

**BEFORE THE**  
**COMPETITION COMMISSION OF INDIA**

**NEW DELHI**

**[Case No. 17/2011]**

Dated: 24.4.2012

**Mrs. Manju Tharad, Proprietress**

**M/s. Manoranjan Films, Kolkata**

**- Informant**

**1. Eastern India Motion Picture Association (EIMPA), Kolkata**

**2. The Censor Board of Film Certification, Kolkata**

**- Opposite Parties**

**Order**

The present matter relates to an information under section 19 of the Competition Act, 2002 (hereinafter referred to as the Act) filed on 20.04.2011 by Mrs. Manju Tharad, Proprietress of M/s. Manjoranjan Films (hereinafter referred to as the "Informant") against Eastern India Motion Pictures Association (hereinafter referred to as "EIMPA/ Opposite Party No. 1") and Central Board of Film Certification, Kolkata (hereinafter referred to as "CBFC/ Opposite Party No. 2") alleging that the Opposite Parties are abusing their dominant position in violation of the provisions of the Act.



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

2.1 The informant is engaged in the business of distribution of cinematographic films and happens to be a member of Eastern India Motion Pictures Association (EIMPA), Kolkata.

2.2 The informant signed a MoU on 24.08.2010 and thereafter executed a License Agreement on 28.12.2010 with M/s Skywings International Limited, producer of a cinematograph film "Golapi Akhon Bilate" in Bengali language, for accruing the rights for distribution, video, satellite cable and for dubbing the said film in any of the regional languages.

2.3 The informant has submitted that the MoU and execution of License Agreement with M/s. Skywings International Limited as above was as per the rules and regulations prescribed by the Government of India in this regard. As a member of EIMPA, the informant applied for registration of the title of the said film in the prescribed form for distribution, exhibition and video, satellite cable transmission in the territory under the control of the association. Based on the declaration submitted by the informant on 15<sup>th</sup> September, 2010 to the effect that the film is neither a joint venture film with foreign countries nor a dubbed film, EIMPA registered the film on 01.10.2010.

2.4 The informant has further submitted that as per the terms and conditions of CBFC, title registration with any association is not mandatory for foreign films. However, as per the terms of the First



Schedule of the Cinematograph (Certification) Rules 1983, CBFC usually demand such registration certificate in case of dubbed films produced in India.

2.5 According to the informant, she submitted the registration certificate issued by EIMPA to CBFC while applying for Censor Certificate before releasing the said film. EIMPA issued a show cause notice to the informant on 10.03.2011 stating that she had submitted a wrong declaration in the application for registration of the title with regards to its status as a producer member.

2.6 Subsequently, EIMPA deregistered the said Title on 25.03.2011 and thereafter informed its decision to CBFC. Based on the information of EIMPA regarding de-recognition of the said Title, CBFC issued a show cause notice to the informant on 05.04.2011 as to why the certificate issued by it should not be cancelled as the title registration had already been cancelled.

2.7 The informant has further submitted that it applied to EIMPA for the provisional title registration of the said film as an applicant and not as a producer of the film as it did before CBFC. Therefore, it had not submitted wrong declaration to EIMPA.

2.8 The informant has alleged that in abuse of its dominant position, EIMPA does not allow registration of regional or national languages



films which are dubbed in Bengali language, unless the films are produced in language of the states where it operates. According to the informant, this attitude of EIMPA is unjust and unfair and because of this attitude, the informant is not allowed to do a fair business.

2.9 It has also been alleged that by deregistering the said title, EIMPA and CBFC have denied the market access to the informant. The act of EIMPA to direct the exhibitor members not to screen the said film, if released, is an unfair trade practice.

2.10 The Informant also submitted an application for order under section 33 of the Act seeking interim relief for issuance of directions to CBFC and EIMPA to allow the film "Golapi Akhon Bilate" to be released as certified.

3. The Commission considered the information in its ordinary meeting dated 05.05.2011 and after forming an opinion that a prima facie case exists in the matter, passed an order under section 26(1) directing the DG to investigate the matter and submit his report to the Commission. The Commission, however, decided not to pass any interim order under section 33 of the Act.

#### **4. Investigation by Director General**

4.1. The DG after conducting investigation submitted his report dated 14.09.2011 to the Commission. While conducting investigation, the



DG collected information from the informant, the Opposite Parties and various primary and secondary sources. DG also elicited information from the office bearers of EIMPA & CBFC, Kolkata.

#### 4.2. The findings of DG, in brief , are as under;

4.2.1 After conducting his investigation, DG concluded that the rules of EIMPA relating to title registration of films were not restrictive in nature since a producer was free to get the registration of title of his/her film from any of producers' associations operating in India. Even regional language films may be registered with any of the producers' associations, where the application is made before CBFC for certification.

4.2.2 After considering the provisions of Cinematograph (Certification) Rules, 1983, and the facts gathered during the course of investigation, DG also concluded that the conduct of CBFC in the matter was not anti-competitive within the meaning of the provisions of the Act. Further, DG has also mentioned that by asking for the title registration from producers' associations, CBFC does not impose any restriction on the producers or create any entry barrier.

4.2.3 Considering the facts of the case and reply received from CBFC, DG submitted that the informant being importer of the said film was not required to apply for the registration of title of the film, since the film was neither produced in India nor produced by the informant. There is



no such condition laid down in the Cinematograph (Certification) Rules, 1983 for the imported film. DG in his report brought out that Shri Nawal Kishor Tharad, representative of the informant did not give any reason as to why the informant applied for the title registration with EIMPA, when there was no such requirement.

4.2.4 DG also found during investigation that at the time of registration for distribution of films with EIMPA, the informant mentioned the name of M/s Manoranjan Films as the producer of the film. However, in the application for certification filed with CBFC, the name of Shri Syed Wahidue Hassan was mentioned as the producer.

4.2.5 On the basis of reply of the informant to CBFC, DG submitted that the informant had voluntarily applied for the title registration and not at the behest of CBFC and thus informant was not compelled by CBFC for title registration documents. As regards contravention of the provision of the Act, DG concluded that the conduct of Opposite Parties in issuing show causes notice to the informant for furnishing false information or deregistering the title of the film could not be termed as restrictive, since the informant had wrongly applied for the title registration and also furnished wrong information in distribution registration form.

4.2.6 When the informant was requested by the DG to furnish evidence as regards activity to restrict or stop the release of said film, the informant could not submit any material evidence. On the basis of information collected and replies received in course of proceedings, DG



found that the said film was released in the territory of EIMPA and also had run its course. No restriction on release of the film was imposed either by CBFC or by EIMPA.

4.2.7 DG also submitted that no written directions were issued by the EIMPA to stop the release of film and the alleged verbal directions of the association were also not supported by the informant with any evidence. According to DG, EIMPA did not cancel the registration of the informant as distributor of the film. The informant also could not provide details of any business loss suffered by him because of the actions of Opposite Parties.

4.2.8 In respect of the allegations of not allowing registration of a dubbed film in Bengali language, DG submitted that EIMPA has framed certain rules relating to the dubbing of Hindi and some other Indian language films in Bengali. The clause 12 of Registration rules framed by EIMPA states as under:-

*“No application for registration of distribution rights in respect of any picture which is dubbed in any language of Eastern India, namely Bengali, Assamese, Oriya, Manipuri, Bhojpuri & Nepalee etc. originally produced outside Eastern Circuit in other languages shall be entertained by the Association.*

*Provided that the distribution rights of such dubbed picture which previously was registered with Association but subsequently expired by efflux of time shall be entertained for registration of*



their Re-issue rights subject of the membership of the producer/assignor.”

4.2.9 According to DG, the above rules restrict the free and fair business of films in the territory of EIMPA. These rules not only restrict the producers and distributors of the films to carry out film business but also deny the opportunity to the film goers to watch their favorite films in their own language. DG, therefore, has concluded that EIMPA is violating the provisions of the Act through the aforesaid provisions in the rules relating to dubbing of films in Bengali language.

4.2.10 On a perusal of bye-laws of EIMPA, DG has submitted that they provide for registration of films for the distribution in the territory of EIMPA. A distributor after obtaining the distribution rights of a film from a producer for distribution in the territory of EIMPA has to get the film registered with EIMPA.

4.2.11 DG has brought out that in course of investigation in an earlier case no. 25 of 2010 also, in which the EIMPA was one of the Opposite Parties, it was found that as per the bye-laws of the association, it was mandatory for every distributor to register each film with it before releasing the film in the theaters. If a film was not registered with the Association of each circuit, the exhibitors would not release the film in theaters as they might face suspension or penalty. According to DG, the





statement of Mr. Bijay Kalyani, President EIMPA Kolkata recorded in case no. 25 of 2010 corroborates the aforesaid findings.

4.2.12 DG has also submitted that there are other bye-laws, rules framed by EIMPA which are restrictive and anti-competitive in nature. As per the DG, the anti-competitive provisions in the bye-laws and rules of EIMPA are as under:-

- (i) Restricting its members to deal with non-members.
- (ii) Making compulsory the registration of each film before release in their territory.
- (iii) For registration of a title, membership of EIMPA is compulsory.
- (iv) Clause 12 of Registration rules regarding registration of dubbed films according to which dubbing of films in Bengali language are permitted only if the originals are produced in any of the languages specified in bye-laws.

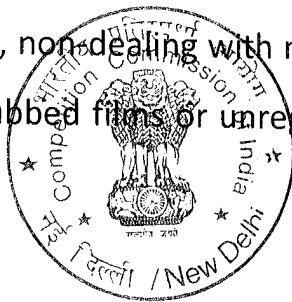
4.2.13 On the basis of foregoing, DG has concluded that the aforesaid rules and regulations of EIMPA are in violation of provisions of section 3(3) (b) of the Act. According to DG, these rules and regulations imposed by EIMPA on its members result in foreclosure of competition. The association has collectively decided not to deal with a person who does not agree with its directions. According to DG, the rules, regulations and bye-laws framed by an association are deemed to be an arrangement between the members of the association. Further, the bye-laws of EIMPA clearly show that the association is exercising its authority to regulate



entries and exits in the market and have the power to impose heavy penalties for re-admission of the members.

4.2.14 In order to find out effect of the rules and regulations of EIMPA on competition in the market, DG also analyzed various factors mentioned in section 19(3) of the Act. DG has concluded that EIMPA is creating barriers to new entrants in the market through its memorandum and articles of association and bye laws by which it is mandatory for all its existing members not to deal with any person who is not affiliated with the association or with the films which are not registered with the association. EIMPA is also driving existing competitors out of the market by way of issuing circulars/letters to the producers/distributors for violating the rules or terms of declaration sign by them at the time of registration of the film. The members of EIMPA who are producers, distributors, sub-distributors & exhibitors are not allowed to deal with non-members which results into foreclosure of competition. The imposition of restrictions by EIMPA on the release of films also impacts the consumers.

4.2.15 DG has also concluded that EIMPA imposes conditions upon its members not to deal with non-members and with films which are not registered with it. The provisions of EIMPA relating to compulsory registration of every film, non-dealing with non-members and preventing the release of Bengali dubbed films or unregistered films results into the



exclusive distribution agreement in violation of provisions of section 3(4) of the Act.

5. Having considered the report of investigation of DG, the Commission forwarded the same to the parties for filing their replies/objections, if any. The replies/objections received from various parties on various dates are as under:

### **5.1. Objections to the report of DG on behalf of EIMPA**

5.1.1 EIMPA in its reply has submitted that as per the report of DG, the conduct of EIMPA of de-registering the title of the film is not found to be in contravention of the provisions of the Act. Similarly the action of CBFC of issuing show cause notice to the informant has also not found to be in violation of the provisions of the Act. It has been submitted that there is no evidence that either CBFC or EIMPA has stopped or affected the release of the said film.

5.1.2 With reference to the alleged restriction imposed by it on its members not to deal with non-members, EIMPA has brought out that in the year 1955, all the members (General Members) of EIMPA had passed resolution that they would do business only with members of EIMPA or members of such Associations, who were the members of Film Federation of India. The said resolution worked for 30 years but after that members started violating that resolution. It also stopped taking action against members, who were/are doing business with non-members for last 10 years. At present 50% of the exhibitors are not members of EIMPA.



Further, 90% of multiplexes are also not its members. The total number of active film distributors who are its members does not cross double digit.

5.1.3 EIMPA has submitted that its members in their own interests refrain from dealing with non-members over whom the association has no control and in case of any dispute or fraud, the members of the association would be left in the lurch whereas dealing with members can provide them with the safeguards against such wrongdoing. The association insists upon registration of a film with it before its release in the territory of Eastern India and requests its members not to do business in respect of any film not so registered only to protect the interests of its unsuspecting members.

5.1.4 According to EIMPA, the title Registration of a film is granted only to avoid two separate films being produced with the same name or even with the identical or nearly identical storyline. Title registration, once granted, remains in force for one year only. In view of the aforesaid and by its very nature scope and object only a producer member of the EIMPA is entitled to apply for and obtain registration of title of a film in contemplation of production. The distributor and exhibitor members who are not involved in production of film are for obvious reasons not entitled to apply for registration of title.

5.1.5 According to EIMPA, it admits four class of members, classified as producer members (engaged in production of films), distributor members (engaged in distribution of films for exhibition), exhibitor members (engaged in exhibition of films in cinema theatres) and associate members

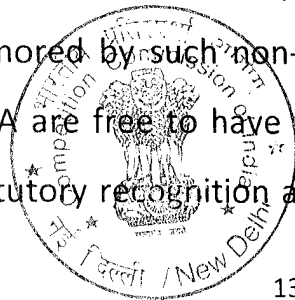


(who are otherwise connected with film trade or business). Each class of members has independent section (i.e., Producer Section, Distributor Section, etc.) and the Executive Committee of the EIMPA consisting of members from all classes is the Apex Body which controls, supervises and regulates the functioning of the association.

5.1.6 EIMPA has submitted that to protect the interests of its members it imposes certain limitations in accordance with its bye-laws on its members against doing business with non-members. However, such limitations are no longer being enforced. Further, anyone who fulfills the prescribed criterion (as stipulated in the Articles of Association) can become a member of the EIMPA of any particular class to which he belongs upon payment of requisite fees (which is very nominal). The process of becoming a member of EIMPA is very simple and is open to all.

5.1.7 According to EIMPA, films are being exhibited without the distribution rights registered with it and lots of time films are also released without getting their distribution rights registered with the association. The association can only permit its producer members to have the film title registered with it before commencing actual production work.

5.1.8 It has further been submitted that EIMPA cannot entertain any application from non-members for registration of title because it wields no control on non-members and any direction that may be passed by it may simply be ignored by such non-members. Both members and non-members of EIMPA are free to have title registered under the copyright law which has statutory recognition and as such non-members are not in



any way prejudiced for being unable to have the title registered with the EIMPA.

5.1.9 With reference to the alleged anti-competitive provisions contained in clause 12 of the Registration rules regarding registration of dubbed films, EIMPA has stated that in respect of dubbing of films it follows the policy for the purpose of protection of Bengali films.

5.1.10 According to EIMPA, films produced in Hindi and South Indian languages have a much wider market share because of higher number of viewers. As a result these films can absorb higher production cost and provide outdoor shootings at exotic locations both in India and abroad, engage services of various technical personnel and also use animation and other latest technologies which a regional film like Bengali film cannot afford. Thus, to protect the Bengali film industry, EIMPA does not allow Bengali dubbed films from Hindi and South Indian languages.

5.1.11 The reply filed on behalf of the President EIMPA was identical with the reply filed on behalf of the association. The Hony. Treasurer, EIMPA, Shri Ram Shankar Khemka, and Hony. Vice President EIMPA, Shri Bijay Khemka in their replies also submitted that the reply filed by the association should be considered as their replies.

#### **Reply by Central Board of Film Certification (CBFC)**

5.1.12 The Opposite Party No. 2, CBFC also filed its reply dated 08.12.2011 and submitted that it has already provided the relevant rules and

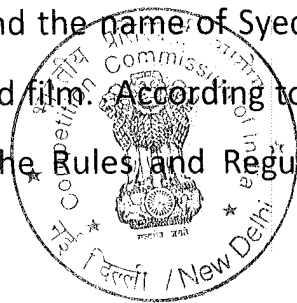


provisions as desired by the Commission. It has not offered comments on the findings of DG.

## 5.2 Reply of the Informant

5.2.1 The informant in her reply dated 25.10.2011 submitted that it has been wrongfully alleged that the informant defrauded EIMPA by claiming that the film "Golapi Akhon Bilate" was indigenous film (not imported) while applying for title registration in respect of the said film. The informant has further stated that CBFC ought not to have taken cognizance of the letter of the EIMPA requesting it to cancel the Censor certificate in respect of the said film and issue show cause notice on the basis of said letter of the EIMPA to the informant.

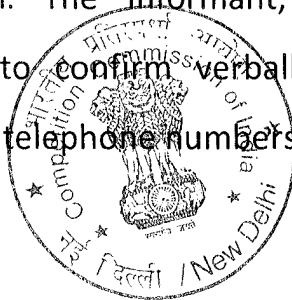
5.2.2 The Informant also submitted a photo copy of the Licence Agreement dated 16.12.2010 to say that Syed Wahidue Hassan, producer of the said film had granted License in favour of the informant to act as producer of the said film for Indian Territory and therefore authorized the Licensee i.e. the informant, to apply for censor and deal as producer in India. As per informant, she never had any intention to defraud or suppress material facts as would be established from the fact that in the application for Censor Certificate she described herself as the importer of the said film in India and the name of Syed Wahidue Hassan was given as the producer of the said film. According to the informant, it has not done anything contrary to the Rules and Regulations attached to the Censor Certificate.



5.2.3 According to the informant, since there was no separate prescribed form of the title Registration in respect of imported films, she was instructed by the officials to use the available form for title registration and to fill it accordingly which was done by the informant.

5.2.4 The informant also submitted that the present body of the EIMPA is biased against most of its members and therefore the suffering members-distributors, member-exhibitors, member-producers have lost their faith in EIMPA and some of its members have in recent past established a parallel association in the name of Distributor Committee and Film Makers Combine. The Informant also submitted that the purported action taken by the EIMPA to cancel the registration title has been followed at the behest of some of the members with vested interest.

5.2.5 The Informant further submitted that it was required by the Commission to furnish details or evidence of activity to restrict or stop the release of film "Golapi Akhon Bilate" and to furnish evidences or details like names of exhibitors to whom verbal direction was issued. In this context, the Informant replied that it had approached the respective exhibitors to give the information in writings with regard to the conduct of the officials of the EIMPA, but, they declined to give anything in writing before the Commission. The Informant, however, stated that the exhibitors were ready to confirm verbally over telephone and also furnished the names and telephone numbers of such exhibitors.





## **Decision of the Commission**

6. On a careful consideration of the information, the report of DG, submissions of various parties and other materials available on record, the Commission observes that the following issues arise for determination in the present matter:-

**Issue 1: Whether EIMPA and CBFC are 'enterprise' within the meaning of section 2(h) of the Act and if the answer to this is in affirmative, can their acts and conduct be said to be violative of provisions of section 4 of the Act as has been alleged by the Informant ?**

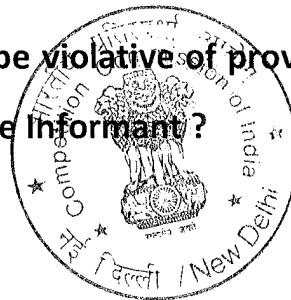
**Issue 2: Whether the rules and regulations, acts and conduct of EIMPA and CBFC are subject matter of examination under section 3 of the Act?**

**Issue 3: Whether the rules, regulations and byelaws of the Opposite Parties are anti-competitive?**

**Issue 4: Whether the act and conduct of the Opposite Parties in respect of the film "Golapi Akhon Bilate" is in contravention of the provisions of the Act?**

### **Determination**

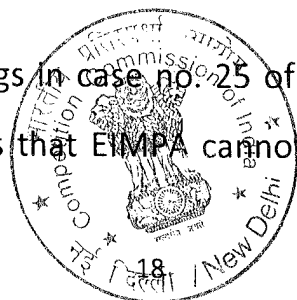
**Issue 1: Whether EIMPA and CBFC are 'enterprise' within the meaning of section 2(h) of the Act and if the answer to this is in affirmative, can their acts and conduct be said to be violative of provisions of section 4 of the Act as has been alleged by the Informant ?**



6.1 The Commission notes that the aforesaid issue has been discussed in detail in the order dated 16.02.2012 passed in case no. 25 of 2010 involving EIMPA and other associations. In the said order, it was observed that as per the provisions of section 2(h) of the Act, to qualify as an enterprise, it is required that any person or department of the Government is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries.

6.2 The Commission after examining the provisions of the Act has concluded while passing order dated 16.02.2012 in case no. 25 of 2010 that EIMPA or other film associations as named in those cases do not qualify to be 'enterprise' since they are not engaged in any activity enumerated in section 2(h) of the Act. The Commission has also held in that case that once an association is not 'enterprise' in terms of section 2(h), its conduct also cannot be examined under section 4 of the Act since it is only the conduct of an 'enterprise' or a group of enterprise as defined in section 5 of the Act, which is subject matter of examination as is apparent from wordings of section 4 (1) which states that 'No enterprise or group shall abuse its dominant position'.

6.3 Considering the findings in case no. 25 of 2010, in the instant matter also, the Commission holds that EIMPA cannot be held as an 'enterprise'

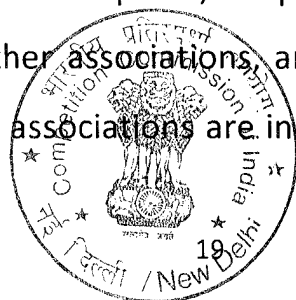


within the meaning of section 2(h) and consequently its conduct, rules and regulations cannot be a subject matter of examination under section 4 of the Act.

6.4 The Commission also observes that CBFC is a statutory body formed under the Cinematograph Act, 1952 and functions as per the said Act and the Cinematograph (Certification) Rules, 1983. The Board works under the Ministry of Information & Broadcasting, Government of India. Every film desirous of public exhibition in India is required to take CBFC certificate before its release. Application of examination of film is submitted and examined as per relevant rules. On the basis of the facts involved in the matter and functions attributable to CBFC, the Commission holds that CBFC is not engaged in the activities mentioned in section 2(h) of the Act. Accordingly, CBFC also cannot be held as an 'enterprise' within the meaning of section 2(h) and consequently, its conduct too cannot be examined within the meaning of section 4 of the Act.

**Issue 2: Whether the rules and regulations, acts and conduct of EIMPA and CBFC are subject matter of examination under section 3 of the Act?**

6.5 The Commission has discussed this aspect also in detail in case no. 25 of 2010. In that order it has inter-alia been concluded that even though the associations themselves are not engaged in any activity which enables them to be termed as an 'enterprise', the practices carried on, or decisions taken by EIMPA and other associations, are covered within the scope of section 3(3) since these associations are in fact associations of enterprises



(constituent members) who in turn are engaged in production, distribution and exhibition of films. EIMPA is taking decisions relating to production or distribution or exhibition in the interest of the members who are engaged in similar or identical business of production of films or distribution or exhibition.

6.6 On the lines of order dated 6.02.2012 passed in case no. 25 of 2010, the Commission holds that the rules, regulations and byelaws of EIMPA which are in essence forms of various trade practices carried on by the association and are manifestation of collective decisions of its constituent members is liable for examination under section 3(3) of the Act.

6.7 The Commission while passing order in no. 25 of 2010 also observed that there was no vertical agreement between associations and the informants in terms of provisions of section 3(4) since the associations and the informants were not found to be part of production or supply chain in respect of production or supply of any goods or service.

6.8 The Commission, accordingly holds, that while act and conduct, rules, regulations and byelaws of EIMPA in the instant case may be examined under section 3(3) of the Act, there is no case of examination under the provisions of section 3(4), since there is no vertical agreement between EIMPA or the informant as part of any production or supply chain in respect of production or supply of any goods or service in the instant matter.

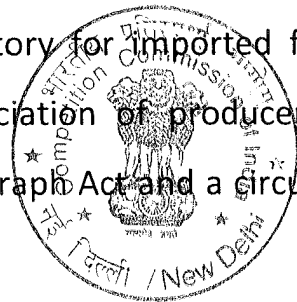


6.9 As regards CBFC, the Commission observes that neither there is existence of an agreement between the informant and CBFC or between EIMPA and CBFC in the whole matter. As brought out above, its role was primarily concerned with the grant of Censor Certificate. Therefore, its conduct cannot be said to be subject matter of examination under section 3(3) or section 3(4) of the Act since there is no material evidence of existence of either a horizontal agreement or a vertical agreement concerning the said conduct.

**Issue 3: Whether the rules, regulations and byelaws of the Opposite Parties have been found to be anti-competitive?**

6.10 The Commission observes that CBFC is a statutory body formed under the Cinematograph Act, 1952 and functions as per the said Act and the Cinematograph (Certification) Rules, 1983. The Board works under the Ministry of Information & Broadcasting, Government of India. Every film desirous of public exhibition in India is required to take CBFC certificate before its release.

6.11 As regards issuance of Censor Certificate issued by CBFC, it has been stated that in case of domestically produced feature films, title registration from Producers' Association is required to avoid duplication of title for simultaneous release of films or release of films within a very short time. However, it is not mandatory for imported feature films. Copy of title registration from an association of producers is required, as per the provision of the Cinematograph Act and a circular of CBFC, Mumbai dated



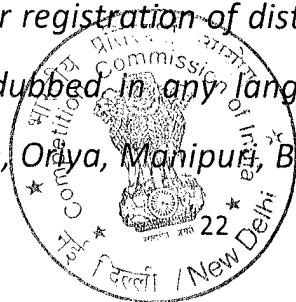
09.06.1997 wherein it was directed to obtain the details of association/  
council/chamber with whom the film title was registered.

6.12 In light of foregoing, the Commission holds that the rules of CBFC regarding title registration certificate from the person desirous of a Censor Certificate from it cannot be held in contravention of provisions of the Act.

6.13 As far as rules framed by EIMPA are concerned, the Commission has examined the same while deciding case no. 25 of 2010. The Commission in case no. 25 of 2010 inter-alia had observed that rules of EIMPA and other associations restricting their members not to deal with non-members, making compulsory the registration of each film before release in their territories, restrictions regarding unfair holdback period for exploitation of satellite, Video, DTH and other rights and act and rules regarding penalizing members who do not follow the dictates of the association are anti-competitive and violative of provisions of section 3(3) (b) of the Act.

6.14 The Commission finds that in addition to aforesaid, in the instant matter it has come to notice that EIMPA has framed certain rules relating to the dubbing of Hindi and some other Indian language films in Bengali. The clause 12 of Registration rules framed by EIMPA states as under:-

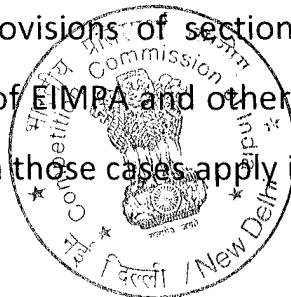
*"No application for registration of distribution rights in respect of any picture which is dubbed in any language of Eastern India, namely Bengali, Assamese, Oriya, Manipuri, Bhojpuri & Nepalee etc. originally*



*produced outside Eastern Circuit in other languages shall be entertained by the Association. Provided that the distribution rights of such dubbed picture which previously was registered with Association but subsequently expired by efflux of time shall be entertained for registration of their Re-issue rights subject of the membership of the producer/assignor."*

6.15 The Commission observes that the aforesaid rule is restrictive and anti-competitive in nature since it imposes restrictions on the free and unrestricted distribution of films of languages other than prescribed in the rules of EIMPA in violation of provisions of section 3(3) (b) of the Act. This rule not only restricts the producers and distributors of the films produced in other languages to screen their films in Eastern India but also deny the opportunity to the consumers to watch other language films produced in other parts of the country. The rule inhibits free and fair competition among the films produced in languages of Eastern India and films produced in the other languages in the territories under the control of EIMPA.

6.16 The Commission while passing order dated 16.02.2012 in case no. 25 of 2010 has discussed in length as to how the competition is adversely affected in terms of provisions of section 19(3) of the Act due to the decisions and practices of EIMPA and other associations. The Commission holds that the findings in those cases apply in the instant matter as well.



**Issue 4: Whether the act and conduct of the Opposite Parties in respect of the film “Golapi Akhon Bilate” is in contravention of the provisions of the Act?**

6.17 On the basis of facts on record, the Commission notes that the informant in this case, Mrs. Manju Tharad, Proprietor of M/s. Manjoranjnan Films is engaged in business of distribution of cinematographic films and is a member of EIMPA.

6.18 The Informant signed a MoU on 24.08.2010 and thereafter executed a License Agreement on 28.12.2010 with M/s. Skywings International Limited, producer of the Bengali cinematograph film “Golapi Akhon Bilate” for accruing the rights of distribution, exhibition, video, satellite cable and for dubbing in any regional languages of the said film. As a member of EIMPA, the informant applied for registration of the title of the said film with EIMPA in the prescribed form for distribution, exhibition, video, satellite cable transmission in the territory of EIMPA. Based on the declaration submitted by the informant on 15<sup>th</sup> September, 2010 that the film is neither a joint venture film with foreign countries nor a dubbed film, EIMPA registered the film on 01.10.2010.

6.19 The informant in course of proceedings also stated that it had submitted registration certificate issued by EIMPA before CBFC while applying for Censor Certificate before releasing the said film. Subsequently, EIMPA issued a show cause notice to it on 10.03.2011 stating that it had submitted a wrong declaration in the application for





registration of the title with regards to its status as a producer member.

EIMPA, thereafter, de-registered the said title on 25.03.2011 and also informed its decision to CBFC. Based on the information of EIMPA regarding de-recognition of the said title, CBFC issued a notice to the informant on 05.04.2011 asking to show cause as to why the certificate issued should not be cancelled as the title registration had already been cancelled by EIMPA.

6.20 CBFC in its replies stated that the film "Golapi Akhon Bilate" was released and run its course in April, 2011 and no action was taken by it against the informant because she had defrauded EIMPA and not CBFC by claiming that the said film was an indigenous film, whereas as per its record it was an imported film.

6.21 The Commission after considering the provisions of Cinematograph (Certification) Rules, 1983, and the facts gathered during the course of investigation, also observes that by asking for the title registration from the producers' associations, CBFC does not impose any restriction on the producers or creates any entry barrier. Therefore, it cannot be said that the conduct of CBFC is anti-competitive within the meaning of the provisions of the Act.

6.22 The Commission also observes that the informant being importer of the said film was not required to apply for the registration of title of the film, since the film was neither produced in India nor produced by the Informant as per the Cinematograph (Certification) Rules, 1983. The



Commission also notes that during investigation before DG, Shri Nawal Kishor Tharad representative of the informant did not give any reason as to why the informant had applied for the title registration with EIMPA, when there was no such requirement.

6.23 The Commission further notes that no compulsion was made by CBFC regarding submission of title registration documents in the instant case. Thus, the conduct of Opposite Parties by issuing show causes notice to the informant or deregistering the title of the film cannot be termed as restrictive. The film was released in West Bengal and no restriction on release of the film was imposed either by CBFC or EIMPA. The informant could not submit any evidence to suggest that either CBFC or EIMPA imposed any restriction on the release of said film except for stating that there were verbal instructions to the exhibitors not to exhibit the said film. However, the alleged verbal directions of EIMPA were also not supported by the informant with evidence. Further, as reported by the DG, EIMPA did not cancel the registration of the informant as distributor of the film. The informant also could not provide details of any business loss suffered by her because of the actions of the Opposite Parties.

6.24 In view of foregoing, the Commission holds that the act and conduct of both the Opposite Parties in the instant matter cannot be held in contravention of the provisions of the Act.



## 7. Order under Section 27 of the Act

7.1. The Commission has found rules of EIMPA as violative of section 3(3)(b) read with section 3(1) of the Act since they limit and control the distribution and exhibition of films in its areas of operation. The rules of the association are anti-competitive and are against the spirit of free competition in the market. However, since penalty has already been imposed on EIMPA vide order dated 16.02.2012 in case no. 25 of 2010, the Commission deems it fit not to impose further penalty on the association. As regards the conduct of the executive members of the association, as was held in case no. 25 of 2010, proceedings shall be taken up separately.

7.2. The Commission had also passed 'cease and desist' order in case no. 25 of 2010 asking EIMPA and other associations to dispense with rules which are anti-competitive.

7.3. In addition to directions issued in those cases, the Commission directs that existing provisions under clause 12 of the existing rules relating to registration of distribution rights in case of dubbed films should be dispensed with and EIMPA should 'cease and desist' from imposing restrictions on distribution and exhibition of films produced and dubbed in any language in its areas of operations.

8. The Commission decides accordingly



9. Secretary is directed to inform the parties as per regulations.

Sd/-  
Member (GG)

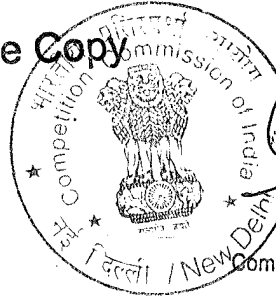
Sd/-  
Member (G)

Sd/-  
Member (AG)

Sd/-  
Member (T)

Sd/-  
Chairperson

Certified True Copy



*S. P. Gahlaut*  
24/04/2019  
S. P. GAHLAUT  
Assistant Director  
Competition Commission of India  
New Delhi