



COMPETITION COMMISSION OF INDIA

Case No. 19 of 2014

In Re:

**Shri Vipul A. Shah
102, Bharat Ark, 1st Floor, Azad Nagar,
Veera Desai Road, Andheri (W),
Mumbai – 400 053, Maharashtra**

Informant

And

- 1. All India Film Employee Confederation
113, Kartik Complex,
Opposite Laxmi Industrial Estate,
New Link Road, Andheri (W),
Mumbai – 400 053, Maharashtra** **Opposite Party No. 1**
- 2. Federation of Western India Cine Employees
113, 1st Floor, Kartik Complex,
Opposite Laxmi Industrial Estate,
New Link Road, Andheri (W),
Mumbai – 400 053, Maharashtra** **Opposite Party No. 2**
- 3. Eastern India Motion Picture Association
EIMPA House, # 98-E, B. N. Sircar Sarani,
Kolkata – 700 072, West Bengal** **Opposite Party No. 3**
- 4. Northern India Motion Pictures Association
Post Box No. 79,
48, Partap Road,
Jalandhar City – 144 001, Punjab** **Opposite Party No. 4**
- 5. The South Indian Film Chamber of Commerce
605, Anna Salai, Cinema Centenary Building,
Phase – I, 4th Floor, T. R. Sundaram Avenue,
Post Box No. 6226,
Chennai – 600 006, Tamil Nadu** **Opposite Party No. 5**



- 6. Western India Motion Picture and Television Sound Engineers' Association**
A-223, 2nd Floor, Morya House,
Veera Industrial Estate,
Oshiwara Link Road, Andheri (W),
Mumbai – 400 053, Maharashtra

Opposite Party No. 6
- 7. Film Studios Setting and Allied Mazdoor Union**
7, Teresa Triumph Co-Operative Housing Society Ltd.,
56 Bamanpuri Road, J. B. Nagar, Andheri (E),
Mumbai – 400 059, Maharashtra

Opposite Party No. 7
- 8. Association of Cine & TV/ AD Production Executives**
103, Kuber Complex,
Opposite Laxmi Industrial Estate,
New Link Road, Andheri (W),
Mumbai – 400 053, Maharashtra

Opposite Party No. 8
- 9. Association of Film and Video Editors**
A/203, 2nd Floor, Oshiwara Industrial Centre,
New Link Road, Goregaon (W),
Opposite Oshiwara Bus Depot,
Mumbai – 400 104, Maharashtra

Opposite Party No. 9
- 10. Association of Cine and TV Art Directors and Costume Designers**
237/238, 2nd Floor, Kuber Complex,
Opposite Laxmi Industries,
New Link Road, Andheri (W),
Mumbai – 400 053, Maharashtra

Opposite Party No. 10
- 11. Association of Voice Artistes**
20/1, Society Number 85, MHADA,
SVP Nagar, Off RTO, Near 4 Bungalows,
Andheri (W), Mumbai – 400 058, Maharashtra

Opposite Party No. 11



- 12. Cine and TV Artistes' Association**
221, Kartik Complex, 2nd Floor,
Opposite Laxmi Industrial Estate,
New Link Road, Andheri (W),
Mumbai – 400 053, Maharashtra

Opposite Party No. 12
- 13. Cine Costume, Make-up Artiste and Hair Dressers Association**
Unit No. 222-225, 2nd Floor, Kartik Complex,
Opposite Laxmi Industrial Estate,
New Link Road, Andheri (W),
Mumbai – 400 053, Maharashtra

Opposite Party No. 13
- 14. Cine Singers' Association**
413/B, Mastermind 1, Royal Palms Estate,
Aarey Milk Colony Road, Goregaon (E),
Mumbai – 400 065, Maharashtra

Opposite Party No. 14
- 15. Cine Musicians' Association**
206, 2nd Floor, Crescent Tower,
Near Infinity Mall, Off Link Road,
Behind China I Restaurant,
Oshiwara, Andheri (W),
Mumbai – 400 053, Maharashtra

Opposite Party No. 15
- 16. Cine Agents Combine**
19, Nanda Bhawan,
Bajaj Road, Ville Parle (W),
Mumbai – 400 056, Maharashtra

Opposite Party No. 16
- 17. Cine Dancers' Association**
ShOP-44, Kuber Complex,
Opposite Laxmi Industrial Estate,
New Link Road, Andheri (W),
Mumbai – 400 053, Maharashtra

Opposite Party No. 17
- 18. Cine Still Photographers' Association**
662, Adarsh Nagar,



Behind Hanuman Mandir, New Link Road,
Oshiwara, Jogeshwari (W),
Mumbai – 400 102, Maharashtra

Opposite Party No. 18

19. Indian Film Dance Directors Association
Also known as Film and Television
Choreographers Association
401, Vishaka Arcade, Veera Desai Road,
Opposite Lane of Courtyard Restaurant,
Andheri (W), Mumbai – 400 053, Maharashtra

Opposite Party No. 19

20. Junior Artistes' Association
Shree Krishna Apartment, Business Point,
1st Floor, Room No. 601,
Near MCGM Office, Andheri (W),
Mumbai – 400 058, Maharashtra

Opposite Party No. 20

21. Movie Stunt Artiste's Association
Dilkap Chambers,
602/604, Veera Industrial Estate,
Veera Desai Road, Andheri (W),
Mumbai – 400 053, Maharashtra

Opposite Party No. 21

22. Music Composers' Association of India
D - 708, Crystal Plaza, Opposite Infiniti Mall,
New Link Road, Andheri (W),
Mumbai – 400 053, Maharashtra

Opposite Party No. 22

23. Movies Action Dummy Effect Association
31/B, Oshiwara Industrial Centre, Link Road,
Opposite Oshiwara Bus Depot, Goregaon (W),
Mumbai – 400 104, Maharashtra

Opposite Party No. 23

24. Film Writers Association
Also Known as Screenwriters Association
201-202, Richa, Plot No. B-29,
Off New Link Road, Opposite City Mall,
Andheri (W), Mumbai – 400 053, Maharashtra

Opposite Party No. 24



- 25. Western India Cinematographers' Association**
24, 2nd Floor, Om Heera Panna Arcade,
New Link Road, Oshiwara, Jogeshwari (W),
Mumbai – 400 102, Maharashtra **Opposite Party No. 25**
- 26. Indian Motion Picture Producers' Association**
G-1 to 7, Crescent Tower,
Near Morya House, Opposite VIP Plaza,
Link Road, Andheri (W),
Mumbai – 400 053, Maharashtra **Opposite Party No. 26**
- 27. The Film and Television Producers Guild of India Ltd.**
1003-04, 10th Floor, Sri Krishna,
Fun Republic Lane, New Link Road,
Andheri (W), Mumbai- 400 053, Maharashtra **Opposite Party No. 27**
- 28. Indian Film and TV Producers Council**
1201, Lotus Trade Centre,
Near D. N. Nagar Metro Station,
Opposite Star Bazar,
New Link Road, Andheri (W),
Mumbai – 400 053, Maharashtra **Opposite Party No. 28**

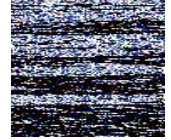
CORAM

Mr. Devender Kumar Sikri
Chairperson

Mr. S. L. Bunker
Member

U. C. Nahta
Member

Mr. Justice G. P. Mittal
Member



APPEARANCES:

1. Shri Karan Singh Chandhiok, Shri Vikram Sobti, Shri Ambanshu Sahni, Ms. Mahima Singh, Ms. Mehul Parti and Shri Avdhesh Bairwa, Advocates for OP-1 along with Shri Aashish Rego, Vice President of OP-1
2. Shri Karan Singh Chandhiok, Shri Vikram Sobti, Shri Ambanshu Sahni, Ms. Mahima Singh, Ms. Mehul Parti, Shri Avdhesh Bairwa and Ms. Sareena Sachar, Advocates for OP-2 along with Shri Dilip Pithva, General Secretary and Shri Himanshu U. Bhatt, President of OP-2
3. Shri Asish Kumar Banerjee, Secretary of OP-3
4. Shri Dharampal Arora, President of OP-4
5. Shri Rasna Kalkat, Advocate for OP-5
6. Shri B. N. Tiwari, President and Shri Anjani Srivastav, Secretary of OP-6
7. Shri F. R. Mishra and Shri Arshad Shaikh, Advocates for OP-7 along with Shri Rakesh Mourya, Joint Secretary and Shri Rajesh Anabhawani, Office Secretary of OP-7
8. Shri Karan Singh Chandhiok, Shri Vikram Sobti, Shri Ambanshu Sahni, Ms. Mahima Singh and Shri Avdhesh Bairwa, Advocates for OP-8
9. Shri J. P. Mishra, Advocate for OP-9
10. Shri Karan Singh Chandhiok, Shri Vikram Sobti, Shri Ambanshu Sahni, Ms. Mahima Singh and Shri Avdhesh Bairwa, Advocates for OP-10 along with Shri Dilip Pithva, General Secretary of OP-10
11. Shri Kumar Ram Pravesh, President and Shri Darpan Mehta, General Secretary of OP-11



12. Ms. Saveena T. Bedi and Shri Vivek Vidyarthi, Advocates for OP-12 along with Shri Sushant Singh, General Secretary of OP-12
13. Shri A.S. Peerzada, Advocate for OP-13 along with Shri Sharad Shelar, President and Shri Stanley D' Souza, General Secretary of OP-13
14. Shri Himanshu U. Bhatt, General Secretary of OP-14
15. Shri Inderpal Singh, General Secretary of OP-15
16. Shri Karan Singh Chandhiok, Shri Vikram Sobti, Shri Ambanshu Sahni, Ms. Mahima Singh and Shri Avdhesh Bairwa, Advocates for OP-16 along with Shri Chandu Chauhan, General Secretary, Shri Pappu Lekraj, President, Shri Ashish Chadda, Member, Shri Wasim Qureshi, Member, Shri Akhilesh Mishra, Member, Shri Deva Mishra, Member, Shri Raju Mitter, Member and Shri Mahesh Mishra, Member of OP-16
17. Shri Ravi Kanwar, General Secretary and Shri Zahid Shaikh, President of OP-17
18. Shri Kundan Goswami, President, Shri Ashok D. Variava, General Secretary and Shri Atul L. Rajkule, General Secretary of OP-18
19. Shri Karan Singh Chandhiok, Shri Vikram Sobti, Shri Ambanshu Sahni, Ms. Mahima Singh and Shri Avdhesh Bairwa, Advocates for OP-19 along with Shri Rajendra Suvanam, President and Shri Bhupinder Sayan, General Secretary of OP-19
20. Shri K. R. Shetty, Advocate for OP-20 along with Shri Feroz Khan, Senior Vice-President; Shri Farid Sura, President, Shri Aziz S. Khan, General Secretary, Shri Mohd. Hanif Sayyed, President, Shri Rajesh Rajpal Bagdi, General Secretary, Shri Wahid Shaikh, General Secretary, Shri Asif Shaikh, Treasurer and Shri Hari Sharma, Vice-Chairman of OP-20
21. None appeared for OP-21



22. Shri Rajat Sehgal, Advocate for OP-22 along with Shri Aashish Rego, General Secretary of OP-22
23. Shri K. R. Shetty, Advocate for OP-23 along with Shri Joaquim Rebello, General Secretary and Shri Babu Sistala, President of OP-23
24. Shri Karan Singh Chandhiok, Shri Vikram Sobti, Shri Avdhesh Bairwa and Ms. Mahima Singh, Advocates for OP-24
25. Shri Karan Singh Chandhiok, Shri Vikram Sobti, Shri Avdhesh Bairwa and Ms. Mahima Singh, Advocates for OP-25
26. Shri Ashok Saraogi, Shri Priyatosh Tiwari and Shri Bhushan Oza, Advocates for OP-26
27. Shri Kulmeet Makkar, CEO and Mukesh Bhatt, President of OP-27
28. Shri Abhimanyu Singh, Executive Member, Shri J. D. Majethia, Co-Chairman, Shri Gul Khan, Committee Member and Shri Shyamaashish Bhattacharya, Vice President of OP-28.

ORDER UNDER SECTION 27 OF THE COMPETITION ACT, 2002

1. The information in the present case was filed by Shri Vipul A. Shah (hereinafter, the '**Informant**') under Section 19 (1) (a) of the Competition Act, 2002 (hereinafter, the '**Act**') against All India Film Employee Confederation (hereinafter, '**OP-1**'), Federation of Western India Cine Employees (hereinafter, '**OP-2**'), Eastern India Motion Picture Association (hereinafter, '**OP-3**'), Northern India Motion Pictures Association (hereinafter, '**OP-4**'), The South Indian Film Chamber of Commerce (hereinafter, '**OP-5**'), Western India Motion Pictures and Television Sound Engineers' Association (hereinafter, '**OP-6**'), Film Studios Setting and Allied



Mazdoor Union (hereinafter, ‘OP-7’), Association of Cine & TV/ AD Production Executives (hereinafter, ‘OP-8’), Association of Film and Video Editors (hereinafter, ‘OP-9’), Association of Cine and TV Art Directors and Costume Designers (hereinafter, ‘OP-10’), Association of Voice Artistes (hereinafter, ‘OP-11’), Cine and TV Artistes’ Association (hereinafter, ‘OP-12’), Cine Costume, Make-up Artistes and Hair Dressers Association (hereinafter, ‘OP-13’), Cine Singers’ Association (hereinafter, ‘OP-14’), Cine Musicians’ Association (hereinafter, ‘OP-15’), Cine Agents Combine (hereinafter, ‘OP-16’), Cine Dancers’ Association (hereinafter, ‘OP-17’), Cine Still Photographers’ Association (hereinafter, ‘OP-18’), Indian Film Dance Directors Association (also known as Indian Film and Television Choreographers Association) (hereinafter, ‘OP-19’), Junior Artistes’ Association (hereinafter, ‘OP-20’), Movie Stunt Artiste’s Association (hereinafter, ‘OP-21’), Music Composers’ Association of India (hereinafter, ‘OP-22’), Movies Action Dummy Effect Association (hereinafter, ‘OP-23’), Film Writers Association (also known as Screenwriters Association) (hereinafter, ‘OP-24’), Western India Cinematographers’ Association (hereinafter, ‘OP-25’), Indian Motion Picture Producers’ Association (hereinafter, ‘OP-26’), The Film and Television Producers Guild of India Ltd. (hereinafter, ‘OP-27’) and Indian Film and TV Producers Council (hereinafter, ‘OP-28’), (hereinafter, OPs-1 to 28 are collectively referred to as the ‘OPs’), alleging contravention of the provisions of Section 3 of the Act.

Facts in brief:

2. The Informant is an independent film producer and director. As a director, he has directed various films like Aankhen (2002); Waqt (2005): The Race against Time (2005); Namastey London (2007) and London Dreams (2009), and as a film producer, he has produced several films like Singh is King (2008); Force (2011); Commando (2013) and Holiday – A soldier is never off duty (2014). Being in the business of film and television content production, he is from time to time, required



to engage spot boys, junior artists, lightmen, cameramen, models, fighters, dancers, sound engineers/ designers, art directors, artists, *etc.*

3. OP-1 is a trade union registered under the Trade Unions Act, 1926 (“**Act of 1926**”) and the mother body of OPs-2 to 5 which in turn are associations that control the four (4) regions of India. OP-2 is a federation and the mother body of twenty-two (22) different associations independently representing twenty-two (22) different crafts in the film industry for western India. It is also a trade union registered under the Act of 1926. Similar to OP-2, OPs-3 to 5 are mother bodies of different associations representing different crafts in the film industry for Eastern India, Northern India and Southern India, respectively. These too are trade unions registered under the Act of 1926.
4. OPs-6 to 25 are trade unions registered under the Act of 1926 and these independently represent different crafts of the television and film industry for the western India. OPs-26 to 28 are also registered trade unions and these represent film producers and television content producers.
5. Brief details of the allegations made by the Informant are summarised hereunder:
 - 5.1 In film and television content production, various activities are involved and producers of television programmes or films are required to engage various people such as spot boys, junior artists, lightmen, cameramen, models, fighters, dancers, sound engineers/ designers, art directors, artists, *etc.* from time to time. Initially, the producers could directly contact the concerned people and engage them. However, slowly and gradually, each and every type of craftsmen started creating their own association and it became easier for both the producers and the craftsmen to contact each other and fulfil their respective requirements. Though the OPs organised themselves under their respective federations, associations and trade unions, a fact which cannot be lost sight of is that film making is a skill based industry.



- 5.2 It was averred that each of such associations has negative agreements such that producers are not allowed to take any craftsperson who is not a member of the respective association. The associations boycott the producers who appoint a craftsperson from outside the associations. Such negative attitude of the OPs, who are in a dominant position in the relevant market of Bollywood film industry, is adversely affecting the public interest as development of skills of persons, who are not a part of the relevant association, is getting limited. Further, the producers are unable to choose talent freely.
- 5.3 It was averred that OPs-6 to 25, either by themselves or through OPs-1 and 2, started taking advantage of their dominant position. They made unreasonable demands threatening the film and television content producers that the associations and their members would not work for such film or television content producers, who would not agree to the demands of any of them. It was alleged that they started making unreasonable monetary demands also.
- 5.4 It was further submitted that the OP associations purportedly act for the benefit of their members but the payments for the work done by the members are received by the OP associations and it is not clear as to how much of the same is passed on to the members. The increase in rates is, thus, to help the associations themselves in becoming more powerful rather than helping the individual members.
- 5.5 The Informant has also stated that the film and television content producers cannot withstand the non-cooperation of OPs-6 to 25 even for a single day for various reasons. Therefore, they, through their associations OPs-26 to 28, approached OP-2, and thereupon a Memorandum of Understanding was signed on 01.10.2010 (hereinafter, the 'MoU') by and between OP-2 representing OPs-6 to 25 on one hand, and OPs-26 to 28 representing film and television content producer members on the other.



- 5.6 The MoU, *inter alia*, provided that the film producers shall exclusively deal only with members of OP-2 including of OPs-6 to 25; fixed the work shift timings, wages, rates *etc.* of the members; and detailed out the other facilities and amenities to be provided by the producers to the members of OPs-6 to 25. It was highlighted that the most important condition of the MoU was that the producers cannot engage any craftsman who is not a member of OP-2 and/ or OPs-6 to 25. The Informant has also detailed out various other clauses of the MoU alleging the same to be anti-competitive.
- 5.7 The Informant is also stated to be aggrieved by the various resolutions passed by OPs-1 to 25 from time to time which were alleged to be in contravention of the various provisions of the Act.
- 5.8 It was alleged that OP-1 had passed a resolution dated 07.03.2013 making it binding upon OPs-2 to 25 whereby and whereunder it was stipulated that (i) if a film is being shot in Mumbai and the dance director/ fight master is from Bengal, Chennai or Hyderabad, the producer would have to engage 70% dancers/ fighters from Mumbai and rest 30% of his choice; and (ii) if a Hindi film is being shot in any other region than Mumbai and the dance director/ fight master is from another region than the region the film is being shot in, the producer would have to engage 50% dancers/ fighters from Mumbai, 25% from the local association where the film is being shot, and the remaining 25% again of his choice. It was also alleged that another resolution was passed by OPs-1 to 25 deciding that the film and television content producers should pay 1.5 times the shift charges to all the craftsmen engaged by them, if shooting is being done outside the Mumbai Municipal limits. Further, another resolution passed/ practice followed by OP-2 to charge extra payment from the film and television content producers for hiring models was also alleged to be abusive.



6. Aggrieved by the alleged anti-competitive terms and conditions of the MoU, conduct of the OPs and the resolutions passed by them, the Informant had prayed before the Commission that action be taken against such contravening parties.

Directions to the Director General:

7. Upon considering the information and hearing the Informant during the preliminary conference held on 13.05.2014, the Commission observed that the averments and materials presented by the Informant suggested that the conduct of the OPs was *prima facie* in contravention of Section 3 (3) (a), 3 (3) (b) and 3 (3) (c) read with Section 3 (1) of the Act. Accordingly, *vide* order dated 23.06.2014, passed under Section 26 (1) of the Act, the Commission directed the Director General (hereinafter, the 'DG') to cause an investigation into the matter. The DG was also directed to investigate the role of the office-bearers/ persons who, at the time of contravention of the provisions of the Act, if any, were in-charge of and responsible for the conduct of business of the OPs.

Investigation by the DG:

8. After a detailed investigation into the matter, the DG submitted its investigation report on 12.04.2016. The DG framed the following two issues for the purpose of investigation:
 - (i) Whether the terms of the MoU signed between OP-2 and OPs-26 to 28 were violative of the provisions of Section 3 (3) (a), 3 (3) (b) and 3 (3) (c) of the Act?; and
 - (ii) Whether the conduct of the OPs was violative of Section 3 (3) (a), 3 (3) (b) and 3 (3) (c) of the Act or any other provision of the Act?
9. On the issue of jurisdiction, the DG observed that in the erstwhile Monopolies and Restrictive Trade Practices Act, 1969 ("MRTP Act"), there was an explicit exemption for trade unions from the application of the said statute under Section 3.



There is no such exemption under the Act. As such *prima facie*, the intent of the Legislature and that of the Act cannot be such that the provisions of the Act are *ipso-facto* not applicable to trade unions.

10. On the issue of whether OP-2 and the other OPs are ‘enterprise’ within the meaning of Section 2 (h) of the Act, the DG referred to the order of the erstwhile COMPAT in Appeal No. 25/2015 and I.A.No. 43/2015 (*Malwa Industrial & Marketing Ferti-Chem Cooperative Society Ltd. v.CCI*) to note that a wide connotation has been given to the definition of ‘enterprise’ under the Act. The DG observed that membership of the affiliates/association related to a craft is a *de-facto* license for any artist/workman to work with a large cross-section of producers in the film/TV industry of western India. Many affiliates like OP-7, OP-20, OP-21, OP-23 and others compulsorily collect all payments due to their members from the producers and the production houses and then distribute the same to the members. There were even instances of receipt of payment by OP-2 in lieu of the services rendered by its members. It was found that such activity of OP-2 and other affiliates is directly related to and crucial in the supply of artists and workmen in the film/TV industry. The DG thus, concluded that OP-2 and the other OPs are liable to be covered within the definition of ‘enterprise’ under S. 2 (h) of the Act.
11. Based on the analysis of the evidence, and facts and circumstances of the case, as discussed in the investigation report, the DG concluded that the MoU as well as conduct of the OPs was in violation of Section 3 (3) (a), 3 (3) (b) and 3 (3) (c) read with Section 3 (1) of the Act.
12. The findings of the DG with regard to the clauses of the MoU were as follows:
 - (i) The MoU was an agreement/ understanding between OP-2 (acting on behalf of its other affiliates) and OPs-26, 27 and 28 (three producers associations). The MoU contains exclusivity clauses providing for member-to-member working as Clauses 6 (a) to 6 (h) of the MoU mandated the producers to



engage only the members of OP-2 *i.e.* members of OPs-6 to 25. Further, Clause 18 of the MoU provided for formation of a Vigilance Committee for inspection and detection of infringement of the provisions of the MoU. This clause provides a mechanism for control by OP-2 and its affiliates over the producers. The DG found the clauses cited above to be limiting and controlling the services of hiring/ engagement of workers and artists in the film and television industry in Mumbai and therefore, violative of Section 3 (3) (b) read with Section 3 (1) of the Act.

- (ii) The DG also found Clauses 8 (b) and 8 (c) of the MoU providing for fixing/ determining the wages/ rates of hiring of workmen as well as fixing the revision of wages of workmen to be violative of Section 3 (3) (a) read with Section 3 (1) of the Act.

13. With regard to the conduct of the parties, the DG in respect of OP-1 observed that OP-1 had issued a directive dated 07.03.2013 mandating the hiring of dancers and fighters in a specific ratio from the regional associations, which was found to be violative of Section 3 (3) (b) read with Section 3 (1) of the Act as it was limiting and controlling the supply of dancers and fighters in the film and television industry.
14. Further, in respect of OP-2, which is the mother body of its affiliates *i.e.* the various crafts associations, the DG found that it was indulging in anti-competitive conduct in tandem with the other OPs as is evident from the following:

- (i) OP-2, through its various letters, had reiterated and thus, perpetuated the resolution of OP-1 regarding 70:30 ratio of hiring of dancers and fighters from the regional associations and also directed the producers to make payment for extra half shift to workers for operation beyond Mumbai territorial limits. The DG found such conduct to be fixing of service charges and determination of sale price of services rendered by the workers in film and television industry. The DG thus, concluded that the same amounts to



violation of Section 3 (3) (a), 3 (3) (b) and 3 (3) (c) read with Section 3 (1) of the Act.

- (ii) OP-2 alongwith its affiliates had issued non-cooperation directives, prohibited hiring of specialised artists, conducted vigilance checks, stalled shoots for hiring of non-members, and levied penalty on the producers/ production houses *etc.* for hiring non-members. Such conduct of OP-2 was found to be limiting and controlling the supply of services in the market of film and television content production in Mumbai/ western India. Therefore, the DG found such conduct to be violative of Section 3 (3) (b) read with Section 3 (1) of the Act.
- (iii) The DG also noted that violation of the provisions of Section 3 (3) (b) was done by OP-2 even after the MoU had expired on 28.02.2015, by means of continuing to enforce the member to member working, stoppage of shooting, levy of penalty, conducting of vigilance checks, *etc.* It was concluded that the OPs were acting in concert and the same amounts to an agreement in terms of Section 2 (b) of the Act.

15. With regard to OPs-6 to 25, which are the various crafts associations engaged in the production of films, television content, *etc.* in Mumbai/ western India and affiliates of OP-2, the DG noted that OP-2 had entered into the MoU with the producers' bodies on behalf of all these affiliates only. Hence, the DG concluded that such affiliates were bound by the MoU and could not act independently of it. Thus, they were also responsible for the anti-competitive clauses of the MoU in violation of Section 3 (3) (a) and 3 (3) (b) read with Section 3 (1) of the Act.

16. Further, during the course of investigation, the DG also found certain specific evidences and instances against OPs-7, 10, 13, 20 and 21 whereby they were found to be limiting and controlling the provisions of services of workers and artists in the market of production of films and television content *etc.* in Mumbai/ western India.



In view of this, the DG concluded that they had violated Section 3 (3) (b) read with Section 3 (1) of the Act. However, with respect to the other affiliates of OP-2 *i.e.* OPs-6, 8, 9, 11, 12, 14, 15, 16, 17, 18, 19, 22, 23, 24, and 25, no specific evidence of any anti-competitive conduct was found by the DG.

17. The DG also concluded that since OPs-26, 27 and 28 being parties to the MoU, would also be responsible for the anti-competitive conduct under the Act. However, the DG noted that producers' associations may not have much bargaining power *vis-à-vis* OP-2 and its affiliates and it may be construed that OPs-26, 27 and 28 may have entered the MoU under pressure from OP-2 and its affiliates.
18. However, since the other regional mother associations OPs-3, 4 and 5 were not part of the MoU and no instances of infringement were found against them, the DG did not hold them liable under the Act.
19. In view of the above findings, the DG concluded that OPs-1, 2, 6 to 25, and 26 to 28 had indulged into anti-competitive behaviour in contravention of Section 3 (3) (a), 3 (3) (b) and 3 (3) (c) read with Section 3 (1) of the Act.
20. The followings were the individuals identified by the DG to be liable under Section 48 of the Act:
 - (1) Shri Dharmesh Tiwari, President of OP-1 (for 2013);
 - (2) Smt. Aparna Ghatak, General Secretary of OP-1 (for 2013);
 - (3) Shri Dharmesh Tiwari and Shri Himanshu Bhatt, President of OP-2 (for 2014-15);
 - (4) Shri Kamlesh Pandey, President of OP-2 (for 2015-16);
 - (5) Shri Dinesh Chaturvedi, General Secretary of OP-2 (for 2010, 2011-12 and 2012-13);
 - (6) Shri Rashid Mehta, General Secretary of OP-2 (for 2013-14);
 - (7) Shri Dilip Pithva, General Secretary of OP-2 (for 2014-15 and 2015-16);
 - (8) Shri B.N. Tiwari, President of OP-6 (for 2013 to 2015);



- (9) Shri Subhash C. Sahoo, General Secretary of OP-6 (for 2013 to 2015);
- (10) Shri Mithoon Chakraborty, Chairman of OP-7 (for 2010-12 and 2012-14);
- (11) Shri Ram Kadam, Chairman of OP-7 (for 2014-15);
- (12) Shri Rangarao Chougale, General Secretary of OP-7 (for 2010 to 2012);
- (13) Shri Gangeshwarlal Shrivastav, General Secretary of OP-7 (for 2012-14 and 2014-15);
- (14) Shri Omparkash Upadhyay, President of OP-8 (for 2014-15);
- (15) Shri Bandodkar Pravin Prabhakar, General Secretary of OP-8 (for 2014-15);
- (16) Shri Ranjan S. Mhasumekar, President of OP-9 (for 2010, 2011 and 2012);
- (17) Shri Rajendra Surve, President of OP-9 (for 2015);
- (18) Shri Mukund Mengle, General Secretary of OP-9 (for 2010);
- (19) Shri Vijay Probhu, General Secretary of OP-9 (for 2011);
- (20) Shri Rajan K. Navghare, General Secretary of OP-9 (for 2012);
- (21) Shri Vaibhav Desai, General Secretary of OP-9 (for 2015);
- (22) Shri Nitin Chandrakant Desai, President of OP-10 (for 2011, 2012-14 and 2014-16);
- (23) Shri Liladhar Sawant, General Secretary of OP-10 (for 2011);
- (24) Shri Dilip Pithva, General Secretary of OP-10 (for 2012-14 and 2014-16);
- (25) Shri Kumar Ram Pravesh, President of OP-11 (for 2014 to 2016);
- (26) Shri Darpan Mehta, General Secretary of OP-11 (for 2014 to 2016);
- (27) Shri Johnny Lever, President of OP-12 (for 2010, 2011, 2012 and 2013);
- (28) Shri Gajendra Chauhan, President of OP-12 (for 2014);
- (29) Shri Om Puri, President of OP-12 (for 2015);
- (30) Shri Dharmesh Tiwari, General Secretary of OP-12 (for 2010, 2011, 2012 and 2013);
- (31) Shri Pankaj Dheer, General Secretary of OP-12 (for 2014);
- (32) Shri Sushant Singh, General Secretary of OP-12 (for 2015);
- (33) Shri Balbir Ward, President of OP-13 (for 2010 to 2014);
- (34) Shri Sharad Shelar, President of OP-13 (for 2014-15);



- (35) Shri Henry Martis, General Secretary of OP-13 (for 2010 to 2014);
- (36) Shri Stanley D' Souza, General Secretary of OP-13 (for 2014-15);
- (37) Shri Neelesh Brahmhatt, President of OP-14 (for 2011, 2012-13 and 2014-15);
- (38) Shri Himanshu U. Bhatt, General Secretary of OP-14 (for 2011 and 2012-13);
- (39) Shri Sanjeev Kohli, General Secretary of OP-14 (for 2014-15);
- (40) Shri Bhushan Chawla, President of OP-15 (for 2013 and 2014);
- (41) Shri Jayantilal Gosher, President of OP-15 (for 2015);
- (42) Shri Inder Pal Singh, General Secretary of OP-15 (for 2013, 2014 and 2015);
- (43) Shri Pappu Lekraj, President of OP-16 (for 2014-15);
- (44) Shri Chandu Chauhan, Secretary of OP-16 (for 2014-15);
- (45) Shri Zahid Shaikh, President of OP-17 (for 2012 to 2015);
- (46) Shri Ravi Kumar, General Secretary of OP-17 (for 2012 to 2015);
- (47) Shri Vinod N. Deshpande, President of OP-18 (for 2014 to 2016);
- (48) Shri Atul L. Rajkule, General Secretary of OP-18 (for 2014 to 2016);
- (49) Shri Rajendra Suvanam, President of OP-19 (for 2014 to 2016);
- (50) Shri Bhupinder Sayan, General Secretary of OP-19 (for 2014 to 2016);
- (51) Shri Farid Sura, President of OP-20 (for 2009-10);
- (52) Shri Altaf khan, President of OP-20 (for 2011-12);
- (53) Shri Mohammed Hanif Sayyed, President of OP-20 (for 2013-14 and 2015);
- (54) Shri Aziz S. Khan, General Secretary of OP-20 (for 2009-10);
- (55) Shri Rajesh Rajpal Bagdi, General Secretary of OP-20 (for 2011-12 and 2013-14);
- (56) Shri Wahid Shaikh, General Secretary of OP-20 (for 2015);
- (57) Shri Surendra Verma (Tinu), President of OP-21 (for 2010, 2011, 2012 and 2013);
- (58) Shri Yakoob Khan, President of OP-21 (for 2014);
- (59) Shri Sunil Rodrigues, President of OP-21 (for 2015);
- (60) Shri Aejaz Gulab, General Secretary of OP-21 (for 2010, 2011, 2012, 2013,



2014 and 2015);

- (61) Shri Ravi Shankar Sharma, Chairman of OP-22 (for 2011);
- (62) Shri Anandji V. Shah, Chairman of OP-22 (for 2014-15);
- (63) Shri Anand Shrivastava, President of OP-22 (for 2011 and 2014-15);
- (64) Shri Aashish Rego, General Secretary of OP-22 (for 2011 and 2014-15);
- (65) Shri Babu Sistala, President of OP-23;
- (66) Shri Joaquim Rebello, General Secretary of OP-23;
- (67) Shri Jalees Sherwani, President of OP-24 (for 2010 and 2014);
- (68) Shri Vinay Shukla, President of OP-24 (for 2012);
- (69) Shri Imteyaz Hussein, General Secretary of OP-24 (for 2010);
- (70) Shri Kamlesh Pandey, General Secretary of OP-24 (for 2012 and 2014);
- (71) Shri Anil Mehta, President of OP-25 (for 2013, 2014 and 2015);
- (72) Shri Mahesh Aney, General Secretary of OP-25 (for 2013, 2014 and 2015);
- (73) Shri T. P. Aggrwal, President of OP-26 (for 2010-12, 2012-14 and 2015-16);
- (74) Ms. J. Neelam, General Secretary of OP-26 (for 2015-16);
- (75) Shri Mukesh Bhatt, President of OP-27 (for 2014-15);
- (76) Shri Sajid Nadiawala, President of OP-28 (for 2012 and 2015); and
- (77) Shri N. R. Pachisia, General Secretary of OP-28 (for 2012 and 2015).

Consideration of the Investigation Report:

21. The Commission, in its meeting held on 21.06.2016, considered the investigation report filed by the DG and decided to forward copies of the same to all the parties for filing their written objections/ submissions thereto. The OPs and their office bearers found liable for the purpose of Section 48 of the Act were also asked to file copies of their audited balance sheets and profit and loss accounts/ Income Tax Returns for the last three financial years to enable the Commission to hear them on merits as well as on the quantum of penalty in the event the Commission finds the OPs guilty of contravention of the provisions of the Act.



22. It may be pertinent to note here that almost all the OPs have raised the preliminary issue of being a trade union and not an ‘enterprise’ as defined under Section 2 (h) of the Act. They have questioned the jurisdiction of the Commission over the instant matter. The arguments put forth by them are more or less on the same ground. Therefore, for the sake of brevity, only the submission of OP-1 on the issue of jurisdiction is mentioned below.
23. OPs-1 and 2 have also raised the issue that they cannot be scrutinised under Section 3 of the Act as their members are from different crafts and are not in a similar business and hence, there can be no horizontal agreement between them as such.

Objections/ Submissions of the OPs to the DG Report:

The OPs submitted their objections and suggestions to the DG Report. The same are summarized hereunder:

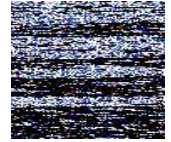
OP-1

24. All the activities and actions of OP-1, as arraigned in the DG Report, fall within the ambit of legitimate trade union activities. Section 5 of the Act of 1926 mandates formation of rules by a trade union without which it cannot be registered. Section 6 states the necessary provisions to be contained in the said rules. OP-2 was formed so that the employees working in the Indian film and television industry could be in a better position to challenge the might of the film producers by exercising their rights of collective bargaining.
25. OP-1 does not fall within the definition of the term ‘enterprise’ as defined under Section 2 (h) of the Act as it is not involved in production of any goods or provision of any service. The DG has failed to appreciate that OP-1 does not supply artists or workers. The word ‘enterprise’ under the Act pre-supposes the conduct of an economic activity, which means production, storage and/ or distribution of goods or provision of services and to hold an organization to be an ‘enterprise’, the pith and



substance of its work should be looked at and not the ancillary activities on carried by it.

26. Further, the present case involves an industrial dispute between the workmen and their employers and has arisen based on rights protected by the Industrial Disputes Act, 1947 (“**ID Act**”). There is no scope for any other statutory body playing any role whatsoever in an industrial dispute and the Act does not empower the Commission to take cognizance of matters where disputes involved are between employer and employees arisen based on rights protected by the ID Act.
27. The Informant has approached the Commission with unclean hands as the Informant himself is a member of Film and Directors Association (IFDA) and it along with Mahila Kalakar Sangh have not been arrayed as Opposite Parties.
28. The DG has failed to appreciate that none of the actions undertaken by OP-1 are aimed to distort the competition fabric or benefit/ promote a particular member/ segment to the prejudice of others. The DG has relied only on the information and various uncorroborated, vague and collusive third party affidavits (which contain depositions of representatives of various production houses) submitted by the Informant and has, thus, blatantly disregarded the provisions of the Act.
29. OP-1 is a confederation of six regional trade unions representing the interests of cine workers throughout the Indian film and television industry. It is merely an umbrella body which performs function of labour class advocacy. Thus, the members of OP-1 cannot be said to be engaged in trade of identical or similar goods or provision of services under Section 3 (3) of the Act.
30. Furthermore, no appreciable adverse effect on competition (AAEC) has been caused by any action of OP-1 as no evidence was put forth by the DG which demonstrates AAEC in the relevant market. In the absence of any intent to gain supra-competitive profits, no case under Section 3 (3) is made out.



31. The resolution dated 07.03.2013 upon which the DG has held the OPs guilty of violating Section 3 (3) (b) and 3 (3) (c) read with Section 3 (1) of the Act has been rescinded *vide* resolution dated 07.08.2015. The impugned minutes of meeting of National Executive Committee of OP-1 dated 27.09.2013 relied upon by the DG were quoted out of context. Such statement was in relation to a dispute arising between two affiliate unions of OP-1 and does not represent the views/ decisions of OP-1 as such.

OP-2

32. Apart from raising the jurisdiction issue, OP-2 submitted that the present case does not raise any competition concern and the Informant is malafidely indulging in forum-shopping. The MoU dated 01.10.2010 is a valid and mutually beneficial agreement and represents *consensus ad idem* between the parties thereto. The Informant has approached the Commission with unclean hands and intentionally failed to provide full set of facts. Therefore, he is liable to be proceeded against under Section 45 of the Act.
33. The DG Report suffers on account of incompleteness. The factual background and critical submissions made by OP-2 have been overlooked while a misplaced reliance has been placed on selective and uncorroborated information/ documents and unfounded assumptions.
34. Further, neither the impugned conduct of OP-2 nor the MoU have caused any AAEC. In fact, various clauses of MoU have been incorrectly interpreted leading to the erroneous finding that it violates Section 3 (3) (a) and 3 (3) (b) read with Section 3 (1) of the Act.
35. The finding that OP-2 has acted in concert with its affiliates is rooted in presumptions and devoid of supportive reasoning or evidence. OP-2 has no say in the internal working of its affiliates. Therefore, it cannot be held liable for the actions of



its affiliates after the expiry of the MoU or for acts committed without knowledge of OP-2, whether during the subsistence of the MoU or after the expiry thereof.

36. The DG perfunctorily and myopically relied upon certain penalties levied by OP-2 without appreciating the context and circumstances of their imposition. OP-2 is constitutionally bound to protect and further the interests of its affiliates and as such, act on their behalf. Therefore, no fault can be attributed upon OP-2 for performing its duties as a federation of Trade Unions.
37. On the issue of 70:30/ 50:25:25 ratio rule and charging extra half shift payment beyond Mumbai municipal limits, OP-2 contends that these are long established industry practices. Further, their underlying rationale was essentially to compensate the cine workers for the cumbersome long distance travelling for shootings beyond Mumbai municipal limits. The DG Report has confounded the question of extra half shift payment with the question of wages.
38. Various purported third party affidavits that have been relied upon by the DG were submitted in collusion with the Informant and the said third parties, who are acting in concert have distorted and/ or concealed information which is pertinent to the present case and malafidely provided selective facts. The findings against OP-2 are almost entirely based on such uncorroborated and collusive affidavits filed by various third parties (production houses operating in the western India film and television industry) and without affording any opportunity of cross-examination to OP-2.
39. The findings contained in the DG Report cannot be legally sustained in the absence of cross-examination of the Informant and the individuals who have deposed against OP-2, despite repeated requests made by OP-2 in this regard.

OP-3

40. The DG has observed that the role of Regional Film Associations (OPs-3, 4 and 5) has not been found to be anti-competitive nor were they a part to the MoU.



Therefore, the DG has concluded that no adverse inference can be drawn *vis-à-vis* these three parties.

OP-4

41. The DG has categorically observed that OP-4 was not a party to the MoU nor liable for its terms and conditions. Further, no instances of infringement of the provisions of the Act and no adverse inferences has been noted or brought out against OP-4.

OP-5

42. OP-5 is the apex trade body of south Indian film industry and its primary duty is to collectively represent the problems and issues of studio owners, producers, distributors and exhibitors to the Government. There is no restriction by it on the producers to engage any person of their choice as craftsmen for their films and the producers have every right to engage, negotiate and fix the salaries of such craftsmen based on their quality and work experience. OP-5 does not recommend the producers to work only with its members.

OP-6

43. OP-6 is not a profit-making organisation but a body to safeguard the interests of its members. The members of OP-6 have to survive under the fear of losing their jobs and have to tolerate all the excesses of the producers. No formal contract is laid down between the producers and the members of OP-6. The producers have the habit of exploiting the employees especially female employees and never arrange even basic amenities during the shooting period. The employees are denied basic facilities such as hygienic food, water, proper toilets, *etc.*
44. The vigilance team of the OPs has been visiting the shooting spots merely to check the safety measures provided by the producers to craftsmen in order to improve the working conditions of their member workmen. Further, the MoU was mutually



agreed upon by all the parties and no pressure whatsoever was exerted on the producers' associations for the same.

OP-7

45. Apart from the common issue of jurisdiction, OP-7 stated that it is not affiliated to OP-2 and does not support its monopolistic practices. OP-7 has never been a part of any strike convened by OP-2 nor does it support the rules and regulation framed by OP-2. Further, denying all allegations, OP-7 argued that the DG has failed to investigate the violation of basic rights of the craftsmen by the producers.

OPs-8, 10, 16, 19, 24 and 25

46. These OPs have raised common issues and for the sake of brevity, their objections/submissions have been briefed collectively. They have reiterated the argument that Section 3 (3) of the Act will not be applicable upon them. The members of various trade unions affiliated to OP-2 are divided in the categories of workers, technicians or artistes with producers at the top of the chain. Production of a film generally starts when the producer engages a story writer and a director. Thereafter, the actors are engaged depending upon the preferences of the director and/ or the producer. Once the script is prepared, the producer engages the production executives. Depending on the budget of the film, such production executives engage, negotiate and enter into contracts with the technicians. The assistants of various technicians are engaged by such technicians themselves. The members of Junior Artistes' Association and Mahila Kalakar Sangh, who are used as junior or background artistes are engaged by members of Cine Agents Combine. Therefore, as evident, the western India film and television industry is a classic case of various kinds and levels of vertical agreements between workers, technicians, assistants, artistes and producers. The said industry cannot be assessed under Section 3 (3) of the Act, which is applicable only to horizontal arrangements.



47. The MoU on which heavy reliance has been placed by the DG to hold OP-2 and its affiliates guilty of anti-competitive conduct is a product of consensus between the producers' associations and OP-2 representing their respective members. The MoU is a fine example of a mutually beneficial agreement for the members of both sides. Further, on various occasions, the producers or the producers' associations have raised their grievances and have benefitted from the raising of such grievances as per the MoU.
48. The MoU has been incorrectly interpreted by the DG who failed to properly and holistically appreciate the various replies/ submissions/ statements made on behalf of OP-2 and its affiliates in the course of investigation. Various clauses of the MoU such as Clauses 6 (a), 6 (c), 6 (f), 6 (g), 6 (h), 18, 8 (b), 8 (c) and 11 were wrongly interpreted by the DG as horizontal agreement. The essentials of a horizontal agreement/ arrangement are not met in the present matter; thus, the MoU cannot be treated as a horizontal agreement. The DG has arbitrarily and erroneously held the OPs to be in violation of the provisions of the Act and ignored the explanations given by them.
49. The alleged practices of the OPs are not violative of Section 3 of the Act and have no AAEC and there is no specific evidence against the OPs and the findings of the DG are a result of baseless presumptions and inadequate investigation.

OP-9

50. Denying the allegations made against it, OP-9 submitted that at the time of execution of the MoU, OP-9 was disassociated from OP-2. Therefore, neither its President nor its Secretary have put their signatures on the MoU. Further, since the MoU has already expired on 28.02.2015, any enquiry based on the contents of the same is only academic.
51. To prove that OP-9 was disassociated from OP-2 at the relevant time, OP-9 enclosed a letter dated 18.02.2017 issued by OP-2 wherein it was stated that OP-9 was not part



of OP-2 for the period 2008 till October, 2014. OP-9 was later re-affiliated with OP-2 from October, 2014 after paying due subscription amount.

52. With respect to the DG's finding on anti-competitive activities in meetings dated 16.10.2010 and 07.02.2015, it was stated that OP-9 could not revoke its resolutions made during the above-said meetings due to paucity of time and change of its office-bearers from time to time. Also, no action has been taken by OP-9 against any of its members.
53. With respect to the DG's observation that since no evidence has come forward against OPs-26 to 28, they might have entered into the MoU under pressure, OP-9 submitted that the producers' associations for their own benefit had pursued the crafts associations for their co-operation to enter into the MoU. Therefore, if crafts associations are liable for any violation of the Act, in the same way, the producers' associations would also be guilty of violation of the provisions of the Act.

OP-11

54. OP-11 does not have any direct interaction with the producers or any producer bodies and members of OP-11 are freelancers who work on hire basis for co-ordinators and vendors and have no interaction at all with the producers. OP-11 has been falsely implicated in this case and none of its office bearers are engaged in any business which qualifies it as a '*De-facto service provider or hiring agency*'.
55. More than 90 % of the voice artistes in Bollywood industry are non-members of OP-11 and some renowned personalities of the Bollywood film industry were mentioned by OP-11 who work as dubbing artists without being members of OP-11. OP-11 has neither restricted nor taken implicit or explicit action taken against such non-members.
56. OP-11 was in a defunct state/ non-working state from 2009 to 2014 and did not have any annual general body meeting for those five (5) years. It also did not have



elections from 2010 to 2014 for which OP-2 had issued a notice of suspension of its right to vote in respect of any of the Executive Council or General Council decisions made by OP-2.

57. The activities of OP-11 are strictly restricted as it is only a trade union which ensures the welfare and well-being of its members and aims to prohibit the exploitation of its members by the employers and ensures that their dues are rightfully paid.

OP-12

58. OP-12 and its executive committee members are answerable to the Registrar of Trade Unions for any violation either of the provisions of the Act of 1926 or the constitution of OP-12 and as such under the Act of 1926, the jurisdiction exclusively lies with the Industrial Court constituted under the Maharashtra Industrial Relations Act, 1946.
59. The State of Maharashtra has a special law dealing with any alleged Unfair Labour Practices by the Trade Unions *namely* Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU and PULP Act, 1971). This Act specifically lists the unfair labour practices on part of the employers and the unfair labour practices on part of the trade unions and the same, *inter alia*, includes the following:
- (a) Unfair labour practices on part of the employers: To refuse to bargain collectively in good faith with a recognised trade union.
 - (b) Unfair labour practices on part of the trade unions: For a recognised union to refuse to bargain collectively in good faith with the employer.
60. Further, the DG has completely ignored the plight of the members of OP-12. The producers' associations often ensure that they enter into agreements with artistes/ members of OP-12 and such agreements are not only one-sided but are of

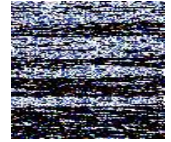


exploitative nature *vis-a-vis* the rights of the workers/ artistes and this was the case even post execution of the MoU.

61. The 'member to member' clause of the MoU is not at all intended to be restrictive and the same would be restrictive only if the producers' associations or the associations of various craft workers were a closed group. However, this is not the case. Membership of OP-12 has always been open. OP-12 has also never charged lacs of rupees as its membership fees. The fee is limited to a few thousand rupees, which is utilised to further the interests of its members only. No association can survive without having a membership fee and merely having a membership fee does not make any association a closed group.
62. Members of OP-12 are engaged by a producer body on a contractual basis for an agreed fee and no minimum wages have been fixed by OP-12 for its members who are paid as per the terms fixed and agreed to by the producers. Also, OP-12 has never disrupted the shooting of any producer or harassed the Informant or any of the producers' associations. OP-12 has no such rule and no artist is required by OP-12 to be paid for an extra half shift due to the shoot location being far away.
63. With regard to the allegation regarding 70:30/ 50:25:25 ratio of hiring professionals, OP-12 clarifies that such an arrangement was worked out by the various federations under the confederation only to satisfy the local interest, which was an exercise by OP-1 to reduce conflict of interest as well as to satisfy the sentiments of the local working class of the region where the shooting is to take place.

OP-13

64. OP-13 raised the same argument of being a trade union which is not being repeated here for the sake of brevity.
65. It also argued that the parties are governed under the provisions of the Cine and Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 and



the rules framed thereunder. The said Act and its rules provide for the procedure for reference of a dispute to a Conciliation Officer or a Tribunal constituted under Section 7 of the said Act. In such circumstances, it is clear that the Informant has adopted the back-door method by misusing and abusing the process of the Act by approaching the Commission under the guise that OP-13 is an 'enterprise' and dealing in competitive business *vis-à-vis* the producers.

66. OP-13 placed on record documentary evidence for the period 2010 to 2015 in order to bring to the notice of the Commission that the producers, in default of agreements, were depriving the craftsmen of their payments and thereby exploiting and harassing them to a great extent. It was stated that due to the grudge against OP-13, these producers have filed this information and dragged OP-13 into this matter.
67. It was also highlighted that in the State of Maharashtra, the following Acts are already governing the field in respect of service conditions of the employees: (a) Industrial Disputes Act, 1947; (b) Maharashtra Industrial Relations Act, 1946; (c) MRTU and PULP Act, 1971; (d) Prevention of Unfair Labour Practices Act, 1971; and (e) The Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969.

OP-14

68. Justifying the MoU, OP-14 submitted that the long standing member to member working conditions had been in place not only for the benefit of OP-2 but also for the benefit of OPs-26, 27 and 28 where they were ensured a peace of mind regarding planning of their film and television program budgets based on the prescribed working conditions of the craftsmen especially the shift-rated members of the craft associations, thereby increasing their business efficiency and profitability. It also mentioned that this was not the first time that member to member rule was being sought to be removed by OPs-26, 27 and 28 and they had raised this issue earlier too, specifically in the years 2005 and 2008. The matter was then referred to the



appropriate statutory authority viz. Labour Commissioner, Mumbai by OP-2. However, upon realising that more than the members affiliated to OP-2, their own member producers would be put to a great hardship in the absence of such a provision, OPs-26, 27 and 28 withdrew their said demand and agreed to continue with the said rule in the interest of their own members.

69. OP-14 raised questions on the finding of the DG holding the OPs to be in a dominant position in the relevant market and urged the Commission to reconsider the same in light of provisions of Section 19 (4), (5), (6) and (7) of the Act. Further, it stated that neither the public interest is getting adversely affected because of the OPs, nor the skills of persons not part of the associations were getting limited just because membership is regulated. Associations are for those people who have already obtained the professional skills and to safeguard their professional, legal rights and privileges as well as for securing better working conditions for them.

OP-16

70. OP-16 is not a necessary/ proper party to the present proceedings and its name is liable to be struck off from the array of parties because neither has any relief been specifically claimed against OP-16 nor any practice of OP-16 been questioned by the Informant. OP-16 is pursuing a legitimate trade union activity and it falls outside the purview of the Act. The constitution of OP-16 is in consonance with the provisions of the Act of 1926.
71. The present case involves an industrial dispute between workmen and employers and such matters are covered under the ID Act and not under the Act. The Informant has malafidely indulged in forum-shopping as certain past/ ongoing disputes between OP-2 on one hand and the producers' associations/ producers on the other were previously raised before the High Court of Bombay and the present information has been filed by the Informant for his vested interests and out of vengeance against OP-2.



72. The MoU is a valid agreement and represents *consensus ad idem* between the parties thereto as terms and conditions of the MoU had been mutually agreed to by both the parties and on various occasions, the producers' associations had raised their grievances as per the MoU. The MoU cannot be treated as a horizontal agreement/ arrangement as the essentials mentioned in Section 3 (3) of the Act are not fulfilled in the present matter. OP-2 or its affiliates are not service providers/ hiring agencies as their functions and services are in consonance with the Act of 1926. They are not 'enterprise' as defined under Section 2 (h) of the Act since their activities do not involve any profit-making.
73. The Informant has approached the Commission with unclean hands as the Informant has suppressed material facts in the present case. Further, the DG Report is prepared with a partial mind-set as the DG has done cherry picking of uncorroborated information/ documents and relied on unfounded assumptions by adding selective facts/ documents to support the pre-determined conclusions made against OP-2 and its affiliates.
74. The alleged practices of OP-2 and its affiliates are not violative of Section 3 and have no AAEC and the clauses of the MoU have been incorrectly interpreted by the DG which is constituting the foundation of the findings arrived at by the DG.
75. No specific anti-competitive conduct or instance was found by the DG against OP-16 and the DG has concluded that OP-16 has violated the provisions of the Act without any substantive evidence.

OPs-17, 20 and 23

76. The above OPs have raised common issues of being covered under the Act of 1926 and for the sake of brevity, the same are not being repeated here. In support of their such contention, reliance has been placed upon *Borosil Glass Works Limited Employees Union v. D.D. Bambode and Others*, (2001) 1 SCC 350; *Gujarat Steel Tubes Limited and Others v. Gujarat Steel Tubes Mazdoor Sabha and Others*, (1980)



2 SCC 593; *Workmen v. Williamson Magor and Co. Ltd. and Another*, (1982) 1 SCC 117; and *KCP Employees' Association, Madras v. Management of KCP Ltd., Madras and Others*, (1978) 2 SCC 42. They also asserted that the State of Maharashtra has a special law dealing with the subject of Unfair Labour Practices by Trade Unions namely MRTU and PULP Act, 1971.

77. They submitted that the concept of a recognised union is founded on the basis of a U.N. Convention (Geneva Convention) adopted by India during the I.L.O. Convention held in Nainital in May, 1958. It was stated that OP-2 and its affiliated unions including OP-17 are operating in the film industry for several decades and they are all recognised by the Producers' bodies. In this regard, reference has been made to the Hon'ble Supreme Court's judgement in *Food Corporation of India Staff Union v. Food Corporation of India and Others* (AIR 1995 SC 1344).
78. Unlike in case of other industries where labour is employed on a permanent basis and contract labour is employed to carry out works of non-perennial nature, employees in the film industry, particularly in production sector, are employed in two categories viz. freelance contractual and daily rated causals. The contractual category of employees, if employed on causal basis, get their remuneration based on base rates fixed mutually by OP-2 and producers' associations. As for freelance causals and daily rated, they get their wages based on minimum wages agreed mutually between OP-2 federation and producers' bodies once in 3 years or 5 years as part of the MoU terms.
79. The MoU provides for a Joint Dispute Settlement Committee consisting of members of OP-2 and the producers' bodies. In case any dispute raised by producers or any affiliated unions is not resolved at the affiliate level, the same is forwarded to OP-2 for referring to the Joint Dispute Settlement Committee, which holds a hearing like an arbitrator body and then decides. The power to implement the decision is given to OP-2 which writes to the employer concerned and calls for implementation of the decision of the Joint Dispute Settlement Committee. On failure to comply with the



directives of the Joint Dispute Settlement Committee, OP-2 directs stoppage of work to recover the amount from the Producers. This mechanism of recovery is hailed internationally because it avoids court litigation and evils connected with it such as long duration a court case generally takes. The decisions of Joint Dispute Settlement Committee are imposed only on the members of the affiliated unions or the producers affiliated to the producers' bodies. It is here that the rule of member to member matters. Apart from OP-2 and its twenty-two (22) affiliates which are all working on non-political basis, there are many other unions operating in the film industry, which are all politically affiliated. In case of any dispute involving the members of such unions, there is no mechanism of Joint Dispute Settlement Committee.

80. It is claimed that the DG was biased in favour of the Informant and the producers' bodies who were signatories to the MoU with OP-2. It is evident that the DG has found fault with the directive of OP-1 fixing a ratio of 70:30 for hiring craftsmen by the producers of one federal region carrying on shooting at another federal region of the country. In fact, such an arrangement was worked out by various federations under the confederation to satisfy the local interest, which is a laudable exercise by OP-1 to reduce conflict of interest as well as to satisfy the sentiments of the local working class of the region where the shooting is to take place. Sons of soil movement is not unheard of in this country, which is mainly divided on linguistic and ethnic basis. In order to avoid this local sentiment and to safeguard the interests of its regional members, such formula was put forth which was mutually accepted by the regional federations. All the associations accepted the proposal of OP-1 which resulted in complete peace in working devoid of local sentiments and local confrontation which could have affected the work of producers. The proposal is more in the interest of producers than in the interest of the working class of the region.

OP-18



86. Major part of the MoU pertains to wages and shift timings of the daily wage earners which in no manner concern OP-22 or its members as the members of OP-22 are hired on contractual basis and it is clearly mentioned in the MoU that the terms and conditions for contractual workers would be determined at a later stage which has never been determined till date.
87. OP-22 or its members have never participated or endorsed member to member working and are not involved in hiring, fixing wages or controlling the services of workmen or prohibiting engagement of people who are not members of OP-22. There is no anti-competitive resolution passed by OP-22 to penalise engagement of its non-members by the producers. The name of OP-22 is not included in the minutes of the meetings that allegedly show the alleged anti-competitive resolution passed by the other OPs as mentioned in the investigation report of the DG.

OP-26

88. The MoU and the rules framed by the OP associations only indicate that they are working in the interest of all those who are engaged in the business of film and television content production. OP-26 itself is a victim of dictates of other associations, more particularly the associations of technicians such as of directors, workers, etc.
89. Members of OP-26 have no choice but to accept the dictates of all those affiliated with OP-2. Holidays and pattern of working are fixed by OP-2 and its affiliates and the producers have no choice but to accept the same without raising any objection failing which the members of OP-2 physically prevent the shootings. Members of OP-26, by virtue of such conduct, are made to suffer losses running into crores of rupees.
90. OP-26 in the past, had made an attempt to implement the scheme of free trading; however, the same was objected to by OP-2 and its affiliates.



OPs-27 and 28

91. OPs-27 and 28 have agreed to the finding of the DG that OPs-1, 2 and other OPs (OPs-6, 8, 9, 11, 12, 14, 15, 16, 17, 18, 19, 22, 23, 24 and 25) have violated the provisions of Section 3 (3) of the Act and that the provisions of the MoU are in violation of Section 3 (3) (a), 3 (3) (b) and 3 (3) (c) read with Section 3 (1) of the Act.
92. OPs-27 and 28 also agreed with the findings made by the DG that producers' associations did not have much bargaining power *vis-a-vis* OP-2 and its affiliates and that OPs-26, 27 and 28 entered into the MoU under pressure from OP-2 and its affiliates. Hence, they submitted that OPs-27 and 28 should not be made liable for the contravention of the provisions of the Act as they had no choice but to accept the MoU.
93. OPs-27 and 28 were compelled to sign the MoU with OPs-1 and 2 and their affiliates on dotted lines as OP-2 and its affiliated associations declared non-cooperation whereby, none of the members of the respective affiliated associations reported to work on the sets of any film and television serial. This resulted in chaos and caused a complete blackout for the television industry whereby the channels had no new content to broadcast. During this period, all channels had no option but to broadcast only the repeat telecasts of old episodes.
94. Due to such non-cooperation declared by OP-2, the production of all films also was either stalled or postponed indefinitely. This made the members of OPs-27 and 28 vulnerable as they were under extreme financial pressure and mental stress leading to a situation where their existence was threatened. Hence, they had to enter into the MoU as per terms of OP-2 and its affiliates.



Findings of the Commission:

95. The Commission has perused the investigation report, objections of the parties and other material available on record including oral arguments made by the parties.
96. It is noted that the OPs have raised preliminary objection regarding jurisdiction of the Commission, which requires consideration before the merits of the case are looked into. The DG observed that *prima facie*, the intent of the Legislature and that of the Act cannot be such that the provisions of the Act are *ipso-facto* not applicable upon trade unions. The DG also concluded that OP-2 and the other OPs are liable to be covered within the definition of ‘enterprise’ under S.2(h) of the Act.
97. In their submissions, most of the OPs, *inter alia*, have stated that they are registered trade unions as per the Act of 1926 and the present case involves industrial disputes between workmen and their employers. Therefore, the matter does not raise any competition concern. With regard to the issues in the MoU, it was submitted that the same is a beneficial arrangement and the intent was to bring about cordial relations between the individuals operating in the western India film and television industry and ensure smooth functioning of the film industry. Some of the OPs have also relied on the judgment of *Herbertsons Limited v. Workmen of Herbertsons Limited and Others*, [(1976) 4 SCC 736] and *P. Vriddhacahalam and Others v. Management of Lotus Mill and Others* [(1998) 1 SCC 650]
98. The OPs have further relied upon the judgment of the erstwhile Hon’ble Competition Appellate Tribunal (‘**Tribunal**’) dated 03rd April, 2014 titled *Co-ordination Committee of Artist and Technicians of West Bengal Film and Television Industry v. Shri Sajjan Kumar Khaitan and others* [Appeal no. 131 of 2012] wherein the minority order of the Commission was upheld and have highlighted that the Tribunal has already confirmed that Section 3 does not take into its fold, coercive actions taken by non-players or labour unions or worker unions, affecting production,



distribution or supply of goods or services. Also, referring to Section 62 of the Act, the OPs have submitted that the Act is in addition to and not in derogation of the Act of 1926. Relying on the above judgments, the OPs have submitted that the Informant cannot invoke the jurisdiction of the Commission which is constituted for the purpose of prohibiting anti-competitive agreements and preventing abuse of dominant position in the relevant market.

99. It has been submitted that the Commission cannot be called upon to adjudicate on trade union disputes which do not find mention in the Act but which have been specifically included under the ID Act. Some of the OPs have stated that the State of Maharashtra has a special law called Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 which deals with unfair labour practices by trade unions. Based on these judgments and provisions of various laws, the OPs have argued that since the rights of and restrictions upon trade unions are well defined under the existing labour laws, the jurisdiction of the Commission to regulate legitimate trade union activities is ousted.
100. The first issue for consideration is whether there is an exemption for trade unions and their activities from the application of the provisions of the Act. The Act of 1926 provides immunity to the office bearer / member of a registered trade union from certain criminal and civil cases. Under Section 17, no office-bearer or member of a registered trade union shall be liable to punishment under Section 120-B(2) (criminal conspiracy) of the Indian Penal Code, 1860 in respect of any agreement made between the members for the purpose of furthering any such object of the trade union as is specified in Section 15 of the Act of 1926, unless the agreement is an agreement to commit an offence. Section 18 provides that no suit or other legal proceeding shall be maintainable in any Civil Court against any registered trade union /office-bearer/ member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the trade union is a party on the ground only that such



act induces some other person to break a contract of employment, or that it is interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills. A registered trade union shall also not be liable in any suit or other legal proceeding in any Civil Court in respect of any tortious act done in contemplation or furtherance of a trade dispute by an agent of the trade union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by, the executive of the trade union. Lastly, Section 19 states that notwithstanding anything contained in any other law for the time being in force, an agreement between the members of a registered trade union shall not be void or voidable merely by reason of the fact that any of the objects of the agreement are in restraint of trade.

101. From a perusal of the above mentioned provisions of the Act of 1926, it is observed that immunity is granted only against proceedings relating to certain limited actions and under specified statutes. No immunity is granted to a trade union/its office bearer(s)/member(s) from the provisions of competition law. Further, as observed by the DG, under the Act, there is no provision similar to Section 3(d) of the MRTP Act which clearly stated that the statute will not apply to any trade union or other association of workmen or employees formed for their own reasonable protection as such workmen or employees. Therefore, the intent of the Legislature and that of the Act does not appear to grant a blanket immunity to actions carried out by a trade union. Further, the Commission also notes that the restriction under Section 18 of the Act of 1926 is against suit or other legal proceeding in any Civil Court. The Commission is not a Civil Court. It is only vested with certain powers of a Civil Court under the Act for the discharge of its functions *vide* Section 36 of the Act. The Hon'ble Supreme Court has also, in its judgment in *CCI v. SAIL [(2010)10SCC744]*, observed that the Commission is only an expert body. Therefore, the immunity under Section 18 of the Act of 1926 will not be applicable to the OPs in the present case.



102. The OPs have also relied upon Section 62 of the Act to contend that jurisdiction of the Commission is not available when there is a ‘trade dispute’ between association and one of its members, in view of the remedy provided under the Act of 1926. The Commission notes that Section 62 of the Act clearly provides that *‘the provision of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force’*. Hence, the issues covered under the ambit of the Act have to be enforced in its true spirit. In the instant case, the area of operation of the two statutes is not opposed to each other but on the contrary, they are complementing each other. The Act of 1926 is created with the objective of protecting legitimate trade union activities and the Act is created to protect fair competition in the market. Therefore, Section 62 of the Act does not bar the applicability of the Act to trade unions.
103. There is no dispute between the freedoms enshrined in the Constitution of India and the right of the parties to form associations or unions within the constitutionally circumscribed limits. Undoubtedly, trade unions can undertake activities which protect and secure the rights of their members. However, the activities of any such union(s) should not be intended to restrain competition or harm consumers or be used for the purpose of bringing about or attempting to bring about any understanding or agreement, written or oral, formal or informal, express or implied, between and amongst competitors with regard to practices of limiting or controlling production, supply, markets *etc.* When these trade unions transgress their legal contours and facilitate collusive or collective decision making with the intention of limiting or controlling the production, distribution, sale or price of or trade in goods or provision of services by its members, it amounts to violation of the provisions of the Act. The Commission, therefore, is of the opinion that if the impugned conduct of trade union falls foul of the Act, the same needs to be examined under the relevant provisions thereof. Competition law is not an impediment to appropriate trade union activities



and members of such unions should be fully aware of the types of conduct such law proscribes when carrying out the union's programs and activities.

104. The present case involves allegations pertaining to terms in the MoU containing exclusivity clause providing for member to member working which stipulates that producers engage only the members of OP-2 and its affiliates, prohibiting the engagement of non-members and mandatory prior intimation to the respective affiliate for hiring non-members; clauses for determination of sale price of the services of various categories of workers and constitution of a vigilance committee for inspection and detection of infringement of the provisions of MoU. These clauses and the alleged actions of the OPs have the potential to affect fair competition in the western Indian film and television industry. Therefore, it is imperative that these allegations be tested on the touch-stone of the provisions of the Act and in light of the evidence collected by the DG.
105. Some of the OPs have further argued that the present case involves an industrial dispute between workers and their employers and such disputes are covered under the ID Act and not under the Competition Act, 2002. Reference was made to the constitution of industrial tribunals for adjudication of industrial disputes specified in the Second and Third Schedule of the ID Act. The Commission observes that this argument is fallacious. Under Section 2(k) of the ID Act, industrial dispute has been defined as '*any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons.*' Further, Second Schedule and Third Schedule of the ID Act relate to the jurisdiction of labour courts and industrial tribunal. The Commission notes that they only pertain to disputes related to discharge or dismissal of workmen including re-instatement of, or grant of relief to, workmen wrongfully dismissed; withdrawal of any customary concession or privilege; illegality or



otherwise of a strike or lock-out; wages, including the period and mode of payment; compensatory and other allowances; hours of work and rest intervals; leave with wages and holidays; bonus, profit sharing, provident fund and gratuity; shift working otherwise than in accordance with standing orders; classification by grades; rules of discipline; rationalisation; retrenchment of workmen and closure of establishment, etc. A perusal of the clauses of the MoU would reveal that the same cannot be said to be an industrial dispute at all. For instance, a clause which limits the choice of recruitment such as the member to member working does not appear to be affecting condition of labour or terms of employment; hence such terms cannot be given the guise of an industrial dispute. Rather, such a clause affects the supply of services and free competition in the market and squarely falls with the purview of the Act. Thus, the Commission is of the view that the preliminary objection of the OPs regarding jurisdiction of the Commission is devoid of any merit and is liable to be rejected.

106. Few OPs have also raised the issue that OPs are not 'enterprise' as defined under the Act and therefore, Section 3 will not be applicable. At the outset, the Commission notes that it is not necessary for an entity to be 'enterprise' to come within the purview of Section 3 of the Act as this section is applicable to an agreement between '*enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise*'. Section 2(1) of the Act has given a wide definition for the term 'person'. Therefore, even an agreement between persons or associations of persons can be scrutinised under Section 3 if it contravenes the said provision.

107. The OPs, however, have relied upon the judgment of the Hon'ble Tribunal in *Co-ordination Committee of Artist and Technicians of West Bengal Film and Television Industry v. Shri Sajjan Kumar Khaitan and other* to highlight that the Tribunal has already confirmed that Section 3 does not take into its fold, coercive actions taken by non-players or labour unions or worker unions, affecting production, distribution or



supply of goods or services. The Commission has referred to the case of *Mr. Sajjan Khaitan v. Eastern India Motion Picture Association and Ors. (Case No. 16 of 2011)*. The informant therein alleged that Eastern India Motion Pictures Association (EIMPA), Co-ordination Committee of Artists and Technicians of West Bengal Film and Television Industry, M/s Channel 10 and CTVN PLUS had contravened the Act by indulging in cartelisation. The Commission in its, majority order dated 13.08.2012, had held that trade unions are not exempt from the purview of the Act and the decision of the Coordination Committee and EIMPA reflected the collective intent of the members. Therefore, it was held that their conduct was liable for examination under Section 3 (3) read with Section 3 (1) of the Act. The majority decision of the Commission was set aside and the minority view was approved by the Tribunal in its order dated 03.04.2014 where it held that Coordination Committee is a trade union and it is legitimately protesting and voicing grievances for the benefit of its members.

108. On appeal, the Hon'ble Supreme Court in *Competition Commission of India v. Co-Ordination Committee of Artists and Technicians of W.B. Film and Television and Others. ((2017) 5 SCC 17)*, vide its order dated 07.03.2017, not only upheld the majority order of the Commission but also held that Coordination Committee and EIMPA are associations of enterprises within the meaning of the Act. The Hon'ble Supreme Court also interpreted the term 'enterprise'. The relevant extract of the said order is placed herein below:

“40. The notion of enterprise is a relative one. The functional approach and the corresponding focus on the activity, rather than the form of the entity may result in an entity being considered an enterprise when it engages in some activities, but not when it engages in others. The relativity of the concept is most evident when considering activities carried out by non-profit-making organisations or public bodies. These entities may at times operate in their charitable or public capacity but



may be considered as undertakings when they engage in commercial activities. The economic nature of an activity is often apparent when the entities offer goods and services in the marketplace and when the activity could, potentially, yield profits. Thus, any entity, regardless of its form, constitutes an 'enterprise' within the meaning of Section 3 of the Act when it engages in economic activity. An economic activity includes any activity, whether or not profit making, that involves economic trade.

41. In the instant case, admittedly the Coordination Committee, which may be a 'person' as per the definition contained in Section 2(l) of the Act, is not undertaking any economic activity by itself. Therefore, if we were to look into the 'agreement' of such a 'person', i.e. Coordination Committee, it may not fall under Section 3(1) of the Act as it is not in respect of any production, supply, distribution, storage, acquisition or control of goods or provision of services. The Coordination Committee, which is a trade union acting by itself, and without conjunction with any other, would not be treated as an 'enterprise' or the kind of 'association of persons' described in Section 3. A trade union acts as on behalf of its members in collective bargaining and is not engaged in economic activity. In such circumstances, had the Coordination Committee acted only as trade unionists, things would have been different. Then, perhaps, the view taken by the Tribunal could be sustained. However, what is lost in translation by the Tribunal i.e. in applying the aforesaid principle of the activity of the trade union, is a very pertinent and significant fact, which was taken note of by the DG as well as the CCI in its majority opinion. It is this: The Coordination Committee (or for that matter even EIMPA) are, in fact, association of enterprises (constituent members) and these members are engaged in production, distribution and exhibition of films. EIMPA is an association of film producers,



*distributors and exhibitors, operating mainly in the State of West Bengal. Likewise, the Coordination Committee is the joint platform of Federation of Senior Technician and Workers of Eastern India and West Bengal Motion Pictures Artistes Forum. Both EIMPA as well as the Coordination Committee acted in a concerted and coordinated manner. They joined together in giving call of boycott of competing members i.e. the Informant in the instant case and, therefore, matter cannot be viewed narrowly by treating Coordination Committee as a trade union, ignoring the fact that it is backing the cause of those which are 'enterprises'. **The constituent members of these bodies take decision relating to production or distribution or exhibition on behalf of the members who are engaged in the similar or identical business of production, distribution or exhibition of the films. Decision of these two bodies reflected collective intent of the members. When some of the members are found to be in the production, distribution or exhibition line, the matter could not have been brushed aside by merely giving it a cloak of trade unionism.** For this reason, the argument predicated on the right of trade union under Article 19, as professed by the Coordination Committee, is also not available.”*

(emphasis supplied)

109. From this judgment of the Hon'ble Supreme Court it is clear that any entity, regardless of its form, is an 'enterprise' within the meaning of Section 3 of the Act when it engages in an economic activity. An economic activity includes any activity, whether or not profit making that involves economic trade. The Supreme Court has also clarified that a trade union acts as on behalf of its members in collective bargaining and is not engaged in economic activity. However, when the constituent members of these bodies take decision relating to production or distribution or exhibition on behalf of the members who are engaged in the similar or identical business of production, distribution or exhibition of the films, the decision of these



two bodies reflected collective intent of the members. In such circumstances, the actions of the trade union can be examined under the provisions of the Act.

110. It is noted that OP-2 is the parent body of the OPs No. 6 to 25, who are different associations and independently representing different crafts of the western India film and television industry. Similar to OP-2, OP Nos. 3 to 5 are the mother bodies of different associations representing different crafts in the film industry for Eastern India, Northern India and Southern India, respectively. OP Nos. 26 to 28 represent film producers and television producers. The members are all organised and regulated by their respective associations.
111. OP-6 is an association of sound engineers, OP-7 is the association of settings and allied mazdoor, OP-8 is the association of cine TV/ad production executives, OP-9 is the association of film and video editors, OP-10 is the association of cine and TV art directors and OP-11 of voice artistes, OP-12 of cine and TV artistes, OP-13 of cine costume and make-up artistes and hair dressers, OP-14 is of cine singers, OP-15 of cine musicians, OP-16 of cine agents, OP-17 of cine dancers, OP-18 of cine still photographers, OP-19 of film dance directors, OP-20 of junior artistes, OP-21 of movie stunt artists, OP-22 of music composers, OP-23 of movies action dummy effects, OP-24 of film writers and OP-25 of western India cinematographers. Constituent members of OP-6 to 25, in their own capacity, as economic operators, provide services in the market and the producers pay for these services. Sound engineers, cine TV/ad production executives, singers, junior artists, make-up artists and hair dressers, dancers, photographers, voice artistes, film and video editors, etc. are hired to offer their respective services to make a film, songs, serials or advertisement for a certain amount of remuneration. As a result, they are assumed to take the financial risks attached to the pursuit of that service and therefore, are engaged in economic activity. Therefore, in light of the order of the Supreme Court in *Co-ordination Committee*, it can be concluded that each of the constituent members of the OP trade unions are enterprises under Section 2 (h) of the Act and



the OPs are associations of enterprises. Further, the actions of the OPs is 'practice carried on' or 'decision taken by' an 'association of enterprises' under Section 3(3) of the Act. Even if the OPs are not associations of enterprises, they will still be 'associations of persons' and will fall within the purview of Section 3 of the Act.

112. Some of the OPs in their objections filed before the Commission have questioned the veracity of the affidavits relied upon by the DG by contending that the deponents were not subjected to cross-examination by the OPs. OP-2 *vide* its letter dated 11.03.2016 had requested the DG for cross examination of 12 persons including the Informant and such producers and executives/ managers of the production houses who submitted their affidavit along with documentary evidence pertaining to anti-competitive conduct of the OP-2 and its affiliates. DG noted in the report that the evidence referred to by OP-2 in its application is documentary in nature and submitted *vide* affidavits/ written depositions. They are not oral depositions or statements recorded on oath or information based on personal information which is not backed by documentary evidence. OP-2 has also been duly confronted with such evidence from time to time and due opportunity to refute the same was also been given. As a result, the request of cross examination was not found to be tenable in law and DG declined the same, *vide* a separate speaking order dated 01.04.2016. A similar request for cross examination made by OP-10 for cross examination of a producer (third party) was also denied by the DG for same reason. In the absence of such cross-examination, the OPs contend that the authenticity of these affidavits have remain unverified thus amounting to a violation of the principles of natural justice.
113. The Commission notes that the DG submitted his report to the Commission on 12.04.2016 which was circulated to the parties *vide* its order dated 21.06.2016. After acceding to various requests for adjournments, the Commission heard the OPs on 22.02.2017, 09.03.2017 and 10.03.2017. Since the rejection by the DG of the cross-examination application *vide* order dated 01.04.2016 till the date of hearings before the Commission, the OPs have not moved any application before the Commission



seeking cross-examination or appeal from the DG's order. The OPs have only made the absence of cross-examination as a ground for objection in their arguments (oral and written) before the Commission. Further, it is observed that when confronted, some of the OPs have acknowledged the incidents mentioned in the said affidavits and have not denied the contents of the affidavits in their response before the DG and/or the Commission. Therefore, in the absence of cross-examination, the OPs cannot allege that principles of natural justice have not been adhered to

114. Having opined above, the Commission proceeds to analyse whether the OPs have contravened the provisions of Section 3 of the Act or not. The following two issues were identified by the DG in its report for analysing the alleged contravention of the Act:

Issue No. I: Whether the terms of the MoU dated 01.10.2010 signed between OP-2 and OPs-26 to 28 are violative of the provisions of Section 3 (3) (a), 3 (3) (b) and 3 (3) (c) read with Section 3 (1) of the Act?

Issue No. II: Whether the conduct of the OPs is violative of Section 3 (3) (a), 3 (3) (b) and 3 (3) (c) read with Section 3 (1) of the Act or any other provision of the Act?

Determination of:

Issue No. I: Whether the terms of the MoU dated 01.10.2010 signed between OP-2 and OPs-26 to 28 are violative of the provisions of Section 3 (3) (a), 3 (3) (b) and 3 (3) (c) read with Section 3 (1) of the Act?

115. The Commission observes that the MoU was entered into on 1.10.2010 between OP-2 on behalf of its affiliate members on the one side and OP-26, OP-27, OP-28 and Western India Film Producers Association on the other side. Its tenure was till 28.02.2015. The intent of the MoU, as reflected in Clause 2, is to set forth a cordial relation between individuals operating and performing duties in western India circuit



of film and television industry. It was intended to set forth and agree to employment related issues including wages, employment, conditions, timings/schedule and shifts of working and ensure smooth functioning of film and television industry, by way of immediate redressal/adjudication/arbitration and mediation of settlement of disputes and difference between their concerned members, on equitable and mutually agreeable grounds. It is noted that in the MoU, the name of Western India Film Producers Association's name was included but it did not sign the MoU, thus taking it out of the purview of the MoU.

116. Clause 4 of the MoU sets out the scope of the agreement to include but not limited to (a) disputes arising between producer and employee; (b) disputes regarding grievances towards specific performance, damages, unsatisfactory performance, professional misconduct, etc.; (c) disputes relating to wages; (d) disputes pertaining to working shifts and working schedule; (e) disputes pertaining to/arising out of employment or during the course of employment or association between producer and members of affiliates of OP-2; (f) disputes to regulate the conduct and increase efficiency of performance in film trade business; (g) disputes which can be effectively resolved by way of arbitration and mediation arising for purpose of performance of film trade and business and/or during the course of employment of workmen/employee; (h) all such disputes which would be mutually agreed to be addressed before the parties.
117. From a perusal of the intent and scope of the MoU, it is seen that the MoU is only an understanding/agreement entered into by OP-2 and the producer associations for regulating/monitoring the day to day affairs of the film/TV industry such that cordial and healthy relationship is maintained between the parties and disputes regarding wages, work schedule, performance of workers, etc. are amicably resolved.
118. One of the arguments raised by the OPs is that the MoU has been erroneously interpreted to be a horizontal agreement within the meaning of Section 3(3) of the Act because an agreement between the producers' associations and OP-2 cannot be a



horizontal agreement as they are not engaged in identical or similar trade of goods or provision of services. However, this argument is devoid of merit. The OPs, as associations or trade unions, themselves are not engaged in any activity of production or supply of goods or service as part of production or supply chain. It is their constituent members who are engaged in this activity of making of films. The OPs are providing a platform to their constituent members who are engaged in economic activities and regulating their affairs. The MoU was signed by OP-2 as a trade union representing its affiliated trade unions and by OPs 26-28 as producer associations having full control over its members. This agreement was signed by the parties as representatives of entities operating in the western India film and television industry, therefore, it is a horizontal agreement under Section 3 (3) of the Act.

Clause 6 – Member to Member Working and Clause 18 – Vigilance Committee

119. The DG examined the clauses of the MoU and came to the conclusion that the MoU contains exclusivity clause providing for member to member working under Clause 6. Further, it was noted that Clause 18 provides for constitution of a Vigilance Committee for inspection and detection of infringement of the provisions of MoU. The DG, thus, opined that these clauses provided an operational mechanism for control by OP-2 and its affiliates over the producers. The DG, therefore, found the above clauses to be limiting and controlling the services of hiring/ engagement of workers and artists in the film and television industry in Mumbai/ Western India and concluded that the above clauses are violative of the provisions of Section 3 (3) (b) read with Section 3 (1) of the Act.
120. With respect to Clause 6 (a), OP-2 argued that DG overlooked the phrase ‘at first instance’, which brings out the intention of the parties to preferentially engage with one another as part of the overall mutually agreed scheme to ensure smooth functioning of western India film and television industry. The rule of member to member working between producers’ associations and OP-2 dates back to almost fifty years and thus, the same cannot be construed as a unilateral imposition on the



producers' associations. Referring to Clause 6 (c) and 6 (d), OP-2 contended that these clauses were not restrictive in nature and rather gave freedom to the producers to engage and arrange for workmen as per their requirements. The mere requirement of informing the affiliate members of OP-2 has been taken out of context by the DG. With regard to giving 30% work in case of reality shows, game shows, *etc.* as provided in Clause 6 (f), OP-2 argued that it was reasonable and reflected common intention of all the parties. It is further argued that Clause 6 (g) was to be read conjointly with other the clauses of the MoU, particularly, Clause 6 (c) which gave necessary freedom to the producers within the contours of 'member to member' working which was mutually agreed upon. On the requirement of NOC in Clause 6 (h), it is submitted that the same was incorporated keeping in mind the future uncertainties which could not be contemplated by the parties while entering into the MoU. The intent of the clause was to address information asymmetry between the parties as to the availability of the required workers and to provide for such special requirements of the producers which might not be met from the available pool of employees.

121. OP-2 further submits that the purpose of formation of a Vigilance Committee under Clause 18 was to secure effective enforcement of the MoU by assuring adherence to the rule of member to member working. It is further submitted that the said clause did not provide unfettered powers to the Vigilance Committee and was reasonable in nature. Various other clauses were incorporated to ensure that shootings are not disrupted under any circumstances. It is contended that the true intent of Clause 18 was to lay down a fair and reasonable mechanism to facilitate operationalisation of the various terms of the MoU, including member to member working.
122. OP-26 stated that it was the real victim as the producers who were attached with the producers associations had no choice but to follow the *diktats* of all such craftsmen associations. It was prevented from hiring services of independent workers. OP-26



submitted that it had made an attempt to have free trading in the industry, but the same was not permitted by the members of OP-2.

123. Clause 6 of the MoU lays down that member to member working will be the foundation of the MoU. Further Clause 18 provides for creation of a Vigilance Committee:

- “6 (a):** *The Parties agree and undertake that its members shall at first instance, engage only the members of the Associations affiliated to the Party for any work regarding Film/ Televisions/ Music/ Advertising or such other employment concerning the Producers’ activities and operations.*
- 6 (b):** *The Parties agree that neither party shall voluntarily and knowingly work with a non-member i.e. a person who is not a valid member of respective association.*
- 6 (c):** *In case of shortage of availability of respective skillful workers from concern member if affiliates of FWICE, the Producer shall be free to arrange necessary workmen as per his requirement with prior intimation to FWICE.*
- 6 (d):** *In case of special requirements for specific purposes and if the requirement is not specifically adjustable within the purview of this MoU or by way of adhering to maintenance of Member to Member working relationship agreed between the Parties, in such a case, the Producer shall be free to engage and arrange any such workmen as required with intimation to FWICE through its respective association.*
- 6 (f):** *In case of reality shows, game shows and such programs having specific requirements or of reality goner, the Producers shall give 30% work to the junior artist members as well as Mahila Kalakar Sangh member of affiliates of FWICE.*
- 6 (g):** *In case of construction activity or for the purpose of construction/ alteration of set, the Producer shall engage skilled workmen from the respective association who is recognized to be member/ affiliate of FWICE.*
- 6 (h):** *If there is any special requirement of a Producer for any specific class of employees and if no such employees are available with the concerned affiliate Associations of the Party, either for a particular Shift(s) or in*



general, the concerned Producer shall give such intimation well in advance, to the Party for engaging non-members fulfilling the said special requirements for such particular shift(s) or in general, as the case may be. The Party, after due verification with its concerned Parties, for engaging non-members fulfilling the said special requirements, for such particular Shift(s) or in general, as the case may be.

It is agreed that any salaried employee of the Producer is free to carry out his activities on the sets without being forced to become a member of any FWICE Affiliate, provided he works outside the scope of the existing 22 Crafts affiliated to the FWICE.

18: *Formation of Vigilance Committee for dispute pertaining to employment of non-members:-*

- a) *A vigilance committee shall be constituted as defined above who shall have powers to take inspection at shooting premises to ensure that member to member working is adhered. Such Vigilance Committee shall be entitled to take inspection of shooting during the breaks without disturbing the shooting activity or production activity of the Producers. In no circumstances the shooting or production shall be disturbed or interrupted for whatsoever reasons. In case if during the inspection certain employees/workmen are found to be non-member of affiliates of FWICE then the vigilance committee shall make list of such non-members of affiliates of FWICE then the vigilance committee shall make list of such non-members and such list shall be forwarded to the respective Producer and Producer association with an intimation that all such non-members should be either removed or enrolled as to members of respective crafts/ affiliates of FWICE. Such directions shall be adhered by respective Producers within 2 days, failing which vigilance committee shall be entitled to refer the matter directly to the Core Committee and the decision of the High Power Committee shall be final.*
- b) *A vigilance committee shall also be entitled to inspect the shooting premises on receipt of complaint by Producer against any of the members of affiliates of FWICE.*
- c) *No stoppage of shooting at any cost with no exception whatsoever unless decided by the High Power Committee. Also no fines to be*



imposed/ levied on the Producers on locations. This provision shall not be applicable for the Producers who have defaulted and dishonored the cheques remitted towards settlement. In such case a notice of three working days will be given to the Producer to clear his dues before taking any action. If the Producer complies and remits payments within such three days he shall not be liable for any action, penalties, interests, etc.”

124. The Commission observes that Clause 6 (a), (b) and (g) restricted the producers from hiring any other worker/ artist who was not a member of the OP associations for any work *i.e.* film, television, music, advertising or any other employment. Clause 6 (c) and (d) further strengthened the above intent by including the provision that producers can hire non-members only after intimation to OP-2. Though the clause provided that parties are free to arrange necessary workmen who are non-members, the restraint was apparent from the requirement of ‘intimation’. It is further noted that the hiring of skilled workers who were non-members was allowed only after issuance of NOC under Clause 6 (h). Additionally, Clause 6 (f) states that in case of certain shows 30% of the work should mandatorily be given to junior artist members as well as Mahila Kalakar Sangh member affiliates of OP-2.

125. Section 15 of the Act of 1926 lists out the objects for which the general funds of a registered trade union may be spent. These objects are *inter alia* in the nature of activities taken for securing or protecting rights of the trade union / rights arising out of relations of any member with his employer / a person whom the member employs, conducting trade disputes on behalf of the trade union/any member, payment of allowances to members or their dependents on account of death, old age, sickness, unemployment of members, issuing policies of assurance on lives of members/policies insuring members against sickness, accident or unemployment, providing educational/social/religious benefits for members, payment in furtherance of any cause intended to benefit workman in general. The tenor of these objects is protectionist; they ensure that the rights of the members of the trade unions are secured. However, such protection does not extend to imposing restrictions on the



employment of certain class of persons. Such conditions cannot be called legitimate trade union activity.

126. The Commission is of the view that that Clause 6 place restrictions on the freedom of the producers to acquire services of any non-member artist/ worker of their choice. The requirement to first give preference to the members of OP-2 and its affiliates indicates absence of freedom to hire. Further, such clauses also prevent any person who is not member of any of the affiliates of OP-2 to work with OPs 26-28 unless he/she takes membership of the concerned affiliate of OP-2.
127. The formation of the Vigilance Committee under Clause 18 is not a violation of the Act, but the purpose for which such Committee was formed might attract the provisions of the Act if such formation amounts to a restraint on hiring. The Vigilance Committee through its inspection at the shooting sites, ensured that the member to member working rule is complied with. After inspection by the Vigilance Committee, if the producers are found to be hiring non-members of the OPs, the Committee would intimate the producers that such non-members be removed or the non-members be enrolled as members. Therefore, this clause imposed a restriction on the freedom of the producers to hire craftsmen as per their desire.
128. As per definition in Clause 1(ix) of the MoU, the Vigilance Committee was to consist of four members – two from OP-2 and two from producers associations. At least one member from the producer representative would be from the producer association of which the producer whose premises has to be inspected is a member. Pursuant to Clause 18, the Vigilance Committee cannot cause stoppage of shooting unless decided by the High Committee and no fines could be imposed/ levied on the producers on location. If the producer does not adhere to the directions of the Vigilance Committee within 2 days, matter shall be referred to the Core Committee and the decision of the High Power Committee shall be final. However, through the various instances reported in the DG report, it is evident that while enforcing the member to member working rule, the parties went beyond the provisions of Clause



18 and disrupted shooting, imposed penalty and stalled shootings. In some instances, it was not the Vigilance Committee, but members of the affiliates of OP-2 who conducted the inspection and imposed penalty. These actions continued to take place even after the expiry of the MoU. These instances are more elaborately examined under Issue II of this order.

129. Clause 6 read with Clause 18 deprived the freedom to hire by the producers. The matter was further aggravated by the Vigilance Committee and members of OP-2's affiliates going beyond the accepted contours of Clause 18. This is a manipulation of producers' hiring process for their films/ television programmes as these actions make it virtually impossible to participate in western Indian film and television industry without becoming member of affiliate of OP-2 or OPs-26-28. Such clauses also deprive the opportunity of fair and free competition in the market. The restraint on freedom to hire on account of NOC and freedom to provide services, legitimised through the MOU, has the effect of limiting or controlling the market or provision of services.

130. The argument that rule of member to member working between producers' associations and OP-2 dates back to almost fifty years and that it was a voluntary undertaking given by the producers cannot legitimise the clauses of the MoU which are in violation of the Act. This is because Section 3 (1) read with Section 3 (2) of the Act renders void an agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. The member to member working clause is violative of Section 3 (3) of the Act and mere consent of the parties to the MoU cannot confer legal validity. If this argument is accepted, then any agreement which is anticompetitive will be conferred legitimacy by virtue of the consent of the parties.

131. It may also be noted that the Commission, in earlier cases, has held the rule of member-to-member working imposed by associations upon its members to be anti-



competitive under Section 3 (3) (b) read with Section 3 (1) of the Act. In the majority order passed by the Commission under Section 27 of the Act on 16.02.2012 in clubbed Cases No. 25, 41, 45, 47, 48, 50, 58 and 69 of 2010 titled *Reliance Big Entertainment Limited etc. v. Karnataka Film Chamber of Commerce and Others etc.*, the Commission held that imposition of member to member working condition through memorandum of understanding or articles of association by an association reflects collective behaviour of all its members. It was further stated that the effect of such a condition is that non-members, who are competitors of the members of such associations, are prevented from competing effectively in the market. Such agreement among the members who act upon such decisions of the associations, in effect, limited the supply and distribution of films in the territories under the control of various associations, which was held to be violative of Section 3 (3) (b) of the Act. A similar view was taken in *UTV Software Communications Limited v. Motion Pictures Association, Delhi*, in Case No. 09 of 2011 decided on 08.05.2012 by the Commission.

132. Therefore, the Commission is of the view that the conduct of OP-2, alongwith that of OPs-26, 27 and 28, being signatories to the MoU which imposed member to member working condition under Clause 6 and created the Vigilance Committee under Clause 18 to ensure compliance with this clause and the continuation of this practice after the expiry of the MoU by their active and tacit conduct, is in contravention of the provisions of Section 3 (3) (b) read with Section 3 (1) of the Act.

Clause 8 (b) - Increase in Wages and Clause 8 (c) – Wages on Monthly Basis

133. With regard to Clause 8 (b) and 8 (c) of the MoU, the DG stated that the clauses clearly provide for determination of sale price of the services of various categories of workers. As a result, the price of services is not being determined directly between the producers and the artists/ workers. The hirer (producers) and the hired (artists/workers) do not have any say as far as determination or even negotiation for determination of rates of hiring of artists/ workers is concerned. The MoU also



determines the percentage increase in the salary/ wages of different categories of artists/ workers. The DG drew reference to the Commission's order in *Swastik Stevedores Private Limited v. Dumper Owners' Association*, (Case 42 of 2012) and concluded that these clauses take determination of service hiring charges out of the ambit of negotiations or determination by the parties or determination by the market forces. Hence, the said clause is violative of the provisions of Section 3 (3) (a) read with Section 3 (1) of the Act.

134. With respect to Clause 8 (b) that provides for increase in wages, OP-2 submitted that the said clause is to ensure the workers' welfare. Further, Clause 8 (c) specifies only the minimum wages and conveyance charges of members of OP-7 employed on a regular basis in the TV serials/ programmes. It is also stated that such clause only provides for benchmarks while the exact terms are left to be negotiated amongst the parties. OP-2 has also pointed out that Case 42 of 2012 is different from the instant matter, because that in that case there was a collective fixation of rates by the members of the DOA and the members were compelled to abide by such fixed rates. However, in the present case, the minimum wages and the yearly increments have been arrived at after mutually agreeing upon the same.

135. Clause 8 (b) and (c) state the following:

“8(b) Increases, in Wages:-

The wage rates agreed herein shall be applicable for the term of this MOU and shall cover all such agreements entered into between the producers and workmen.

(i) **Films/TV Serial:-** *The parties hereto have agreed that Wages shall stand increased as under and be applicable only to categories of Shift Workers belonging to (1) Film Studio Setting & Allied Mzdoor Union, (2) Junior Artistes Association/Mahila Kalakar Sangh, (3) Cine Dancers' Association, (4) Cine Singers' Association, (5) Cine Musicians' Association, (6) Association of Voice Artistes, (7) Movie Stunt Artistes' Association, (8) Movie Action Dummy Effects Association and to the Minimum Wages of all other*



Associations of Contractual Members in case of a Dispute and the absence of a Written Contract.

*The Wages shall stand increased for the **First year** (from 1st March 2010 to 28th February 2011) by **10%** of the rates agreed between the parties and as existing on 31st December 2009 (i.e. The agreed rate shall be 10% over and above the rate existing before the execution of this (MOU));*

*The Wages shall stand increased for the **Second year** (from 1st March 2011 to 28th February 2012) by **5%** of the rates agreed between the parties and as existing on 28th February 2011 (i.e. The agreed rate not exceed more than 5% over and above the rate existing on 28th February 2011);*

*The Wages shall stand increased for the **Third year** (from 1st March 2012 to 28th February 2013) by **7.5%** of the rates agreed between the parties and as existing on 28th February 2012 (i.e. The agreed rate not exceed more than 7.5% over and above the rate existing on 28th February 2012);*

*The Wages shall stand increased for the **Fourth year** (from 1st March 2013 to 28th February 2014) by **5%** of the rates agreed between the parties and as existing on 28th February 2013 (i.e. The agreed rate not exceed more than 5% over and above the rate existing on 28th February 2013);*

*The Wages shall stand increased for the **Fifth Year** (from 1st March 2014 to 28th February 2015) by **7.5%** of the rates agreed between the parties and as existing on 28th February 2014 (i.e. The agreed rate not exceed more than 7.5% over and above the rate existing on 28th February 2014);*

8(c): *It is further agreed that in case of TV serials / programs, the concerned members of the Film Studio Setting & Allied Mazdoor Union, who are employed on a Regular Basis, shall have the option to work at a compensation or wages on monthly basis, as per the terms specified herein after, subject to wage hike, as per clause (b)(i) overleaf:*

- i) Spot Boy – Existing rate Rs 13,500/- (per month) minimum + conveyance Rs. 60 per day amounting to Rs. 15,300/- per month*
- ii) Light Boys – Existing rate Rs 15,000/- (per month) minimum + conveyance Rs. 60 per day amounting to Rs. 16,800/- per month*



- iii) *Electrician – Existing rate Rs 17,000/- (per month) minimum + conveyance Rs. 60 per day amounting to Rs. 18,800/- per month*
- iv) *Carpenter – Existing rate Rs 15,000/- (per month) minimum + conveyance Rs. 60 per day amounting to Rs. 16,800/- per month*
- v) *Asst. Carpenter – Existing rate Rs 13,000/- (per month) minimum + conveyance Rs. 60 per day amounting to Rs. 14,800/- per month*
- vi) *Payment to such workmen employed on fix remuneration/wage rate will be made on 15th Day of every month or on monthly basis as per their mutual contract.*
- vii) *For termination of services the Producer and the workman both shall have to get a 30 days notice in advance.*
- viii) *The Producer shall be free to enter into individual contracts for governing the terms of engagement of services with all unit members as deemed fit.*
- ix) *Assistants engaged from any department shall have to enter into separate contract with the Producer. And shall be paid directly by the Producer.*
- x) *All payment exceeding Rs. 5000 shall be disbursed by cheques only and on production of valid PAN Card, Bank Accounts, etc.*
- xi) *Minimum One Month's Notice of Termination shall be given by the Producer to the Salaried Member.*
- xii) *It is still further agreed that in case of TV Serials / Programmmes, the concerned members of the other Contractual Associations, who are employed on a Regular Basis, shall also have the option to work on a Salary Basis, as per the term no. f, g, h and I specified hereinabove at amounts to be finalized within a month of signing this MOU.”*

136. The Commission observes that Clause 8 (b) and 8 (c) contain provisions with respect to fixation of minimum wages for certain affiliates of OP-2 and increase in wages on a yearly basis. This MoU was signed with OP-2 as a registered trade union on behalf of its affiliates and the producer associations as representative of its members. It is



true that these clauses have the effect of fixation of prices especially when coupled with Clause 6 which prohibits the engagement of non-members without prior intimation/NOC. However, wages and increment being also a condition of labour/term of employment, can fall within the realm of legitimate trade union activity when negotiated by a registered trade union. Therefore, Commission is of the view that Clause 8 (b) and (c) are not in contravention of Section 3 (1) read with Section 3 (3) of the Act.

Issue No. II: Whether the conduct emanating from the impugned clauses of MoU is in contravention of Section 3 (3) (a), 3 (3) (b) and 3 (3) (c) read with Section 3 (1) of the Act or any other provision of the Act?

137. Having demonstrated that certain clauses of the MoU are against the provisions of the Act, the Commission now proceeds to examine the culpability of the parties violating the provisions of the Act. It is noted that:

- (a) OP-2, OP-26, OP-27 and OP-28 are signatories to the MoU;
- (b) OP-6, OP-8, OP-12, OP-14, OP-15, OP-16, OP-17, OP-18, OP-19, OP-22, OP-23, OP-24 and OP-25 have admitted and defended the provisions of MoU by being affiliates of OP-2;
- (c) in respect of OP-7, OP-10, OP-13, OP-20 and OP-21, there are specific instances of enforcing the provisions of MoU;
- (d) OP-9 had disassociated as affiliate of OP-2 from 2008 to October 2014 and OP-11 was not active from 2009 to 2014 and its affiliation from OP-2 was suspended in August 2014.

138. In this backdrop, the Commission has considered the evidence gathered by the DG the findings recorded in the investigation report and the replies/ objections made by the OPs to examine the conduct of all the OPs in enforcing the clauses of the MoU.



OP-1

139. It is noted that OP-1 is the umbrella body of the four regional associations *i.e.* OPs-2, 3, 4 and 5 and OP-1 is neither a party to the MoU dated 01.10.2010 nor an affiliate of OP-2. As such, the DG has concluded that OP-1 is neither directly nor indirectly liable for the MoU or any of the anti-competitive clauses of the same.
140. However, it is noted that fixing the 70:30/ 50:25:25 norm for engagement of members from dancers and fighters' associations where dance artists and fight masters were engaged from other regional federations was done on the initiative of OP-1. It had passed a resolution/ directive dated 07.03.2013 which was circulated and emphasised upon by OP-2 *vide* its letter dated 12.03.2013.
141. The DG found that this directive of OP-1 has wide ramifications as it limits and controls the provisions of services as well as shares the market of services of dancers and fighters in the film industry. Accordingly, the conduct of OP-1 is violative of the provisions of Section 3 (3) (b) and 3 (3) (c) read with Section 3 (1) of the Act.
142. To justify its conduct, OP-1 has submitted that the responsibility to balance the working of these regional federations within their territories lie with the regional federations themselves and not upon OP-1. The 'rule of 70:30 or 50:25:25' was evolved based on mutual consent of all the stakeholders *namely* the regional federations, the producers' associations and the members of the local unions where the shootings actually take place. OP-1 explained that in certain situations, especially ones where producers shoot in a region different from their own, sometimes local sentiments such as sons of soil come into play and shootings are obstructed by the locals demanding local employment in their territory. Further, it was stated that the aforesaid conduct does not have any appreciable adverse effect on competition.
143. The Commission at the outset observes that it was only because of the directive/ resolution of OP-1 that producers were required to hire dancers and fighters in the prescribed ratio from the regional associations in certain circumstances. The



Commission further observes that the reasons adduced by OP-1 for initiating such a hiring of workers in the abovementioned ratio does not hold good in the eyes of competition law. It is to be noted that OP-1 had issued a circular/ directive to all the regional associations for enforcing it while engaging the local workers. This was affecting the right of the producers to engage talent of their choice.

144. With regard to the reliance placed by OP-1 on the letter dated 10.03.2000 written by All India Film Producers Council (AIFPC) to OPs-27 and 28 stating that the member to member working arrangement with OP-2 has been in existence since 1966 and this arrangement is responsible for the smooth functioning of the film industry, the Commission notes that only because the anti-competitive conduct has been in existence since 1966, it does not mean that the conduct of OP-1 would continue even after the Act came into operation in 2009. Further, as observed earlier, continuation of a such conduct under the guise of legitimate trade union activity cannot be exempted. It is OP-1 which is forcing the producers to hire workers in the ratio of 70:30/ 50:25:25 regardless of the fact whether they can find artistes/ workers having the required skills for the work or not. This conduct of OP-1 amounts to controlling and limiting the supply of dancers and fighters in the western India film and television industry.
145. It may be noted that the averment that 70:30/ 50:25:25 resolution is based on an arrangement made between the producers' associations and the other OPs on mutual consent basis, cannot justify the violation of the Act. Moreover, it may be noted that this arrangement was objected to by certain regional federations *viz.* Employees Federation of South India *vide* its letter dated 18.03.2013. The directive of engagement of dancers and fighters in the ratio of 70:30/ 50:25:25 has not only ramifications on limiting and controlling the provision of services but also on sharing of market of services of dancers and fighters in the entire film industry is concerned. Also, the market of these services was being shared/ allotted on the basis of geographical area.



146. The Commission also notes the minutes of its meeting held on 27.09.2013, it is was discussed as below:

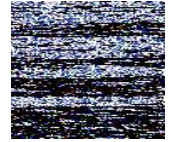
“Mr. Shiva wanted to clear the fact that Mr. Peter was their member but he used to work often with non-members. Repeatedly he was also punished and then he went to Hyderabad and joined their Union in 2009”

147. This discussion, as per the DG, happened on the 2nd day of the NEC meeting organised by OP-1 at Kerala. OP-1 has submitted that the impugned minutes are quoted out of context and states that the extract reproduced above is in relation to the dispute involving two other regional associations of OP-1. The Commission is of the view that these minutes of the meeting are sufficient to demonstrate that the practice of penalising the members who were working with non-members was prevalent.

148. Based on the foregoing, the Commission is of the view that the allegations against OP-1 are established by the evidence available on record and OP-1 is found to be liable for contravention of Section 3 (3) (b) and 3 (3) (c) read with Section 3 (1) of the Act.

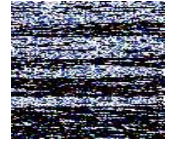
OP-2

149. The Informant and many third parties furnished documentary evidence alleging violation of different provisions of the Act by OP-2 and its affiliates. It is alleged that in instances where producers had engaged artists/ dancers *etc.* who were non-members, they had faced retaliatory action in the form of disruption of shoot, inspection by Vigilance Committees, levy of penalty, issuance of non-cooperative directive/ direction, *etc.* Even when the Producers had specific requirements *viz.* hiring of artists for *Kalaripayattu*: a martial art of Kerala or *Dandapatta*: Maharashtra’s art form of sword fighting, which were specific skill sets, hiring of non-members was not permitted or penalty was levied in lieu of loss of jobs to the members of the affiliates. It has been pointed out that such conduct was carried out not only during the currency of MoU, but even after its expiry on 28.02.2015.



150. The DG found the following specific evidence against OP-2:

- (i) Shri Rahul Kumar Tewary, Director of Swastik Production Private Limited, in his affidavit dated 21.08.2015, has stated that a representative of OP-20 was arrested by the police for stalling the shooting of television serial “*Yam Hai Hum*”, in which non-members were engaged for work. In its reply to the DG dated 09.11.2015, OP-2 has admitted that such an incident happened on 16.05.2015. It has also stated that a non-cooperative directive was issued by it against the producers of the serial on the basis of a complaint received from OP-20, as the action of the producers was in contravention to the terms of MoU. It is further noted that the incident occurred on 16.05.2015 which is well after the expiry of MoU on 28.02.2015.
- (ii) Shri Jasminder Singh Arora, partner of M/s DJ’s Creative Unit, in his affidavit dated 06.11.2015, has stated that shooting of television serial “*Ek Muthi Aasman*” was disrupted by members of OP-2 for engaging non-member technicians in the set.
- (iii) Shri Abhimanyu Singh, Director of Contiloe Pictures Private Limited, has, in his affidavit dated 10.09.2015 before the DG, cited few instances of enforcement of the MoU by OP-2 and/or its affiliates:
 - (a) Representatives of OP-21 had reached the shooting set at Talasari, Maharashtra of television serial “*Bharat Ka Veer Putra Maharana Pratap*” and objected to the hiring of persons from Kerala who were specialised in the martial art form ‘*Kalaripayattu*’. They stalled the shooting arguing that the hired artists are its non-members. Due to this incident, there was a huge monetary loss to the production house approx. to the tune of Rs. 6,00,000/-. Besides, penalty of Rs. 84,677/- was imposed by OP-2. Even though a complaint was filed with the President



of Indian Film and Producers Council (IFPC) with a copy to OP-2, no action was taken.

- (b) While shooting for the television serial “*Veer Shivaji*” at Madh Fort, Mumbai, the producer had hired certain specialised artistes who were non-members of OP-21 for action sequences which used *Dandpatta*, a specialised form of martial arts practiced by Maratha warriors. However, representatives of OP-2 stalled the shooting of this serial for hiring non-members and threatened the production house for which it (production house) had to file an FIR dated 21.03.2012
- (c) During the shoot of the film “*Darr @ The Mall*”, the Vigilance Committee of OP-2 had charged an amount of Rs. 5000/- towards purported losses caused on account of hiring of persons who were non-members.
- (d) At the shoot of the television serial “*Mahabali – Hanuman*”, representatives of OP-20, an affiliate of OP-2, had charged the production house an amount of Rs. 25,000/- for hiring of non-members. A copy of the charge slip dated 14.07.2015 issued by OP-20 was also produced in support.

151. When confronted by the DG with regard to the aforesaid allegations, OP-2 and its affiliate OP-20 failed to provide any justification/ clarification on the said incidents.

152. The Commission observes that even in the written submissions filed by OP-2 and its affiliates, they have not disputed the evidence recorded by the DG in the investigation report. It is noted that OP-2 had levied penalty from January, 2014 till January, 2016 on nearly 60 parties ranging from Rs. 5000/- to Rs. 6,05,000/-, totalling Rs. 18,57,244/- (approx.) for enforcing the provisions of the MoU such as employing non-members of its affiliates.



153. The Commission further notes that the evidence collected by the DG is for two different periods *i.e.* during the subsistence of the MoU and later, after the expiry of the MoU on 28.02.2015.

154. The Commission perused the minutes of the Emergency General Council Meeting held on 14.03.2015 at 11.00 a.m. at the office of OP-2. These minutes bring out that Shri Dilip Pithva of OP-2 had discussed ways to penalise producers who were engaging non-members for their work. The excerpts of the minutes are self evident as can be seen from below:

“Shri Dilip Pithva General Secretary said, if any member engages non-members you penalize member-whoever he maybe for engaging non-member. He also said that the Producer pays that penalty to FWICE (OP-2) but the same is deducted from our membership.”

155. On the rule of hiring dancers and fighters in 70:30 ratio, it is observed that OP-2, vide letter dated 12.03.2013 forwarded the resolution passed by OP-1 in its NEC meeting dated 07.03.2013 at Hyderabad clarifying the following:

- (a) *If a Hindi film is being shot in Mumbai and the dance director/fight master is from Bengal/Chennai/Hyderabad, in that case he should engage 70% dancers/fighters from Mumbai and rest 30% of his choice.*
- (b) *If a Hindi film is being shot in other region than Mumbai and the dance director/fight master is from other region, then the region the film is being shot in: in that case 50% of dancers/fighters should be engaged from Mumbai. 25% from the local association where the film is being shot, and the remaining 25% again of his choice.*

156. OP-2, in its reply before the Commission, has contended that OP-1's 2013 resolution was rescinded by OP-1 through resolution passed in NEC meeting dated 07.08.2015



and this information was circulated to all the affiliates of OP-2 vide letter dated 13.08.2015. Therefore, OP-2 cannot be held liable for violating Sections 3 (3) (b) and 3 (3) (c).

157. This directive not only amounts to controlling and limiting the supply of dancers/fighters in the film and television industry, but it also leads to sharing market of provision of services of dancers/fighters by way of allocation of geographical area of the market. Further, there is no denial by OP-2 of the fact that the resolution was in effect from 07.03.2013 till 07.08.2015. Rescission of the resolution at a later date cannot take away that the conduct during the period of effect was not in contravention of the Act.
158. Based on the foregoing, the Commission is of the view that the allegation of the Informant that artists/ workers could only be hired by the producers from those trade associations which are affiliated to OP-2 stands established. This is further substantiated by the conduct of OP-2 imposing penalty for engaging non-members. Thus, the conduct of OP-2 is in violation of Sections 3 (3) (b) and 3 (3) (c) read with Section 3 (1) of the Act.
159. The Commission further notes that OP-2 is the mother body of various craft associations in western India film and television industry. This is evident from Para A of the MoU, which is as follows:

“The Party of the first Part is a Registered Trade Union bearing registration number 7194 (Registered under Trade Unions Act 1926) since 1956 and is currently representing and performing for its affiliated Trade Unions. A list of an affiliated Trade Unions who are members of FWICE and are associated/ governed by FWICE is annexed hereto and marked as Exhibit-A. FWICE represents that it has full control over its affiliates, to agree to the terms and conditions of this MoU for itself and on behalf of all its affiliated Trade Unions and their members, to govern/ enforce the contents of this MoU by itself and on behalf of all its affiliated Trade Unions and their



members, to govern/enforce the contents of this MOU by itself and on behalf of all its affiliated Trade Unions and their members. FWICE further represents that it has full authority and ability to perform this MOU unconditionally and in full respect, and to execute this MOU by itself and on behalf of all its affiliated Trade Unions and their members”

By virtue of this, OP-2 is acting on behalf of all its affiliates and therefore, all its acts are construed to be with active or tacit approval of its affiliates.

160. The DG has found that OP-2 and its affiliates were practising the convention of charging ‘extra half shift’ from the producers whenever the employees were required to work beyond the territorial/ municipal limits of Mumbai. It is noted that the convention of charging ‘extra half shift’ was not a part of the MoU. It emerged as a practice to be enforced from the directive of OP-2 *vide* its letter dated 11.10.2013. The relevant portions are reproduced below:

“We take this opportunity to bring to your notice that few of the Producers were not paying one and half shift to the daily rated workers which was brought to our notice by some of our affiliated crafts union. Thereafter we have deliberated and debated in our general council meeting.

For example, 9.00 AM to 6.00 PM shift within Mumbai territorial limits is considered as one shift while the same outside Mumbai territorial limits is considered as one and a half shifts (for cases where overnight stay is not required). Similarly, 9.00 Am to 9.00 PM shift within Mumbai territorial limits is considered as one and a half shifts while outside Mumbai territorial limits is considered as two shifts. It was found that paying one and a half shifts beyond Mumbai territorial limits has been in practice since decades which however, had not been implemented strictly by some production houses. We hereby request you to please issue a circular in this effect to all your members to implement the payment of one and a half shifts to all our affiliated crafts unions.



161. The Commission observes that OP-2 was actively enforcing the charging of extra half shift through its directive dated 11.10.2013 on the producers' associations. In response, OPs-26 and 27 had replied as follows:

Letter dated 17.10.2013 from Indian Motion Pictures Producers Association (OP-26)

“This has reference to your letter Ref No FWICE/102-7/644/2013 dated 11th October 2013 wherein you have mentioned charging extra payment for shooting beyond Mumbai Territorial Limits.

This is to state that the decision to charge one and a half shift payment for shooting beyond Mumbai territorial limit mentioned in your above letter in unjustified and unilateral.”

Letter dated 17.10.2013 from the Film and Television Producer's Guild of India Limited (OP-27)

“This is with reference to FWICE's letter on the above issue concerning stoppage of extra payment being charged by FWICE affiliates for shooting beyond the territorial limits of Mumbai.

It is quite shocking that FWICE has taken an arbitrary decision to implement a payment of one and a half shift outside the preview of Mumbai Geographical limit. This is in contravention of the rules enshrined in the MoU and violate the unanimous decision arrived jointly by FWICE and Producers body.”

162. The Commission notes that OP-2 has stated that the practice of charging extra half shift for shooting beyond Mumbai municipal limits has been discontinued long back and tried to justify by saying that this practice was being followed in the industry for decades and was brought upon after years of collective bargaining efforts. It further stated that the underlying rationale was essentially to compensate the cine workers for their cumbersome travelling over long distances beyond Mumbai municipal limits. It also stated that the letter dated 11.10.2013 was not issued as a directive by OP-2, but rather in the context of some complaints brought to OP-2's attention by its



affiliates to the effect that the said practice was not being followed by a few producers. In this regard, OP-2 stated that being constitutionally born to address/ resolve the grievances of its members, OP-2 had issued the said letter to the producers' associations requesting appropriate action.

163. The Commission observes that OP-2 has admitted the practice but has tried to justify the same by saying that this was for the welfare of cine workers and that the said practice has been discontinued. No documentary evidence has however been furnished by OP-2 on the discontinuation. This is an example of unilateral imposition by OP-2 of payment terms which is beyond the terms of the MoU and is instantly acted upon by OP-2's affiliates, as is demonstrated from instances cited below. Therefore, not just the MoU, but even arbitrary unilateral decision of OP-2 is being followed by its affiliates. Hence, it can be concluded that the affiliates of OP-2 are acting in concert with OP-2 and they cannot deny the applicability of the MoU by virtue of not being a signatory to it.

OP-7

164. The following instances were recorded against OP-7:

- (i) Shri Lawrence D' Souza, Executive Producer of Ashutosh Gowariker Productions Private Limited *vide* an affidavit dated 20.01.2016 before the DG, averred that Shri Gangeshwar Srivatsva, head of OP-7, visited the sets of the film "MohenjoDaro" at Ramdev Film City, Village Maljipada, Mumbai, and demanded that the production team pay 50% extra wages to all its members/ workers in the film. In addition, he demanded that extra half wages be paid for outdoor shifts failing which, all its members/ workers hired by the production house would cease to work in the movie. At such time, the producer had no option but to abide by such demands of OP-7.
- (ii) Shri Rakesh Juneja, General Manager of M/s Optimistic Entertainment *vide* an affidavit dated 21.01.2016 stated that during the shooting of the television



serial “*Krishnadasi*” at Thane, there was availability of plenty of skilled and experienced local workers for hire. Yet, OPs-2 and 7 forced the production house to hire OP-7’s members only. They also demanded 50% more wages than the rate card wages if shooting locations were outside the municipal limits of Mumbai. On this ground, OP-7 members stalled the shooting on 26.12.2015, 01.01.2016 and 09.01.2016 for three hours, causing the production house a loss of Rs. 5,00,000/- towards payment of extra wages.

- (iii) Shri Vidyuth Bhandary, Business Head of Fremantle India Television Productions Private Limited, *vide* letter dated 16.02.2016 to the DG, stated that during an outdoor shooting of the TV show “*India’s Got Talent (IGT) Season 5*” at Film City (Mumbai), shooting was stalled by the representatives of OP-7 on the pretext that the production house had used nine non-members on their set. Further, representatives of OP-7 threatened to shut down the shoot unless a fine was paid for hiring non-members. Despite best efforts of the production company to resolve the situation, no conclusion could be reached and the shooting had to be postponed. A fine had to be paid by the production house as well. A copy of the receipt dated 11.02.2014 for the fine paid by the production house to OP-7 was enclosed in support of this statement.
- (iv) Shri Sunjoy Wadhwa, Director of Sphereorigins Multi-vision Private Limited also *vide* an affidavit dated 10.11.2015 stated that shooting was disrupted on 27.06.2015 by the members of OP-7 for non-acceptance of payment of one shift beyond Mumbai limit.

165. The DG confronted OP-7 with the above evidence; however, OP-7 failed to respond to the show-cause notice dated 28.01.2016 in spite of repeated reminders dated 01.03.2016, 16.03.2016, 22.03.2016 and 01.04.2016 issued by the DG.

166. It is noted that OP-7 has, before the Commission, stated in its reply that it is not affiliated to OP-2 and does not support its monopolistic practices. It has never been a



part of any strike convened by OP-2 nor does it support the rules and regulations framed by OP-2. It was earlier affiliated to OP-2, but since it did not adhere to some of its rules which were bad in law or illegal, it was dis-affiliated from OP-2. The allegations made against it in the investigation report are totally misconceived and devoid of merit.

167. The Commission is of the view that OP-7 has not placed on record any documentary evidence to prove that it was not a party to the MoU signed on 01.10.2010 by OP-2 on behalf of its affiliates. In this regard, it is to be noted that OP-7 in its objections dated 23.01.2017 in Para 19 has mentioned as follows:

“Moreover, in so far as OP-7 is concerned it is not as if it does not allow non-members at all. Indeed, when a non-member has been engaged in the circumstances, as set out in the MoU, OP-7 collects the remuneration, if the Producers have not paid the daily rated employees directly, and on receipt of the same, OP-7 disburses the wages to the concerned employees.”

168. The Commission finds it contradictory that OP-7, on the one hand states that was not affiliated to OP-2 nor the MoU signed by OP-2 on behalf of its affiliates was acceptable to it, and on the other hand it has made a reference to the MoU in its objections. Further, the conduct of OP-7 in collecting remuneration if the producers were not paying daily wages to the employees, points to its involvement in implementing the provisions of the MoU.
169. Based on the aforesaid evidence, Commission finds OP-7 to be liable for contravention of Section 3 (3) (b) read with Section 3 (1) of the Act.

OP-10

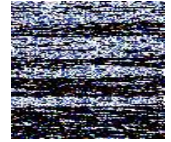
170. Following is the evidence recorded against OP-10:

Shri Lalit Sharma, CEO of Colosceum Media Private Limited vide an affidavit dated 21.01.2016 stated that the representatives of OP-10



visited the shooting premises of his TV serial “Twist Wala Love – Cinderella Story” at Dream House and imposed a penalty of Rs. 51,000/- on the production house for engaging non-members on the set. A copy of the Vigilance Report and the association’s letter was enclosed along with the affidavit.

171. OP-10, however, denied the allegation and claimed that the said vigilance drive was carried out by one of its members, Shri Durga Montoo Gupta, who was not authorised for the same. They stated before the DG also that Shri Gupta was not a part of OP-10’s vigilance team and had acted without due authority while conducting the alleged vigilance drive. OP-10 has stated that it suspended the said member and initiated an internal investigation about the matter as well. It is also averred that the signatures of Shri Dilip Pithva, General Secretary of OP-2, were forged on the Vigilance Report and the penalty was not enforced by OP-10.
172. DG noted that OP-10 has not produced any evidence to show that the vigilance drive was carried out without its authorisation. Before the Commission, the OP-2 filed a copy of the show cause notice dated 14.11.2015 issued by OP-10 to Shri Durga Montu Gupta, his undated response to the notice in Hindi and the notice of his suspension from membership of OP-10 dated 08.12.2015. At the outset, it should be highlighted that this response was not filed by OP-2 on an affidavit. Even if the Commission takes cognizance of these documents, the fact remains that these documents were not produced before the DG. Without going into the authenticity of Shri Durga Montu Gupta’s reply to the show cause notice, following stark facts are observed:
- (i) his objection to the engagement of non-members;
 - (ii) his insistence on making them members; and
 - (iii) his admission that he prepared a vigilance report under pressure from the member of OP-10.



Further, Commission notes that this is a one off incidence of suspension and similar action was not taken in any other case of similar conduct. In addition, no evidence as provided for withdrawing penalty imposed on Colosseum Media Private Limited.

173. Further, the minutes of OP-10's meeting held on 01.06.2011 clearly show that the members of OP-10 were discussing the modalities to impose fine on the producers who were engaging non-members for their work. The relevant excerpts of the said minutes are reproduced below:

“This issue was discussed in the meeting and it was decided that a fine would be levied on the concerned Producer. It was further decided that the schedule of the fine will be decided in advance. It will be in the range from Rs.500 to Rs.5000 distributed on different categories and rules and regulations regarding the fine structure would be sent to each Art Director. Mr Amit Shinde suggested that a Producer would be requested on two occasions for not to engage non-members and if he does not heed to our request even than we would take action against the concerned Producer”.

These minutes are sufficient to demonstrate that the members of OP-10 were actively forcing the producers to not work with non-members in compliance with the MoU.

174. The Commission therefore finds OP-10 to be liable for contravention of Section 3 (3) (b) read with Section 3 (1) of the Act.

OP-13

175. The DG has found specific evidence against OP-13:

- (i) Shri Saurabh Tiwari, Director of Saurabh Tiwari Films Private Limited *vide* an affidavit dated 10.09.2015 stated that film shooting at Sai Maidan, Film City, Goregaon, Mumbai was interrupted on 14.05.2015 by members of OP-13 claiming that the hair dressers used by the production house were non-members of OP-13. Though the head hair dresser, Ms. Nimmi Padwal, showed her identity card issued by OP-2, her two assistants were unable to produce the



same. Hence, OP-13 demanded a sum of Rs. 25,000/- from each of the assistants which they refused to pay. Upon this, the same was demanded from the production house. When the payment receipt was asked for, it was not given as they did not have it. As a result, the production house refused to make the payment after which the members of OP-13 created ruckus and delayed the shoot. Copy of the letter of OP-13 to OP-27 to prevent haphazard checks and copy of the letter addressed to OP-2 by Ms. Nimmi Padwal recording the event which transpired on 14.05.2014 were supplied by Shri Saurabh Tiwari.

- (ii) Shri Nilesh Mehta, Finance Head at Hats Off Production Limited, *vide* an affidavit dated 22.12.2015 stated that on the sets of TV serial “*Badi Door Se Aye Hai*” at Green Studios, Malavani, Mumbai on 17.07.2015, few members of OP-13 entered into the set and inspected and checked the membership validation of all the make-up artists and hair-dressers. Their head hair-dresser, Ms. Jaya Panchal, furnished her identity card which in fact was a Federation Card issued by OP-2. However, her two assistants were unable to produce similar identity cards as they belonged to other associations which were not recognised by OP-13. Hence, OP-13 asked Ms. Jaya Panchal to pay the fine and instructed the production team to terminate her contract and discontinue her services at the earliest.

Both these incidents have taken place after the expiry of the MoU.

176. With respect to the incident involving Ms. Nimmi Padwal, OP-2, in their additional submissions filed before the Commission, averred that it does not issue any identity card to any member; thus the question of inspection of identity card and payment of fine does not arise. Further, the authenticity of the signature of Ms. Nimmi Padwal was also questioned by OP-2 as her signatures are different on two undated letters recording her the complaint regarding this incident.



177. The DG noted that in its reply dated 06.11.2015 received in response to the show cause notice issued on 20.10.2015, OP-13 stated that it is clearly recorded in its constitution that members cannot engage non-members and it is a fact known to all its members. The member Ms. Nimmi Padwal was aware of the provision in the constitution that requires and was mandatory to engage the services of members only.
178. OP-13 contended that a deliberate attempt is being made by the producers to mislead the Commission by making the aforesaid allegations. The DG proceeded against them on the basis of the isolated incident which happened on the set of *Bade Door Se Aiye Hai* and denied the allegation of obstruction of the shooting. It was further stated that with regard to its member, Ms. Jaya Panchal, its conduct does not fall within the ambit and purview of the Section 3 of the Act. If she (Jaya Panchal) had any grievance with regard to her suspension, she could have very well assailed the order of suspension before the Registrar of Trade Unions raising the dispute under the Act of 1926. Thus, merely on these two isolated instances, OP-13 has been proceeded against.
179. The Commission notes that OP-13 has not denied the allegations mentioned in the DG Report and has not provided any documentary evidence to dispense the same. The evidence noted above clearly indicates that OP-13, like the other mentioned OPs, had implemented the anti-competitive provisions of the MoU making it liable for contravention of Section 3 (3) (b) read with Section 3 (1) of the Act.

OP-20

180. The DG found the following specific evidence against OP-20:
- (i) Stalling of shooting of TV Serial “*Yam Hai Hum*” at Film City, Goregaon, Mumbai, Maharashtra;
 - (ii) Shooting of TV Serial “*Veer Shivaji*” at Madh Fort, Mumbai, Maharashtra;



- (iii) Penalty imposed during the shooting of TV serial “*Mahabali Hanuman*” at Naigoan, Mumbai, Maharashtra;
- (iv) Statement of Shri Abhimanyu Singh, Director of Contiloe Pictures Private Limited, in his affidavit dated 10.09.2015, of payment of a sum of Rs. 9,00,000 to OP-20 for a period of six months (from May, 2010 to October, 2010) as an advance penalty so that members of OP-20 do not visit their sets and levy penalty for not hiring their members or for any other reasons.
- (v) Extra payments to be made during shooting of films titled “*Phata Poster Nikhla Hero*” and “*It’s Entertainment*”;

Shri Ramesh S. Taurani, Managing Director of Tips Industries Limited has stated on affidavit dated 27.01.2016 that OP-20 had forced the producers/production house to make extra payment for engaging non-member models. It was a sort of penalty levied for using more skilled professionals and less costly non-member models.

- (vi) Shooting of film titled “*Rustom*”;

Shri Shital Bhatia, Co-founder of Friday Film Works Private Limited, has stated on affidavit dated 17.02.2016 that OP-20 forced the producers/production house to make extra payment to it for engaging non-member models.

- (vii) Disruption during shooting of TV serial “*CID*” at Ellora Studio Mira Road (East), Mumbai.

Shri Pradeep Uppoor, Partner of M/s Fireworks Productions stated in his affidavit dated 17.02.2016 that when they were conducting a shoot on or about 13.05.2015, at around 12:30 p.m. one Ms. Jilpa Boss, representative of OP-20 barged on the sets and started creating ruckus. On inquiry, it came to



their knowledge that the reason was having junior artists who are non-members of OP-20.

181. The Commission notes that OP-20 was confronted by the DG with these incriminating evidence at the time of investigation. However, it failed to give any reply or refute these. In fact, it did not reply to the show-cause notice dated 28.01.2016 as well as the reminder letters dated 03.02.2016, 15.02.2016, 22.02.2016, 09.03.2016 and 17.03.2016 issued by the DG. Even, in its reply to the DG Report filed before the Commission, OP-20 has not clarified its stand on merits and has taken the argument that it is a registered trade union and its conduct falls within the ambit of legitimate trade union activity.
182. The evidence noted above clearly indicates that OP-20, like the other mentioned OPs, had implemented the anti-competitive provisions of the MoU. Based on the foregoing, the Commission is of the view that OP-20 is liable for contravention of Section 3 (3) (b) read with Section 3 (1) of the Act.

OP-21

183. The DG found the following evidence against OP-21:
- (i) Stalling of the shooting of TV serial '*Bharat Ka Veer Putra Maharana Pratap*' and imposition of penalty; and
 - (ii) Shri Lawrence D' Souza, Executive Producer of Ashutosh Gowariker Productions Private Limited *vide* an affidavit dated 20.01.2016 before the DG, deposed that when the production team was shooting for the film titled "*MohenjoDaro*" in Bhuj, Gujarat, they received a bill from the Stunt Co-ordinator Shri Amar Shetty, billing them for extra half shift because the stuntmen had to work in the water during the shooting. The production team had to bear the increased cost and pay the stuntmen Rs. 3,52,000/- (approx.) as per the demands of OP-21.



184. OP-21, in its reply to the DG and the Commission, has denied the aforesaid allegations and stated that OP-21 is not a signatory to the MoU. Regarding the shooting of TV serial ‘*Bharat Ka Veer Putra Maharana Pratap*’, it has stated that the bill no. 2307 submitted by Contiloe Entertainment Pvt. Ltd. shows that payment is for:

- (i) travelling charge
- (ii) fight master per day
- (iii) 7% allowance for stunts

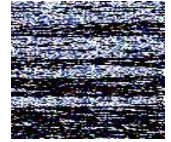
and there is no fine or penalty imposed whatsoever. With respect to documents submitted by Shri Lawrence D’ Souza, there was nothing in the document other than persons hired for stunts, their rates, and shift charge. Though Shri Aejaz Gulab, General Secretary of OP-21, has stated that it is not a signatory to the MoU, they have not denied that they are an affiliate of OP-2.

185. By virtue of being OP-2’s affiliate, provisions of the MoU become applicable to OP-21. Further, in their reply before the Commission, they have defended and justified the clauses of the MoU imposing member to member working and 70:30 rule for engaging fighters/dancers. Further no documentary evidence was submitted to the DG or Commission to support its allegations. Based on this foregoing, the Commission is of the view that OP-21 is liable for the contravention of the provisions of Section 3 (3) (b) read with Section 3 (1) of the Act.

OPs- 26, 27 and 28

186. With respect to the above producers’ bodies, the DG has made the following observation:

“OP-26, 27, 28 are the three associations of film producers which are also a party to the MoU. Therefore, they are also liable for the anticompetitive provisions of the MoU. However, as noted during the investigation, the producers association may not have much bargaining

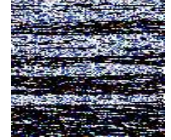


power vis-à-vis OP-2 and its affiliates and it may be construed that OPs-26, 27 and 28 may have entered into the MoU under pressure from the OP-2 and its affiliates.”

187. The Commission finds that the producers’ associations had themselves entered into and signed the MoU containing the violative clauses. The act of signing the MoU may have been committed with the desire of self-preservation by the producers’ associations. But, if necessity is admitted as defence by the Commission, it would be made a legal cloak for unbridled passion and atrocious conduct. Hence, the Commission does not agree with the DG’s view that OPs-26, 27 and 28 had little bargaining power *vis-a-vis* OPs-1 to 25 and that they may have had to accept the MoU under compulsion.

188. Rather, it appears that OPs-26, 27 and 28 had entered into negotiations with OP-2 and agreed to the anti-competitive clauses mutually. In this regard, the Commission relies on the documents submitted by OP-10 regarding the complaint made to OP-2 by the Informant towards non-payment of his rightful dues as director for the film “*London Dreams*” by the producer and the request made to OP-2 to make arrangements for such payment of the claim amount of Rs. 5,50,00,000/-. The Informant, *vide* another letter dated 29.12.2011 addressed to the General Secretary of OP-2, requested OP-2 to expedite the action against Head Start Films Private Limited. Based on the correspondence between the Informant and OP-2, the Commission finds that the directors/ producers were also using the Dispute Settlement Mechanism created by Clause 14 (a) of the MoU relating to disputes pertaining to wages/ remuneration of workmen of OP-2. Based on this, the Commission is of the view that OPs-26, 27 and 28, who are signatories to the MoU, are liable for contravention of the provisions of Section 3 (3) (b) read with Section 3 (1) of the Act.

OP-6, OP-8, OP-9, OP-12, OP-14, OP-15, OP-16, OP-17, OP-18, OP-19, OP-22, OP-23, OP-24 & OP-25



189. OP-6 to OP-25 are engaged in various crafts associated with production of films, television programmes *etc.* in western India and are the affiliates of OP-2 and Clause 2 of the MoU binds the affiliates of OP-2 who cannot act independent of it. Thus, the DG, considering the above facts and by reason of them being associated with the execution and operation of the MoU, found OPs-6 to 25 liable for the anti-competitive clauses of the MoU and for violating the provisions of Sections 3 (3) (a) and 3 (3) (b) read with Section 3 (1) of the Act.

190. On perusal of the submissions filed by the OPs, the Commission finds that the following OPs have admitted that they are affiliated to OP-2:

- (i) Western India Motion Pictures and Television Sound Engineers Association (OP-6),
- (ii) Association of Cine & TV/ AD production executives (OP-8),
- (iii) Cine & TV Artist Association (OP-12),
- (iv) Cine Singers Association (OP-14),
- (v) Cine Agents Combine (OP-16),
- (vi) Cine Dancers' Association (OP-17),
- (vii) Cine Still, TV and Motion Photographers Association (OP-18),
- (viii) Indian Film and TV Choreographers Association (OP-19),
- (ix) Music Composers Association of India (OP-22),
- (x) Movie Action Dummy Effects Association (OP-23),
- (xi) Writers Association (OP-24), and
- (xii) Western India Cinematographers Association (OP-25).

It is observed that these associations have defended the clauses in MoU as they were for the welfare of the workers and helpful in improving the working conditions of their members.



191. OP-15 has not filed any submissions nor has provided any evidence or made any arguments before the Commission to prove that they are not affiliated to OP-2. The remaining OPs have largely argued before the Commission that no specific conduct of violation of the provisions of the Act has been brought out against them by the DG and that they have not derived any benefit of the alleged anti-competitive provisions contained in the MoU.
192. The Commission notes that OP-2 is the mother body of various craft associations in the western Indian film and television industry. It is currently representing and acting for its affiliates and has full control over them. OP-6, OP-8, OP-12, OP-14, OP-15, OP-16, OP-17, OP-18, OP-19, OP-22, OP-23, OP-24 & OP-25 have not provided any documentary evidence to prove that they were not affiliated to OP-2 at the relevant time and were in any way opposed to the provisions of the MoU. Rather they have defended the clauses of the MoU in their submissions before the DG and the Commission. Even though the DG has not found any specific evidence against these OPs for having invoked the provisions of the MoU, the fact remains that they were all affiliated to OP-2 and they all acknowledged and defended the clauses of the MoU, thus conveying clearly that they were bound by the provisions of the MoU. Therefore, OP-6, OP-8, OP-12, OP-14, OP-15, OP-16, OP-17, OP-18, OP-19, OP-22, OP-23, OP-24 & OP-25 are liable and guilty of contravention of the provisions of Section 3 (3) (b) read with Section 3 (1) of the Act.

OP-9

193. OP- 9 has submitted that it was dis-associated from OP-2 in the year 2008 and re-joined it in September, 2014. As a result, it was not liable for the conduct of OP-2 and its affiliates since it was not affiliated to OP-2 at the time when MoU was executed on 01.10.2010 and later during the period of its operation. In support, OP-9 has submitted an affidavit dated 02.03.2017 where it has placed on record a letter dated 18.02.2017 issued by OP-2 endorsing that OP-9 was not an affiliate of OP-2 during the period between 2008 and October, 2014. This letter also states that OP-9



however, became an affiliate of OP-2 from October 2014 after paying the due subscription amount. Further, it has contended that the resolutions dated 16.10.2010 and 07.02.2015 were revoked by OP-9 in their Executive Committee meeting held on 11.02.2017.

194. The Commission notes that the MoU was executed on 01.10.2010 and it has expired on 28.02.2015. Based on the letter by OP-2, even if it is accepted that OP-9 was not an affiliate of OP-2 from 2008 till October, 2014, it did join OP-2 after October, 2014 which is well before the expiry of the MoU. Further, in the absence of any other evidence citing other reasons, it transpires that OP-9 was dis-affiliated from OP-2 solely due to non-payment of subscription fee.
195. In addition, it is observed from the minutes of the meeting of OP-9 held on 16.10.2010, when it was not affiliated with OP-2, that they had discussed the matter of Joint Secretary, Shri Vijay Mengle, who worked with a non-member, Shri Rohit Shetty. The Committee decided to remove and expel Shri Mengle from the post of Joint Secretary and keep him as an Executive Committee member. Further, the resolution dated 07.02.2015, which is during the period when OP-9 was affiliated to OP-2 and the MoU was in operation, pertains to imposing penalty of Rs. 11,000/- per member for working with a non-member. Thus OP-9 was not averse to and was discussing matters relating to imposition of penalty for working with non-members during the currency of the MoU. Thus, its affiliation with OP-2 and other issues cannot become a ground in its defence.
196. The text of resolution dated 11.02.2017, rescinding resolution dated 07.02.2015, is as follows:

“The Gen Sec. informed the committee that there was a resolution in the EC meeting of 7.2.2015 vide agenda no.7 of the said meeting regarding the penalty to the executive committee members who will work with non-members. But we never implemented any penalty to



any member, though various non-member were working with members and further we also came to know that this something negative resolution as per the govt. rules. So, today we want to cancelled that resolution which further will not be implemented in any case. So, this decided to revoke this resolution with immediate effect and it was unanimously passed to revoke the same by the member.”

It is noted that this resolution was passed after the report of the DG was circulated to the OPs. From the tenor of the resolution, it is evident that it was passed as an afterthought and to avoid imposition of penalty by the Commission. There is also no rescission of the action taken in the minutes of the meeting dated 16.10.2010. Rescission at a later date would not absolve the parties from their liability as the Act was in force at the time of commission of such conduct.

197. In view of the foregoing, the Commission is of the view that OP-9 is also liable and is held guilty of contravention of the provisions of Section 3 (3) (b) read with Section 3 (1) of the Act.

OP-11

198. OP-11 averred that it was not active from 2009 to 2014 and that its affiliation to OP-2 was suspended in 2014 for not having conducted elections and Annual General Meeting (AGM) for many years. It has placed on record the notice dated 23.08.2014 issued by OP-2 where in terms of Clause 11A read with Clause 25 of OP-2's constitution, OP-2 declared OP-11 not eligible for any rights and benefits available to its affiliates and suspended OP-11 from participating in any activity of OP-2 until elections are held as required by OP-11's constitution.
199. It was also submitted that they were was not part of the discussion and/ or signing of the MoU with the producers' bodies in 2012. OP-11 stated that many renowned personalities of the Bollywood film industry have worked as dubbing artists without being a member of OP-11 like Shahrukh Khan in the Hindi version of “The



Incredibles” and Nana Patekar, Om Puri, Irrfan Khan, Priyanka Chopra and Shefali Shah in the Hindi version of *“The Jungle Book*. The said stars/ actors have never been questioned by OP-11 nor has any implicit or explicit action been initiated against them.

200. It is noted that OP-11 was suspended only in August 2014 when the MoU was in effect. By virtue of being an affiliate of OP-2, OP-11 it cannot absolve itself from the application of the MoU. The suspension was for mere non-compliance with the bye-laws of the association for not holding elections. It is observed that by December 2014, the office bearers of OP-11 have had the financial statements of the years 2009-2013 prepared by their chartered accountant. The Accounts Compilation Report states that the financial statements are the responsibility of the managing committee and the said statements were signed by the President, General Secretary and Treasurer of OP-11. Therefore, it can be concluded that before the expiry of the MoU (28.02.2015), OP-11 had a managing committee conducting its affairs and it cannot use its status of being defunct as a defence. Therefore, the Commission is of the view that OP-11 is also liable for contravention of the provisions of Section 3 (3) (b) read with Section 3 (1) of the Act.

OPs- 3, 4 and 5

201. The Commission notes that the DG has not recorded any adverse findings against OPs-3, 4 and 5 during the course of investigation. Further, these regional associations were not parties to the MoU and as such the Commission does not need to discuss and deliberate their conduct.

ORDER

202. The associations have used their position to disrupt competition and fair-play in the market through their anti-competitive conduct. Through the provisions of Clauses 6 and 18 of the MoU, the OPs have indulged in anti-competitive conduct such as issuing non-cooperation directives, prohibiting hiring of specialised non-member



artists, conducting vigilance checks, stalling shoots for hiring of non-members and levying of penalty. All this amounts to limiting and controlling the services in the western Indian film and television industry. Even after the expiry of the said MoU on 28.02.2015, the OPs have continued to enforce the anti-competitive clauses.

203. Based on the foregoing discussion, analysis of evidence, and considering the facts and circumstances of the case, the Commission is of the view that:

- (a) OPs-1 and 2 has contravened Sections 3 (3) (b) and 3 (3) (c) read with Section 3 (1) of the Act, and
- (b) OPs-6 to 28 have contravened Section 3 (3) (b) read with Section 3 (1) of the Act.

204. Section 27 of the Act empowers the Commission to issue such other order (s) and/ or direction (s) as it may deem fit in case contravention of the provisions of Section 3 or 4 of the Act is found. It is evident that the Legislature has conferred wide discretion upon the Commission in the matter of taking requisite action against contravention of the said provisions of the Act including imposition of penalty under Section 27 (b). While considering the issue of imposition of penalty, the Commission takes into account the peculiarity of facts and totality of circumstances involved. In this regard, the Commission notes that the practice adopted in the MoU dated 01.10.2010 was in existence since 1966. The MoU was a mechanism to resolve disputes between the producers on one side and the craftsmen employed by them on the other. Of the various provisions of the MoU, only Clauses 6 and 18 are found to be in violation of the Act. Further, the Commission also notes that some of the OPs are associations of daily wage earners. Therefore, the Commission is of the view that only an order of cease and desist is sufficient to meet the ends of justice in this case.

205. In view of the findings and observations recorded by the Commission, it is ordered as under:



- (i) OP-1, OP-2, OP-7, OP-9, OP-10, OP-13, OP-20, OP-21, OP-26, OP-27 and OP-28 are directed to cease and desist from indulging in conduct which has been found to be in contravention of the provisions of the Act, as detailed in this order.
- (ii) OP-6, OP-8, OP-11, OP-12, OP-14, OP-15, OP-16, OP-17, OP-18, OP-19, OP-22, OP-23, OP-24 and OP-25 are directed to desist from indulging in conduct which has been found to be in contravention of the provisions of the Act, as detailed in this order.
- (iii) Clauses 6 and 18 of the MoU dated 01.10.2010 are held to be anti-competitive and are ordered not to form a part of the MoU should it be extended or be part of any agreement entered into in future.

206. The Secretary is directed to inform the parties accordingly.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(U. C. Nahta)
Member

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

New Delhi
Date: 31/10/2017