



COMPETITION COMMISSION OF INDIA

Case No. 65 of 2017

In Re:

**Sarv Prakash Developers
9/633, Moti-Katra Road,
Agra, Uttar Pradesh – 282 003.**

Informant

And

1. Phantom Films

**Millat Nagar Road, Yamuna Nagar,
Andheri-West, Mumbai,
Maharashtra – 400053.**

Opposite Party No. 1

2. Zee & Essel Group

**A Wing, 18th Floor, Marathon Futures,
N M Joshi Marg, Lower Parel (West), Mumbai,
Maharashtra – 400 013.**

Opposite Party No. 2

3. Fox Star India

**Urmi Estate, Ganpatrao Kadam Marg,
Lower Parel (West), Mumbai,
Maharashtra – 400 013.**

Opposite Party No. 3

CORAM

**Mr. Devender Kumar Sikri
Chairperson**

**Mr. Augustine Peter
Member**



Mr. U. C. Nahta
Member

Mr. Justice G. P. Mittal
Member

Appearance: Ms. Gauri Chaturvedi, Advocate for the Informant.

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

1. The present information has been filed by M/s Sarv Prakash Developers (hereinafter referred to as the “**Informant**”) under Section 19(1) (a) of the Competition Act, 2002 (hereinafter referred to as “**the Act**”) against Phantom Films (hereinafter referred to as “**Opposite Party No. 1/OP-1**”), Zee & Essel Group (hereinafter referred to as “**Opposite Party No. 2/OP-2**”) and Fox Star India (hereinafter referred to as “**Opposite Party No. 3/OP-3**”) alleging contravention of the provisions of Section 3 of the Act. It may be noted that the names of the Opposite Parties have been listed in the cause title of the present order as have been mentioned in the information received and some of them may or may not be legal entities.
2. The Informant is a partnership firm which is the owner of Sarv SRK Mall at Agra in Uttar Pradesh which houses a multiplex admeasuring 3000 sq. ft. consisting of three auditoriums having 1075 seats. The Opposite Parties are cinematographic film producers/ distributors with presence all over India including in western Uttar Pradesh (UP) circuit/ territory.
3. It is stated in the information that the Informant was granted sanction by the Competent Authority (District Magistrate, Agra) to construct a mall housing a multiplex on the express condition that there would be concurrent operation of the mall and the multiplex and in case of non-operation of the multiplex, the



sanction would be cancelled for the whole premises. Therefore, the Informant started operating three screens in the said premises.

4. After running the multiplex for some time, the Informant leased the same to one SRS Ltd., Faridabad for future operations *vide* lease deed dated 21.01.2014. Addendum dated 02.02.2017 and 26.07.2017 to the said lease deed were also signed by the Informant and SRS Ltd. for the said multiplex.
5. It is averred by the Informant that SRS Ltd. was not maintaining the multiplex in accordance with the agreement entered into. Due to persistent breaches, the Informant was about to terminate the said lease deed; however, by an agreement dated 25.04.2017, SRS Ltd. agreed to remedy all the breaches and rectify all the defects in the running of the multiplex. But even after this agreement, required steps were not taken by SRS Ltd. due to which a fire incident occurred in the multiplex on 04.06.2017.
6. Due to the fire incident, a joint inspection of the mall was conducted by the Competent Authority (District Magistrate, Agra) on 04.10.2017, wherein violations of various Cinematographic Rules were found. Consequently, the District Magistrate, Agra served a Show-Cause Notice dated 16.10.2017 to the Informant. The said Show-Cause Notice was forwarded on 17.10.2017 to SRS Ltd. by the Informant for taking remedial actions. After not receiving any response from SRS Ltd., the Informant replied to the said Show-Cause Notice on 27.10.2017. The District Magistrate, Agra, *vide* a letter dated 02.11.2017 allowed the Informant to carry out the required repairs and rectify breaches within 45 days and permitted the Informant to run the multiplex from 09.11.2017.
7. In the meanwhile, the lease deed signed by SRS Ltd. and the Informant was terminated *vide* a Legal Notice dated 27.10.2017 as SRS Ltd. had failed to take any steps to remedy the violations set out in the Show Cause Notice dated 16.10.2017. The possession of the multiplex was subsequently handed over by SRS Ltd. to the Informant.



सत्यमेव जयते



8. It is stated by the Informant that to prevent violation of the Sanction Order which mandated concurrent operation of the mall and the multiplex, the Informant appointed an agent Shri Sanjay Ghai, for procuring exhibition/ display rights of certain movies from the OPs for exhibition in its multiplex. The Informant's agent subsequently approached OP-1, OP-2 and OP-3 for procuring display rights of certain movies. OP-3 though initially gave rights to the Informant for few days for a movie titled '*Judwa 2*'; but later on OP-3 along with OP-1 and OP-2 refused to give any newly released movie's exhibition rights to the Informant. Reasons for the same were similar *i.e.* queries relating to the right of the Informant to operate the cinema/multiplex were raised.
9. It is alleged that the OPs are acting in a collusive manner at the behest of SRS Ltd., which can be seen from the coordinated and parallel conduct of refusing the exhibition rights to the Informant. It is further alleged that the aforementioned conduct of the OPs indicates an understanding between them to limit and control the supply of exhibition of movies in the cinema screens of the Informant thus, contravening the provisions of Section 3(3)(b) read with Section 3(1) of the Act.
10. It is further alleged that the OPs are stalling the exhibition of movies in the Informant's theatre by taking undue advantage of the dispute between SRS Ltd. and the Informant. The conduct of non-supply of movies amounts to refusal to deal and is in violation of Section 3(4)(d) of the Act.
11. The Commission considered the information in its ordinary meeting held on 27.12.2017. After perusing the information available in public domain, the Commission observed that a movie titled '*Tiger Zinda Hai*' was being exhibited in the multiplex owned by the Informant. Therefore, the Commission decided to have a preliminary conference with the Informant to clarify the above mentioned allegations stated in the information.



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12. During the preliminary conference, the learned counsel for the Informant appeared and did not press upon the allegations made in the information and on the contrary requested to withdraw the information stating that the Informant's theatre is exhibiting movies like '*Padmavat*' and is now not facing any difficulties as alleged in the information. However, as per the scheme of the Act, there are no provisions providing for the withdrawal of the information and thus, this request of the Informant stands rejected.
13. The Commission observes that the Informant is aggrieved by the conduct of the OPs who are the distributors/ producers of films and are refusing to give rights of exhibiting movies to the Informant. It has also been alleged that the OPs have colluded at the behest of SRS Ltd. to whom the Informant had leased out the multiplex owned by it and whose lease was subsequently terminated on account of repeated breach of the lease agreement and its failure to rectify them.
14. The Commission further observes that cinemas/ theaters have the option of simultaneously procuring rights of exhibition of movies from multiple distributors; therefore, it cannot be said that the alleged non-supply of movies by OP-1, OP-2 and OP-3 is creating barriers for the Informant to operate in the cinematographic exhibition market. The OPs are not the only producers/ distributors of movies and there are many number of producers/ distributors in the business of production/ distribution of movies with significant presence. It has been noted that the Informant has not provided any material to substantiate the allegations mentioned in the information. Rather, the learned counsel for the Informant has admitted the fact that the Informant is exhibiting movies on its screens.
15. As regards the allegation of collusion, the Informant has submitted written communications/ e-mails/ messages exchanged with the OPs. However, on perusing the communications exchanged between the parties, neither a refusal to deal by any of the OPs could be ascertained nor can any action in concert amongst the OPs be inferred which denies the Informant access to the movies.



Thus, in the absence of any material, no conclusion of collusive refusal to deal can be drawn on the basis of bald allegations.

16. Based on the aforesaid discussion, the Commission is of the *prima facie* view that no case of contravention under Section 3 of the Act has been made out. Accordingly, the information is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.
17. The Secretary is directed to communicate this order to the Informant, accordingly.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

Sd/-
(Justice G. P. Mittal)
Member

Dated: 08.03.2018

New Delhi