition Act, 2002 (the 'Act'), K Sera Sera Digital Cinema Ltd. ('Informant') has filed the information in the instant matter against Pen India Ltd. ('OP 1'), Bound Script Motion Pictures Pvt. Ltd. ('OP 2'), UFO Moviez India Ltd. ('OP 3') and Real Image Media Technologies Pvt. Ltd. ('OP 4') alleging contravention of the provisions of Sections 3 and 4 of the Act.
2. As per the information, the Informant is engaged in the business of digital cinema exhibition services involving digital projection and screening of films in India through a digital technology called 'Sky Cinex Technology' having tie-up with as many as 320 cinema theaters across the country. It is stated that the technology used by the Informant is at par with the other leading digital cinema service providers across the world. OP 1 and OP 2 are stated to be the producers and presenters of the movie 'Kahaani 2' which was scheduled to be released on 2nd December, 2016 in India and worldwide. OP 3 and OP 4 are engaged in the business of digital cinema services in India. It is stated that, besides the Informant, OP 3 and OP 4, there are three other digital cinema service providers viz. United Media Works Pvt. Ltd, Interworld, and Prasad Extreme Digital Cinema Network Pvt. Ltd. providing digital cinema services to Bollywood movies in India.
3. The Informant has alleged that OP 1 and OP 2, being producers and presenters of the said movie, and OP 3 and OP 4, being the digital cinema service providers, have entered into an anti-competitive arrangement/ agreement with a view to limit/ control the release of the movie 'Kahaani 2' and has denied the same to other digital cinema service providers operating in the market. It is averred that OP 1 and OP 2 have provided the content of the movie 'Kahaani 2' to OP 3 and OP 4 alone i.e. the competitors of the Informant. As per the Informant, OP 1 had provided the contents of its earlier movies for release



सत्यमेव जयते



through the Informant's technology on several occasion in the past. However, pursuant to an anti-competitive arrangement between the OPs, OP 1 and OP 2 had refused the Informant to supply the content of the movie '*Kahaani 2*' and had also directed distributors across India not to accept movie order from the theatres associated with the Informant.

4. Further, in utter disregard to competition, the representatives of OP 1 circulated the aforesaid discriminatory dictate to various distributors, bookers and theaters stating that they would rule the digital cinema service market and kill the business of other digital cinema service providers such as the Informant. In this regard, the Informant has submitted an email dated 25.11.2016 which was sent by OP 2 through its channel partner PVR pictures, purported to inform all the distributors that the content of the said movie was not available with the four digital cinema service providers including the Informant. It is stated that the Informant had approached OP 1 and sought clarification for not providing the content of the movie '*Kahaani 2*', but OP 1 had blatantly refused to entertain the same. It is also stated that the Informant had issued a notice dated 24.11.2016 to OP 1, OP 2 and other stakeholders of the said movie, but OP 1 and OP 2 neither replied to the said notice of the Informant nor gave any justification for their anti-competitive practices.
5. It is alleged that OP 3 and OP 4 were the direct beneficiaries of the said act of OP 1 and OP 2 and they had started poaching the theaters of the Informant for installation of their technology/ equipment stating that they are the exclusive supplier of the movie '*Kahaani 2*'. It is also averred that OP 3 and OP 4 have assured the theatres that in future they would be the only exclusive service providers to big budget Bollywood movies.
6. The Informant has averred that the conduct of OP 1 and OP 2 in providing the said movie to select digital cinema service providers *i.e.* OP 3 and OP 4 amounted to unfair and illegal ousting of the Informant and other similar players from the digital cinema service market in violation of the provisions of the Act.



It is alleged that the said arrangement amongst the OPs also resulted in limiting and controlling the supply of movie to single screen theatres as compared to multiplexes which have much higher ticket prices. Further, it is averred that the aforesaid conduct of the OPs resulted in tie-in arrangement, exclusive supply agreement and refusal to deal with the Informant. The Informant has alleged that the OPs have not only entered into anti-competitive agreements in violation of the provisions of Sections 3(3) and 3(4) of the Act but also individually abused their dominant position in violation of the provisions of Section 4 of the Act.

7. Based on the above submissions, the Informant prayed the Commission to appropriately intervene in the matter for ensuring free and fair competition in the digital cinema exhibition industry. The Informant has also requested the Commission to *inter alia* impose penalties on the OPs for entering into anti-competitive agreement and direct the OPs to discontinue their present practice of refusal to deal with the Informant.
8. The Commission has perused the information and other material available on record and heard the Informant, OP 1, OP 3 and OP 4 on 28.02.2017. The Commission has also perused the month-wise numbers of cinema that are associated with the Informant's digital cinema service for the last four years along with other documents submitted by the Informant as well as the written submissions of OP 1, OP 3 and OP 4. Further, the Commission perused the email dated 23.11.2016 sent by OP 1 to its distributors and associates informing them that the contents of the movie 'Kahaani-2' was not available with the Informant/ the cinemas which are using the Informant's digital cinema service and the email dated 25.11.2016, sent by OP 2 through its channel partner PVR, informing all the distributors that the content of the movie 'Kahaani-2' was not available with the four digital cinema service providers including the Informant. The Commission observes that the Informant appears to be aggrieved by the conduct of OP 1 and OP 2 in refusing to provide the content of the movie 'Kahaani-2' to the Informant but providing the same to OP 3 and OP 4 alone in



सत्यमेव जयते



violation of the provisions of Section 3 of the Act and abuse of dominance by each of the OPs in violation of the provisions of Section 4 of the Act.

9. The Commission observes that, during the preliminary conference with the parties, OP 3 argued that there was no evidence to show any sort of anti-competitive arrangement amongst the OPs or abusive conduct by OP 3 which could attract any provisions of the Act. It was stated that the emails dated 23.11.2016 and 25.11.2016 had no relevance *vis-à-vis* OP 3. It was also argued that since OP 1/ OP 2 and OP 3 are vertically related and not engaged in similar or identical business, the provisions of Section 3(3) of the Act are not applicable with respect to them. OP 3 further contended that it has no role in distribution of the movies and that it is the complete discretion of the producers and distributors. It was highlighted that the movie 'Kahaani-2' was not even released on all UFO's platforms of OP 3. It stated that quality and security as the factors for deciding release of a movie and the Informant had caused infringement of copyright in the recent past. It was also submitted that no specific conduct was alleged to be abusive under the provisions of Section 4 of the Act. OP 4 also argued on the same lines as those of OP 3. OP 1 enclosed copies of a news article dated 11th January, 2017 carrying the news regarding an FIR filed by the film producer Viacom18 of the movie 'Force 2' against the Informant for online piracy. In the said news, it was reported that the movie 'Force 2' was released on 18th November, 2016 and the pirated version of the movie was available in full length on various websites for unauthorised download and streaming. Further, it was reported that Viacom18 had developed an internal security mechanism, in the form of unique identifiers for each copy of the said film before the digital content packages (DCPs) were distributed to the digital integrators in order to tackle the menace of online piracy and to identify the source of leak, if any. Further, it was reported that the investigations conducted by Viacom 18 revealed that pirated copies had originated from the copy that was sent to the Informant for digital integration.



सत्यमेव जयते



10. In this regard, the Commission notes that the Informant has neither refuted the allegations reported in the aforesaid news article during the oral hearing nor adduced any documents to rebut the same in their written submissions after the oral hearing. The Commission observes that the complete silence on the part of the Informant on the issue of online piracy as raised in the aforesaid news article indicates that the allegation of OP 1 is not baseless and have some substance in it. Thus, an objective business rationale to protect the commercial interest of OP 1 and OP 2 cannot be overlooked in a proceeding under the Act unless the same is shown to have exclusionary effects or is tainted with an anti-competitive objective. The Commission also observes that the movie '*Kahaani - 2*' was released on 2nd December, 2016 which is 14 days after the release of the movie '*Force 2*'. In such a situation, it would be counterintuitive for the producers of the movie '*Kahaani - 2*' to provide content of the said movie to the Informant which was released within two weeks after the aforementioned incident of piracy.

11. It is also observed that OP 1 and OP 2 are likely to have spent considerable effort and money to develop their film '*Kahaani – 2*' and have every right to decide their business strategy to release the same. The producers of the movie '*Kahaani 2*' has copyright over the content created by them and the same to be protected from any sort of leak/ piracy and they must be entitled to take suitable measures to protect their properties from being exploited illegally in the market. The Commission observes that Section 3(5)(i)(a) of the Act clearly provides that application of Section 3 shall not restrict the right of any person to impose reasonable conditions as may be necessary for protecting any of its rights conferred upon under the Copyright Act, 1957. The decision of OP 1 and OP 2 to refuse to exhibit their movies through the Informant's digital service, with whom other producers have had issues of piracy earlier, appear to be taken as a precautionary step to prevent any loss due to piracy. The Commission further observes that the producer of a movie/ content manufacturer availing the services of digital cinema providers as a consumer has the right to decide the digital cinema service providers of its choice to distribute its movies. It may be



सत्यमेव जयते



noted that the very objective of competition law is to protect the interest of consumers and the process of competition. It is not concerned with the harm to the competitors unless that also leads to harm to the consumers. Thus, the Commission is of the view that the alleged conduct of OP 1 and OP 2 in refusing to provide the content of the movie 'Kahaani-2' to the Informant does not appear to be unreasonable and anti-competitive.

12. The Commission also observed that nothing can be construed from the Agreements of OP 2 with OP 3 and OP 4 that they had any arrangement to oust similarly placed digital cinema service providers like the Informant from the market. Further, it is observed that during the period between March, 2015 to December, 2016 the number of theatres associated with the Informant has been varying between 259 to 322 and the maximum number of the theaters *i.e.* 322 theatres associated with the Informant was in the month of June, 2016. In the month of December, 2016, three new theaters joined the Informant. After looking into the number of theaters associated with the Informant for last twenty one months starting from March, 2015 to December, 2016, it is observed that the switching of theaters among the various players of digital cinema service is a common practice in the industry and it is not linked with the release of the movie 'Kahaani - 2'. Further, the Commission observed that OP 1 had produced five Bollywood movies in the year of 2016 *i.e.* *Mastizaade*, *Do Lafzon Ki Kahani*, *Wah Taj*, *Shivaay* and *Kahaani 2* in which OP 1 had availed the services of the Informant for three movies and the Informant has not asked for the content of the movie 'Wah Taj'. From the above, it appears that OP 1 has been availing the services of the Informant before the issue of piracy raised in the release of Viacom's produced movie 'Force-2'. Based on the above, the Commission is of the view that there is no substance in the allegation of the Informant that because of anti-competitive agreements with OP 3 and OP 4, OP 1 and OP 2 have refused to provide the content of the movie 'Kahaani-2' to the Informant in contravention of the provisions of Section 3 of the Act.



सत्यमेव जयते



13. On the allegation of abuse of dominance, the Commission observes that the Informant has made this allegation in a passing reference without divulging anything specific regarding the abusive conduct by any one of them. Even, the Informant has not provided any evidence to elaborate its allegation on abuse of dominance by any of the OPs. Hence, the Commission is of the view that no *prima facie* case of contravention of any of the provisions of Section 4 of the Act is made out against any of the OPs in the instant matter.
14. In the light of the above analysis, the Commission finds that no *prima facie* case of contravention of either the provisions of Sections 3 or 4 of the Act is made out against any of the OPs in the instant matter. Accordingly, the matter is closed under the provisions of Section 26(2) of the Act.
15. The Secretary is directed to inform all concerned accordingly.

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

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

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

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

New Delhi

Date: 21.06.2017