IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION AT NEW DELHI

NC/CC/133/2013
WITH
NC/IA/4618/2025 (RECALLING OF ORDER)

M/s. Asian Theatres Pvt. Ltd. … Complainant

Versus

Oriental Insurance Co. Ltd. & Anr. … Opp. Parties

BEFORE:
HON'BLE MR. JUSTICE A.P. SAHI, PRESIDENT
HON'BLE MR. BHARATKUMAR PANDYA, MEMBER

Appeared at the time of arguments:

For Complainant	:	Ms. Aanchal Tikmani, Advocate
For OP-1	:	Mr. Ajay Singh, Advocate Mr. Himanshu Shukla, Advocate
For OP-2	:	Mr. Shobhit Jain, Advocate

Pronounced on: 30th September 2025

ORDER

JUSTICE A. P. SAHI, PRESIDENT

1. This complaint raises an interesting issue regarding a claim of indemnification under a "Distributors Loss of Revenue Insurance Policy" acquired from the Opposite Parties for covering the risks of losses that could be possibly incurred upon the distribution of a film for its exhibition in theatres, in the present case in the area described by the complainant as "Nizam Area", now Telangana. The policy was taken by the complainant for covering the losses relating to the distribution and exhibition of film "Adhurs", a Telugu feature film produced by Mr. Kodalimani in which the main star and actor was Mr. Jr. N.T.R. (N.T. Rama Rao). The exhibition of the film was met with resistance in the Nizam area (now Telangana State) as the film allegedly had the patronage of the then Telugu Desam ruling party and a Member of the Legislative Assembly of the said Party was involved in its production. In short, the film was being opposed from being screened in the Telangana area as a protest at the political level on the allegation that the same was against the spirit of the Telangana movement and in pursuance thereof, a demand for its ban from being exhibited was made by the Telangana Joint Action Committee (TJAC). Allegations were also made against the Producer for allegedly having made intemperate comments against the Separate State Movement and its leaders.

2. The claim under the insurance coverage was repudiated by the Opposite Party Insurance Company on 12.06.2012 that gave rise to the filing of the present complaint on 06.05.2013 before this Commission.

3. The repudiation was based on the alleged violation of the policy conditions no. 2.9, 3.2 and 3.9 with the observation that material facts of the release date of the film had not been communicated which was foundational for any claim of insurable indemnity, and also for the additional reasons of provocative comments having been made by the Producer that aggravated the loss. Consequently the complainant was responsible for such aggravation having failed to exercise due diligence to curtail the cause of such aggravation.

4. The complaint has been resisted by the Insurance Company denying having received any communication of the release date and also alleging that the Producer had made provocative comments which led to the aggravation of the loss. It was also contended by the Insurance Company that no due diligence was exercised and the facts were misrepresented and consequently the conduct of the complainant amounted to a clear breach of the terms and conditions of the policy as such the repudiation deserves to be upheld.

5. Affidavits have been exchanged and evidence affidavits have been filed. Learned counsel for the complainant Advocate, Ms. Aanchal Tikmani assisted by Mr. Gilani have advanced their submissions contending that the repudiation is invalid on all counts for which they have invited the attention of the Bench to the various documents on record and have urged that the communication, as desired under the policy, had been appropriately made directly as well as through the Broker, the Opposite Party No. 2 herein for which evidence is available on record and not only this, the Surveyor in his report dated 03.09.2010 has recorded the same. The Insurance Company has totally omitted to even mention the said facts in the letter of repudiation, much less having considered the same. It is urged that the letter of repudiation nowhere mentions any shortcoming with regard to the communication on the basis of material available on record has simply made a sweeping observation of non-communication that is unsustainable. It has been further pointed out that the reply of Opposite Party No. 1 and the Opposite Party No. 2 are factually incorrect and inconsistent, and rather the averments therein admit the receipt of communications. It is further urged by the learned counsel for the complainant that the allegation of provocation made by the Producer cannot be attributed to the complainant who is only a Distributor. There is no evidence to demonstrate that the complainant has either acted in any manner so as to cause any loss nor is there any evidence to demonstrate that the complainant had in any way contributed or abetted any such alleged aggravation. It is urged that it was an agitation by protestors for a separate Telangana State that led to a large scale *Bandh* and other forms of protests which are clearly covered under the perils, the risk whereof on the occurrence of the loss is indemnifiable. There is no breach of any policy conditions nor was there any misrepresentation or withholding of any information so as to invoke the clauses referred to in the letter of repudiation. Consequently, the letter of repudiation has no legs to stand and the conclusions drawn are contrary to the facts that have been collected, collated and recorded by the Surveyor in his report. In essence, the letter of repudiation is inconsistent with the facts recorded by the Surveyor and is therefore untenable.

6. It is further submitted that while calculating the quantum of loss, the assessment made by the Surveyor suffers from discrepancies that were clearly pointed out and have also been questioned in the present complaint. It is urged that the entire claim made by the complainant was correctly calculated and the calculations have not been doubted, but the Surveyor has made certain deductions for which no valid reasons exist. It is submitted that the loss suffered by the complainant due to the Telangana agitation was a genuine loss, and the claim was bonafide. There is no reason to doubt the same, yet the Surveyor had made deductions on that count by incorrectly construing the facts that led to the losses. It is urged that neither the incidents have been doubted nor the actual losses suffered as per the documents produced have been discarded, but on an erroneous application of the conditions of the policy and on an incorrect perception of the facts, deductions have been made that cannot be sustained.

7. It is further submitted that the Insurance Company has arrived at conclusions bereft of the actual facts and the evidence supporting the same and hence the claim deserves to be allowed.

8. Learned counsel for the complainants has also invited the attention of the Bench to the written submissions made on their behalf.

9. Responding to the submissions on behalf of the complainant, Mr. Ajay Singh appearing for the Insurance Company has opposed the claim urging that no communication to the Insurance Company was directly made nor do the documents on record establish the same. This was a clear breach of the terms of notice that was required to be observed by the complainant in terms of the policy to the issuing office of the Insurance Company within 72 hours. The intimation and communication is completely wanting and in the absence of any clinching evidence to that effect, there is a clear breach of the said conditions, hence the repudiation on that count is clearly valid and the complainants have failed to produce any evidence to dislodge the said conclusion. He has invited the attention of the Bench to the denial made in the written statement and has urged that the contentions on this ground raised by the complainant is untenable.

10. Mr. Singh has then urged that the Producer had a direct connect with the exhibition of the film in the theatres throughout the Nizam area (now Telangana area) and was directly involved with its release and screening in the theatres with the Distributors namely the complainant herein. The contention of the complainant that they had no connect with the Producer or his activities and therefore his conduct cannot be attributed as an act of aggravation by making provocative comments, is an arguments in desperation, in as much as, the fact is that on account of the comments of the Producer, the agitation flared-up that led to the losses after the film was released and could not be screened and exhibited. The agitation therefore gained momentum on account of such aggravation and this was a direct cause of the increase in losses for which the complainant is equally responsible. The contention is that the facts on record clearly establish the same and the complainant cannot disassociate its activities with the comments made by the Producer that led to the severity of the loss. Mr. Singh therefore submits that both grounds for repudiation stem from a clear breach of the terms and conditions of the policy and therefore the claim has been rightly repudiated. He has also invited the attention of the Bench to the written arguments filed on their behalf.

11. Learned counsel for the Opposite Party No. 2 has also invited the attention of the Bench to the reply filed by them to this complaint and he has urged that there is no privity of contract or any involvement of the Opposite Party No. 2 in the distribution, exhibition or screening of the film. The Opposite Party No. 2 was only a facilitator of bringing to notice the terms and conditions of the policy that was entered into between the complainant and the Opposite Party No. 1. It is urged that in the absence of any such connect, the Opposite Party No. 2 was neither a proper nor a necessary party, but at the same time has invited the attention of the Bench to the pleadings on record as well as the written submissions filed on its behalf to contend that the complainant had unnecessarily sent mails and intimation to the Opposite Party No. 2 when under the terms of the policy, the complainant was obliged and under a mandate of the policy to send all notices directly to the policy issuing office. The complainant therefore cannot take any plea of acceptance of the intimation by Opposite Party No. 1 by sending it to the answering Opposite Party No. 2 who is neither an issuing officer nor is the agent of the Insurance Company for the purpose of any communication after the policy had been issued to the complainant by the Insurance Company. He therefore submits that there is no question of any deficiency in service on the part of the Opposite Party No. 2 for making it answerable for any alleged loss as claimed by the complainant under the policy.

12. From the facts as disclosed, the film 'Adhurs' was planned to be released on 23.12.2009. The policy was acquired by the complainant, which is in two parts. The first is the Loss of Revenue policy, the duration whereof is from 23.12.2009 to 22.02.2010 for 60 days. The other part of the policy is the "Publicity Expenditure Extension" policy. This policy is to indemnify the insured for the additional expenditure incurred on publicity of the film due to postponement or rescheduling of the release attributable to riots, strikes, malicious damage, terrorism or the like situation. The Loss of Revenue policy itself provides that the print and publicity cover will start 7 days before the release date. The Publicity Expenditure Extension policy also recites that the liability of the insurer would not exceed the publicity expenses declared 7 days prior to the release of the film. It is for this reason that the print and publicity cover is to commence 7 days before the release date. The Publicity Expenditure cover also recites that the release date shall mean the date of the first theatrical exhibition of the film to members of the public who have paid fee to view the film. In other words, the date of the first screening of the film in theatres would be the date of release.

13. In the instant case, as noted above, the film was planned to be released on 23.12.2009.

14. The date of release however stood shifted and this intimation of the shifting of the date was given to the Opposite Party No. 2, the Broker via mail on 17.12.2009, copy whereof is extracted hereinunder:

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From: A S Sathish Kumar [mailto:assk@assk.in]
Sent: Thursday, December 17, 2009 9:45 PM
To: Pranav Shah - Alliance Insurance; kartik; karthikk@allianceinsurance.org; kartik krishnan; Aatur Thakkar
Cc: bs@assk.in; First NameSudhir Rao
Subject: Telugu Feature film - ADURS - DLOP - NIZAM Area - Postponement of Release
Importance: High

Dear All,

The release of the Telugu feature film 'ADURS' covered by the DLOP for NIZAM Area now stands postponed and the release date will now be Dec 30, 2009 instead of Dec 23, 2009.

Please inform Oriental Insurance to give effect to the change in the release date.

Regards,

A S Sathish Kumar
ASSK – Corporate Advisory Services
Mobile: +91 98416 14844
E-mail: assk@assk.in
www.assk.in

15. A perusal of the said mail would demonstrate that the release date was extended to 30.12.2009 instead of 23.12.2009 and a request was made to the Opposite Party No. 2 to inform the Insurance Company regarding this change. The Opposite Party No. 2 in its reply has taken a stand that the intimation ought to have been directly given to the Insurance Company, the Opposite Party No. 1 as required under the terms of notice as per clause 3.1 and also as per the declaration on the first page of the policy. The complainant has alleged the sending of this mail which is not disputed as having been received by the Opposite Party No. 2, but the stand taken in the reply in paragraph 4(v) by Opposite Party No. 2 is that the complainant had incorrectly sent it to the Opposite Party No. 2, yet the said mail was forwarded by the Opposite Party No. 2 to the Insurance Company, the Opposite Party No. 1. The Opposite Party No. 2 is the Broker through whom the policy had been negotiated and he has admitted having dispatched the said information of postponement to the Insurance Company.

16. Strangely enough, the Insurance Company in its reply on the one hand has denied having received any such intimation, but has not denied having received the communication through the Opposite Party No. 2. Thus what appears is that the communication was sent by the complainant to the Opposite Party no. 2 that was in turn communicated to the Opposite Party No. 1. The Opposite Party No. 1 only denies having received it directly from the complainant but there is no specific denial by the Opposite Party No. 1 in the counter affidavit of the assertion made by the complainant that it was sent to the Opposite Party No. 2 with a request to forward it to the Opposite Party No. 1.

17. What is more revealing in the reply of the Opposite Party No. 1 is to be noted in paragraph 4(vii) of the reply. The Insurance Company while denying the claim of publicity expenses has averred as follows "it is submitted that on request of the insured, the OP-1 had issued an endorsement for change of release date of the film from 23.12.2009 to 31.12.2009". This is a clear admission in the reply of the Opposite Party No. 1 Insurance Company, which has been sworn on Oath before a Notary by Mr. S.C.S. Bisht, Chief Manager of the Oriental Insurance Company, Janpath, New Delhi. The affidavit is by one of the highest officials of the Insurance Company and therefore there is no reason to doubt the admission made in the affidavit about the Insurance Company having made an endorsement of the extension of the date of release as informed by the complainant. This admission therefore confirms the fact that the intimation about the postponement of the date of release was duly informed to the Insurance Company directly as well as through the Opposite Party No. 2. It is obvious that had the information not reached the Insurance Company, it would not have made the endorsement. The endorsement of the postponed date of release by the Insurance Company therefore clinchingly establishes the receipt of information. The Consequently, we hold that the date of release and the date of postponement to 31.12.2009 was well informed and was intimated to the Insurance Company that stands affirmed as per the conclusions drawn hereinabove.

18. The date of release was once again not confirmed because of further postponement of the release, and once again a letter was sent by post to the Opposite Party No. 1 intimating that the Telangana agitation has gained momentum and not only this, a claim was also lodged with the Insurance Company through the letter dated 31.12.2009 intimating the Insurance Company of the losses incurred towards the publicity. This letter intimates and requests the Insurance Company that since the release now stands postponed to a later date to be announced by the Producer, publicity expenses will again have to be incurred to match with the fresh release date.

19. The fact of sending of the said letter to the Insurance Company has been categorically stated in paragraph 4(vii) of the complaint to which once again a reference be made to the reply given by the Insurance Company in paragraph 4(vii) of its reply. A perusal of the same would indicate that there is no denial of the receipt of the said letter in respect of the claim of publicity charges, and rather the claim has been contested by stating that the said claim was beyond the policy as this claim was not reported within 72 hours from 30.12.2009. What the Insurance Company intended by the said assertion was that the claim ought to have been made three days before prior to 30.12.2009 as required under the Publicity Expenditure Extension policy under the heading "Claim Procedure" which requires "notice of the claim should be given within 72 hours of the event occurred". Whether the said claim was within 72 hours or required to be done is a different issue that shall be dealt with hereinafter, but it needs to be emphasized that the reply contained in paragraph 4(vii) of the counter affidavit only questions the claim made through the said letter on merits, but does not dispute the arrival or contents of the letter. It is thus clear that the claim was sought to be denied only after receiving the letter. It could not have been done or responded to unless the letter was received by the Insurance Company. Consequently, the averments made in the reply referred to above for all practical purposes does not dispute the receipt of the said letter dated 31.12.2009 which once again intimates and communicates the postponement of the release of the film. The letter is extracted hereinunder:

Asian Theatres Pvt. Ltd.

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Annexure- A6

December 31, 2009

Dt:07/01/2010 Time:19:57
0000000 DNo:008 BNo:0315
Call No:02267390918
Call To:MUMBAI
Dr:0043 Unts:0002 PR:030
Call Charge : 0002.70
Tax @ 00.0 : 000.00
Service Charge: 02.00
PAY :0004.70
SMART LINK

Oriental Insurance Company Limited
Broker Division
Oriental House
4th Floor – J Tata Road
Churchgate
MUMBAI 400 020.

Dear Sirs,

DISTRIBUTORS' LOSS OF REVENUE INSURANCE COVERED UNDER POLICY NO. 124500/48/2010/3456

Consequent to the postponement of the release of the Telugu feature film ADHURS covered under the captioned policy, we now lodge our claim for the loss of publicity expenses incurred. As intimated by us earlier, the release of the film has since been postponed due to riots and threats perceived for the film on account of the Telangana agitation in the State of Andhra Pradesh.

We have since incurred a sum of Rs. 23,00,000/- (Rupees Twenty Three lacs only) towards publicity in the form of hoardings that were erected in various locations in the Nizam Area and since the release of the film now stands postponed to a later date to be announced by the Producer, we are left with no choice but to incur expenses again on publicity to coincide with the fresh release date.

Accordingly, we lodge our claim for a sum of Rs. 23,00,000/- under the Print & Publicity Expenses Cover for which we are insured for a sum of Rs. 1 crore.

Relevant receipts and photographs evidencing our claim will be submitted as and when required.

You are requested to kindly process our claim at the earliest.

Thank you,

Yours truly,

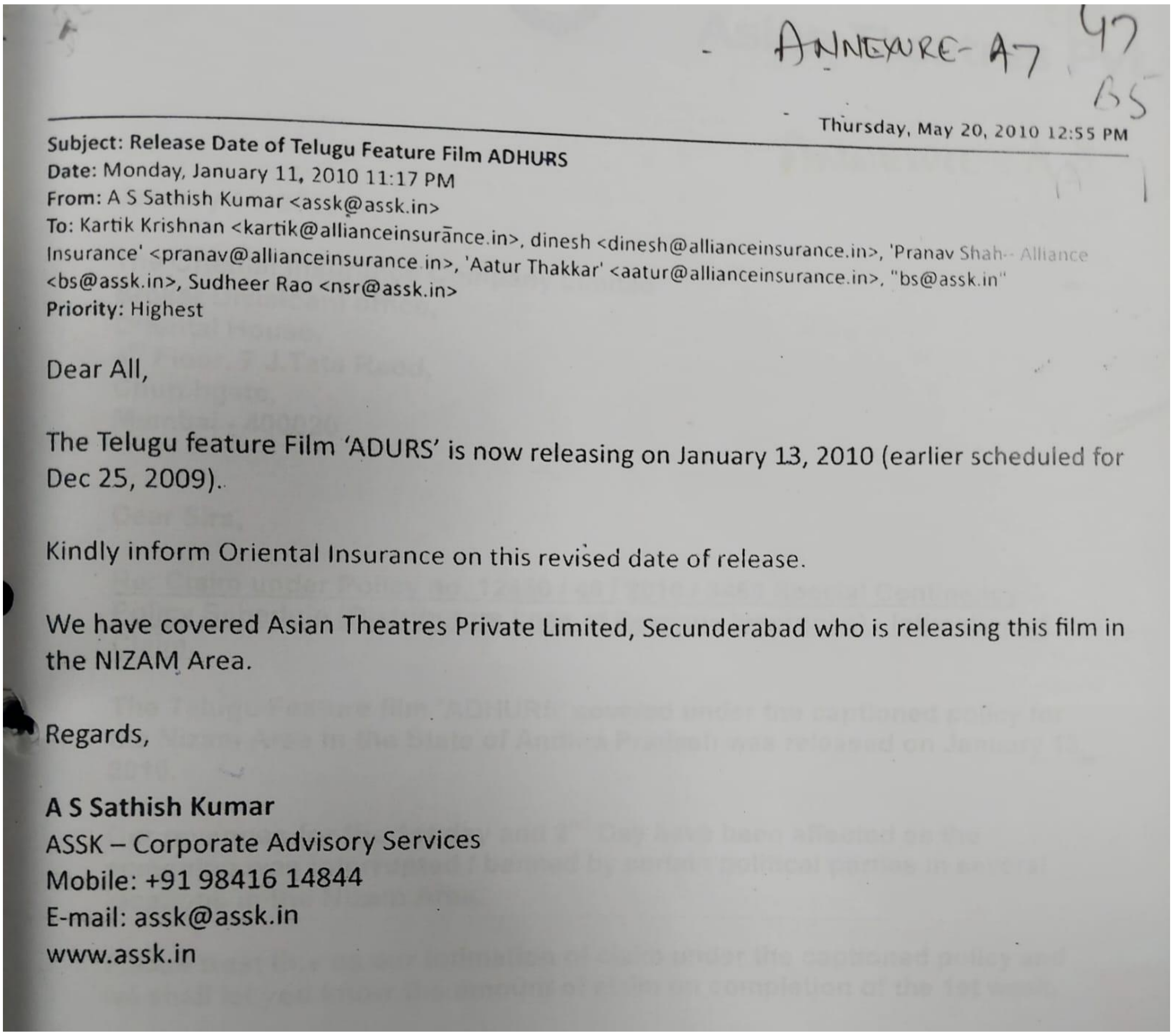
For **Asian Theatres Pvt. Ltd**

NarayanDas Narang

AUTHORISED SIGNATORY

RAGHENTH BASANT
Advocate
B-34, Lower Ground Floor,

20. The final communication dispatched by the complainant fixing the date of release as 13.01.2010 was mailed on 11.01.2010 to the Opposite Party No. 2. The said mail is extracted hereinunder:



ANNEXURE-A7 47
BS

Thursday, May 20, 2010 12:55 PM

Subject: Release Date of Telugu Feature Film ADHURS
Date: Monday, January 11, 2010 11:17 PM
From: A S Sathish Kumar <assk@assk.in>
To: Kartik Krishnan <kartik@allianceinsurance.in>, dinesh <dinesh@allianceinsurance.in>, 'Pranav Shah-- Alliance Insurance' <pranav@allianceinsurance.in>, 'Aatur Thakkar' <aatur@allianceinsurance.in>, "bs@assk.in" <bs@assk.in>, Sudheer Rao <nsr@assk.in>
Priority: Highest

Dear All,

The Telugu feature Film 'ADURS' is now releasing on January 13, 2010 (earlier scheduled for Dec 25, 2009).

Kindly inform Oriental Insurance on this revised date of release.

We have covered Asian Theatres Private Limited, Secunderabad who is releasing this film in the NIZAM Area.

Regards,

A S Sathish Kumar
ASSK – Corporate Advisory Services
Mobile: +91 98416 14844
E-mail: assk@assk.in
www.assk.in

21. A perusal of thereof indicates that a request was made to forward this revised date of release to the Oriental Insurance Company. The Opposite Party No. 2 once again has responded to this averment in its reply to paragraphs 4(vii) and 4(viii) of the complaint in paragraph 4(viii) of its reply where it has admitted that the said mail had been forwarded to the Insurance Company. Fortunately after directions were issued to the Insurance Company on 22.10.2024 to file all the Annexures along with the survey report, the same was filed vide Diary No. 38474 dated 21.11.2024. The complete survey report dated 03.09.2010 along with all the annexures accompanying the said report have been brought on record. This is a complete set of the documents of the

Insurance Company and the said report was dispatched to the Insurance Company by the Surveyor Mr. R.G. Verma. The survey report has categorically recorded these mail and postal communications in paragraph 4.4.1 and 4.4.2 of the report. We have carefully perused the same and it categorically records the dispatch and receipt of all these communications to the Opposite Party No. 1. While recording this, the Surveyor has referred to Annexure-3, the copies of the mails, and what is interesting is that the mail of the Opposite Party No. 2, the Broker, sent to the Insurance Company on 12.01.2010 has been appended along as Annexure – 3. The same is extracted hereinunder:

Request you to kindly do the needful at the earliest.

Regards,
Kartik Krishnan
Manager – Specialty Lines

From: Kartik Krishnan [mailto:kartik@allianceinsurance.in]
Sent: Tuesday, Jan 12, 2010 12:49 PM
To 'bhavika.parekh'<Bhavika.parekh@orientalinsurance.co.in>
Subject: FW: Release Date of Telugu Feature Film ADHURS
Importance: High

Dear Bhavika Mam.,

As per the below mail from client request you to kindly pass the endorsement under the policy . Policy details are as follows towards the same

Insured Name :	ASIAN THEATRES (P) LTD
Policy No:	124500/48/2010/3456
Policy Period:	23.12.2009 to 22.02.2010
Movie Name:	ADHURRS

Thanks & Regards
Kartik Krishnan
Asst Manager
Specialty Lines

22. This mail is the trailing mail to the mail sent by the complainant on 11.01.2010 and has been admittedly sent by the Opposite Party No. 2 Broker to the Insurance Company. This mail being received by it is not disputed by the Insurance Company and therefore the information of the date of release was promptly intimated to it.

23. The Opposite Party No.2-Broker has taken a stand that it has no privity of contract with the Complainant for any insurance risk or indemnity. The Opposite Party No.2 has depicted itself only as a facilitator. This simple stand and explanation has to be understood in the background of the communications that have been made by the Complainant through the Opposite Party No.2 to the Opposite Party No.1 regarding the intimation of the date of release of the film. It is in this context that we proceed to examine the matter further and we find that the Opposite Party No.2 is a Broker who had quoted the proposal on 14th December, 2009 which is Annexure-1 to the Complaint, intimating the Complainant the details of the policy that was proposed and also to issue a cheque of Rs.6,06,650/- in favour of Oriental Insurance Company Ltd., Opposite Party No.1 herein. The same was responded to by the Complainant vide letter dated 14.12.2009 accompanied with a cheque of the amount aforesaid of the same date. The insurance cover was issued by the Opposite Party No.1 on the basis of the said proposal and the first page of the policy is extracted hereinunder to demonstrate that the name of the Opposite Party No.2 has been specifically mentioned against the column 'Broker Name':

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The Oriental Insurance Company Limited.

Prithvi. Agni. Jal. Aakash. Sab ki suraksha hamare paas.

Regd.Office: ORIENTAL HOUSE P.B.No.7037, A-25/27, Asaf Ali Road, New Delhi-110 0020

POLICY – SCHEDULE

Policy Issuing Office: Broker Division, Oriental House, 4th Flr.. 7, J.Tata Rd., Churchgate, Mumbai-400 020.

SPECIAL CONTINGENCY POLICY SCHEDULE

(Distributor's Loss of Revenue Insurance)

Policy No	124500/48/2010/3456.	
Insured	ASIAN THEATRES (P) LTD.	
Address	396-97 JAIN ESTATE, PARKA LANE, OPP NANKING RESTAURANT , SECUNDERABAD-500003	
Title (Name of Film)	ADHURRS	
Policy Period	23.12.2009 to 22.02.2010 Print & Publicity cover will start 7 days before the release date	
Scope of Cover	As per Policy Wordings attached	
Deductibles	INR 5,00,000/- for each & every claim.	
Additional Extention	Print & Publicity Expenses cover for Rs.1 Crs.	
Details of Territories Covered	Nizam Area (Including the Twin Cities) in A.P.	
Broker Name	Alliance Insurance Brokers Pvt. Ltd	
Receipt No.	CD A/c.No.AB0000017186	
Service Tax Regn. No.	AAACT 06 27 R ST 308	
Broker Code		1217
Total Sum Insured		11,00,00,000/-
Premium		Rs.5,50,000/-
Add Service Tax	10.30%	Rs.56,650/-
Total Premium		Rs 6,06,650/-

All Notices concerning this policy shall be given to policy issuing office.
Warranted that in case of dishonour of premium cheque(s) the Company shall not be liable under the policy and the policy shall be void ab initio (from inception)
In witness whereof the undersigned being authorised by and on behalf of the Company has/have herein to set his/their hands at Mumbai on 16.12.2009

For and on behalf of
THE ORIENTAL INSURANCE CO.LTD.

Place: MUMBAI
Date: 16.12.2009

Authorised Signatory

24. It is, thus, established that the policy was negotiated through the Opposite Party No.2 as a Broker.

25. Brokers who negotiate insurance deals are statutorily regulated by the Insurance Regulatory and Development Authority (Insurance Brokers) Regulations, 2002, framed by the IRDA under Act 41 of 1999, read with the powers conferred on the said Authority under Section 114-A of the Insurance Act, 1938. The dispute in the present case relates to the year 2009-2010 when the 2002 Regulations were in force and we are, therefore, referring to the year 2002 Regulations.

26. The phrase 'Insurance Broker' has been defined in Regulation 2(i), which is reproduced as hereinunder:

> *"(i) "insurance broker" means a person for the time-being licensed by the Authority under regulation 11, who for a remuneration arranges insurance contracts with insurance companies and/or reinsurance companies on behalf of his clients."*

27. The same refers to all forms of Brokers licensed thereunder as is evident from the explanation. Three types of Brokers defined under the Regulations are:

> Regulation 2 is extracted hereinunder:
>
> *"(d) "composite broker" means an insurance broker who for the time being licensed by the Authority to act as such, for a remuneration, arranges insurance for his clients with insurance companies and/or reinsurance for his client/s;"*
>
> Regulation 2(e), extracted hereinunder:
>
> *"(e) "direct broker" means an insurance broker who for the time-being licensed by the Authority to act as such, for a remuneration carries out the functions as specified under regulation 3 either in the field of life insurance or general insurance or both or behalf of his clients;*
>
> and Regulation 2(m) also extracted hereunder:
>
> *"(m) "reinsurance broker" means an insurance broker who, for a remuneration, arranges reinsurance for direct insurers with insurance and reinsurance companies."*

28. The functions of all three types of Brokers are defined in Regulation 3, 4 and 5 respectively which are extracted hereinunder:

*“3. **Functions of a direct broker.**-The functions of a direct broker shall include any one or more of the following:-*

*(a) **obtaining detailed information** of the client's business and risk management philosophy;*

(b) familiarising himself with the client's business and underwriting information so that this can be explained to an insurer and others;

(c) rendering advice on appropriate insurance cover and terms;

(d) maintaining detailed knowledge of available insurance markets, as may be applicable;

*(e) **submitting quotation received from insurer/s for consideration of a client;***

(f) providing requisite underwriting information as required by an insurer in assessing the risk to decide pricing terms and conditions for cover;

*(g) **acting promptly on instructions from a client and providing him written acknowledgments and progress reports;***

(h) assisting clients in paying premium under section 64-VB of Insurance Act, 1938 (4 of 1938);

(i) providing services related to insurance consultancy and risk management;

*(j) **assisting in the negotiation of the claims;** and*

(k) maintaining proper records of claims.

4. Functions of a re-insurance broker.- The functions of a re-insurance broker shall include any one or more of the following:-

(a) familiarising himself with the client's business and risk retention philosophy;

(b) maintaining clear records of the insurer's business to assist the reinsurer(s) or others;

(c) rendering advice based on technical data on the reinsurance covers available in the international insurance and the reinsurance markets;

(d) maintaining a database of available reinsurance markets, including solvency ratings of individuals reinsurers;

(e) rendering consultancy and risk management services for reinsurance;

(f) selecting and recommending a reinsurer or a group of reinsurers;

(g) negotiating with a reinsurer on the client's behalf;

(h) assisting in case of commutation of reinsurance contracts placed with them;

(i) acting promptly on instructions from a client and providing it written acknowledgements and progress reports;

(j) collecting and remitting premiums and claims within such time as agreed upon;

(k) assisting in the negotiation and settlement of claims;

(l) maintaining proper records of claims; and

(m) exercising due care and diligence at the time of selection of reinsurers and international insurance brokers having regard to their respective security rating and establishing respective responsibilities at the time of engaging their services.

5. ***Functions of composite broker.- A composite broker shall carry out any one or more of the functions mentioned in regulations 3 and 4.***

29. Such Insurance Brokers are also obliged under Regulation 4 to obtain Professional Indemnity insurance for themselves as well. There are a large number of Regulations regulating such licensed Brokers with powers to take action and, therefore, it is reasonable to presume that the Opposite Party No.2 is a Broker of the category referred to hereinabove with the obligation to perform functions as indicated in the Regulations.

30. Schedule II to the Regulations, also under Chapter III thereof, defines the Code of Conduct in matters relating to Client Relationship, Sales Practices, **Furnishing of Information**, Explanations of Insurance Contract, Renewal of Polices, **Claims by Clients**, Receipt of Complaints, **Relationship to Documentation**, Relating to Advertising, Receipt of Remuneration and Matters relating to Training. The said Schedule is extracted hereinunder:

"SCHEDULE III

INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY

(INSURANCE BROKERS) REGULATIONS, 2002

(See regulation 21)

CODE OF CONDUCT

1. Every insurance broker shall follow recognised standards of professional conduct and discharge his functions in the interest of the policyholders.

2. Conduct in matters relating to ***clients relationship.*** *– Every insurance broker shall:*

(a) conduct its dealings with clients with utmost good faith and integrity at all times;

(b) act with case and diligence;

(c) ensure that the client understands his relationship with the broker and on whose behalf the broker is acting;

(d) treat all information supplied by the prospective clients as completely confidential to themselves and to the insurer(s) to which the business is being offered;

(e) take appropriate steps to maintain the security of confidential documents in their possession;

(f) hold specific authority of client to develop terms;

(g) understand the type of client it is dealing with and the extent of the client's awareness of risk and insurance;

(h) obtain written mandate from client to represent the client to the insurer and communicate the grant of a cover to the client after effecting insurance;

(i) obtain written mandate from client to represent the client to the insurer/reinsurer; and confirm cover to the insurer after effecting re-insurance, and submit relevant reinsurance acceptance and placement slips;

(j) avoid conflict of interest.

3. Conduct in matters relating to ***Sales practices.*** *- Every insurance broker shall: (a) confirm that it is a member of the Insurance Brokers Association of India or such a body of brokers as approved by the Authority which has a memorandum of understanding with the Authority;*

(b) confirm that he does not employ agents or canvassers to bring in business;

(c) identify itself and explain as soon as possible the degree of choice in the products that are on offer;

(d) ensure that the client understands the type of service it can offer;

(e) ensure that the policy proposed is suitable to the needs of the prospective client;

(f) give advice only on those matters in which it is knowledgeable and seek or recommend other specialist for advice when necessary;

(g) not make inaccurate or unfair criticisms of any insurer or any member of the Insurance Brokers Association of India or member of such body of brokers as approved by the Authority;

(h) explain why a policy or policies are proposed and provide comparisons in terms of price, cover or service where there is a choice of products;

(i) state the period of cover for which the quotation remains valid if the proposed cover is not effected immediately;

(j) explain when and how the premium is payable and how such premium is to be collected, where another party is financing all or part of the premium, full details shall be given to the client including any obligations that the client may owe to that party; and

(k) explain the procedures to follow in the event of a loss.

4. Conduct in relation to ***furnishing of information.*** *- Every insurance broker shall -*

(a) ensure that the consequences of non-disclosure and inaccuracies are pointed out to the prospective client;

(b) avoid influencing the prospective client and make it clear that all the answers or statements given are the latter's own responsibility. Ask the client to carefully check details of information given in the documents and request the client to make true, fair and complete disclosure where it believes that the client has not done so and in case further disclosure is not forthcoming it should consider declining to act further;

(c) explain to the client the importance of disclosing all subsequent changes that might affect the insurance throughout the duration of the policy; and

(d) ***disclose on behalf of its client all material facts within its knowledge and give a fair presentation of the risk.***

5. Conduct in relation to ***explanation of insurance contract.*** *- Every insurance broker shall -*

(a) provide the list of insurer(s) participating under the insurance contract and advise any subsequent changes thereafter;

(b) explain all the essential provisions of the cover afforded by the policy recommended by him so that, as far as possible, the prospective client understands what is being purchased;

(c) quote terms exactly as provided by insurer;

(d) draw attention to any warranty imposed under the policy, major or unusual restrictions, exclusions under the policy and explain how the contract may be cancelled;

(e) provide the client with prompt written confirmation that insurance has been effected. If the final policy wording is not included with this confirmation, the same shall be forwarded as soon as possible;

(f) notify changes to the terms and conditions of any insurance contract and give reasonable notice before any changes take effect;

(g) advise its clients of any insurance proposed on their behalf, which will be effected with an insurer outside India, where permitted, and, if appropriate, of the possible risks involved.

6. Conduct in relation to ***renewal of policies.*** *- Every insurance broker shall -*

(a) ensure that its client is aware of the expiry date of the insurance even if it chooses not to offer further cover to the client;

(b) ensure that renewal notices contain a warning about the duty of disclosure including the necessity to advise changes affecting the policy, which have occurred since the policy inception or the last renewal date;

(c) ensure that renewal notices contain a requirement for keeping a record (including copies of letters) of all information supplied to the insurer for the purpose of renewal of the contract;

(d) ensure that the client receives the insurer's renewal invitation well in time before the expiry date.

7. Conduct in relation to ***claim by client.*** *- Every insurance broker shall -*

(a) explain to its clients their obligation to notify claims promptly and to disclose all material facts and advise subsequent developments as soon as possible;

(b) request the client to make true, fair and complete disclosure where it believes that the client has not done so. If further disclosure is not forthcoming it shall consider declining to act further for the client;

(c) give prompt advice to the client of any requirements concerning the claim;

(d) ***forward any information received from the client regarding a claim or an incident that may give rise to a claim without delay, and in any event within three working days;***

(e) advise the client without delay of the insurer's decision or otherwise of a claim; and give all reasonable assistance to the client in pursuing his claim.

Provided that the insurance broker shall not take up recovery assignment on a policy contract which has not been serviced through him or should not work as a claims consultant for a policy which has not been serviced through him.

8. Conduct in relation to ***receipt of complaints.*** *- Every insurance broker shall -*

(a) ensure that letters of instruction, policies and renewal documents contain details of complaints handling procedures;

(b) accept complaints either by phone or in writing;

(c) acknowledge a complaint within fourteen days from the receipt of correspondence, advise the member of staff who will be dealing with the complaint and the timetable for dealing with it;

(d) ensure that response letters are sent and inform the complainant of what he may do if he is unhappy with the response;

(e) ensure that complaints are dealt with at a suitably senior level;

(f) have in place a system for recording and monitoring complaints.

9. Conduct in relation to ***documentation.*** *- Every insurance broker shall -*

(a) ensure that any documents issued comply with all statutory or regulatory requirements from time to time in force;

(b) send policy documentation without avoidable delay,

(c) make available, with policy documentation, advice that the documentation shall be read carefully and retained by the client;

(d) not withhold documentation from its clients without their consent, unless adequate and justifiable reasons are disclosed in writing and without delay to the client. Where documentation is withheld, the client must still receive full details of the insurance contract;

(e) acknowledge receipt of all monies received in connection with an insurance policy;

(f) ensure that they reply is sent promptly or use its best endeavours to obtain a prompt reply to all correspondence;

(g) ensure that all written terms and conditions are fair in substance and set out, clearly and in plain language, client's rights and responsibilities; and

(h) subject to the payment of any monies owed to it, make available to any new insurance broker instructed by the client all documentation to which

the client is entitled and which is necessary for the new insurance broker to act on behalf of the client.

10. Conduct in matters relating to ***advertising.*** *- Every insurance broker shall conform to the relevant provisions of the Insurance Regulatory and Development Authority (Insurance Advertisements and Disclosure) Regulations, 2000, and -*

(a) ensure that statements made are not misleading or extravagant;

(b) where appropriate, distinguish between contractual benefits which the insurance policy is bound to provide and non-contractual benefits which may be provided;

(c) ensure that advertisements shall not be restricted to the policies of one insurer, except where the reasons for such restriction are fully explained with the prior approval of that insurer;

(d) ensure that advertisements contain nothing which is in breach of the law not omit anything which the law requires;

(e) ensure that advertisement does not encourage or condone defiance or breach of the law;

(f) ensure that advertisements contain nothing which is likely, in the light of generally prevailing standards of decency and propriety, to cause grave or widespread offence or to cause disharmony;

(g) ensure that advertisements are not so framed as to abuse the trust of clients or exploit their lack of experience or knowledge;

(h) ensure that all descriptions, claims and comparisons, which relate to matters of objectively ascertainable fact shall be capable of substantiation.

11. Conduct in matters relating receipt of remuneration. - Every insurance broker shall -

(a) disclose whether in addition to the remuneration prescribed under these regulations, he proposes to charge the client, and if so in what manner;

(b) advise the client in writing of the insurance premium and any fees or charges separately and the purpose of any related services;

(c) if requested by a client, disclose the amount of remuneration or other remuneration it receives as a result of effecting insurance for that client. This will include any payment received as a result of securing on behalf of the client any service additional to the arrangement of the contract of insurance; and

(d) advise its clients, prior to effecting the insurance, of their intention to make any deductions from the amount of claim collected for a client, where this is a recognised practice for the type of insurance concerned.

12. Conduct in relation to matters relating to training. - Every insurance broker shall -

(a) that its staff are aware of and adhere to the standards expected of them by this code;

(b) ensure that staff are competent, suitable and have been given adequate training;

(c) ensure that there is a system in place to monitor the quality of advice given by its staff;

(d) ensure that members of staff are aware of legal requirements including the law of agency affecting their activities; and only handle classes of business in which they are competent;

(e) draw the attention of the client to Section 41 of the Act, which prohibits rebating and sharing of commission.

13. Every insurance broker shall display in every office where it is carrying on business and to which the public have access a notice to the effect that a copy of the code of conduct is available upon request and that if a member of the public wishes to make a complaint or requires the assistance of the Authority in resolving a dispute, he may write to the Authority.

14. An insurance broker as defined in these regulations shall not act as an insurance agent of any insurer under section 42 of the Act.

15. Every insurance broker shall abide by the provisions of the Insurance Act, 1938 (4 of 1938), Insurance Regulatory And Development Authority Act 1999 (41 of 1999), rules and regulations made there under which may be applicable and relevant to the activities carried on by them as insurance brokers."

31. It is, thus, seen that a Broker is not a mere facilitator but has to conduct himself so as to collate information between the insurer and insured and to explain all details regarding the insurance contract. The said conduct relates to keeping the insured aware and on the other hand to inform the Insurance Company of all matters relating to claims. It obliges the Broker under the Code of Conduct to furnish and forward information received from the client regarding a claim or an incident that may give rise to a claim without delay. Reference be had to Code 7(d) quoted above. Thus, there is a corresponding obligation on the Broker to discharge these obligations under a statutory Code of Conduct. We, therefore, find that the contention on behalf of the Opposite Party No.2 that the Opposite Party No.2 is a mere facilitator is not correct and there are statutory regulations governing the obligations to be discharged by a Broker. The present case and its facts discussed above leave no room for doubt that the Broker had been acting not as a mere facilitator but was discharging his statutory obligations of forwarding all information which he was obliged to do under the Regulations. The explanation, therefore, given in the reply of Opposite Party No.2 overlooks the aforesaid aspect of the matter and is, therefore, not acceptable in the manner as narrated in the reply. The Insurance Company, therefore, was receiving the information under the obligations cast on the Broker in terms of Regulations aforesaid and, therefore, the contention raised by the Opposite Party No.2 that the information ought to have been given only directly to the Opposite Party No.1 is not correct. It can also be done by communication through the Broker. As noted above, it is the statutory obligation of the Opposite Party No.2 to pass on information regarding claims arising out of the policy to the Insurance Company which was done by them in discharge of their statutory obligations and not as a mere formality. The information, thus, intimated was an official information and the tendering of such information is, therefore, a valid communication in accordance with terms of the policy read with the Regulations aforesaid. The information received by the Insurance Company from the Broker would, therefore, be an official information as required under the policy.

32. We are therefore constrained to observe that the Insurance Company through one of its highest officials has sworn an affidavit contrary to the regulations and the evidence on record which formed part of the Surveyor's report. To us, it appears that this is a case where the Insurance Company has purposely tried to misquote and misrepresent the evidence with regard to the communications of the date of release of the film by the complainant, which, in our opinion on the basis of the evidence discussed above, was clearly communicated and the Insurance Company had acted upon it. There was therefore no question to arrive at a contrary conclusion more so when the same was confirmed by the Surveyor in his report as stated above. We therefore find that the repudiation letter dated 12.06.2012 erroneously and against records repudiates the claim on a totally wrong premise of non-communication of the date of release of the film. The repudiation letter is extracted hereinunder:

ANNEXURE-A19

दि ओरिएण्टल इंश्योरेंस कम्पनी लिमिटेड

ब्रोकर मण्डलिय कार्यालय
'ओरिएन्टल हाऊस', 4 था माला,
7, जे. टाटा रोड, चर्चगेट, मुंबई- 400 020.
फेक्स : 2204 1284 फोन : 2204 2621
ई-मेल :124500@orientalinsurance.co.in

THE ORIENTAL INSURANCE COMPANY LIMITED

Broker Divisional Office,
Oriental House, 4th Floor,
7, J. Tata Road, Churchgate,
Mumbai - 400 020.
Phone : 2204 2621 Fax : 2204 1284
E-mail : 124500@orientalinsurance.co.in

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12th June 2012

To,
ASIAN THEATRES (P) LTD.
396-97 JAIN ESTATE, PARKA LANE,
OPP NANKING RESTAURANT ,
SECUNDERABAD-500003

BY REGD. A.D.

Dear Sir,

Re : Loss of Revenue under Special Contingency Policy no.124500/48/2010/3456
Claim no.124500/48/2011/000126 Film : Adhurrs.

This has reference to the claim preferred by you and surveyed by Mr. R.G.Verma, Surveyor.

After going through the contents of the claim and survey report, we observe as under-

1. Non-communication of release date of film which is of utmost importance in case of the event insurance.
2. The provocative comments made by the producer has also aggravated the loss and therefore he himself was responsible for aggravating the loss.

In view of the above, it is a non-disclosure of the above mentioned material facts and being violation of the policy conditions 2.9, 3.2 & 3.9 reproduced as under-

2.9 Misrepresentation

This policy shall be void, if at any time the insured had concealed or misrepresented any material fact(s) or circumstance(s) concerning this insurance or the property that is the subject there of, or interest there in or in the case of a fraud of false swearing by the insured relating thereto.

3.2 Duty of Disclosure and Due Diligence

This policy shall be void and all premiums paid hereon shall be forfeited to the insurer in the event of misrepresentation, mis - description or non disclosure of any material fact. Further it is hereby declared and agreed that during the currency of this policy the insured shall always act with due diligence.

.........2

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दि ओरिएण्टल इंश्योरेंस कम्पनी लिमिटेड
ब्रोकर मण्डलिय कार्यालय
'ओरिएन्टल हाऊस', 4 थां माला,
7, जे. टाटा रोड, चर्चगेट, मुंबई- 400 020.
फेक्स : 2204 1284 फोन : 2204 2621
ई-मेल :124500l@orientalinsurance.co.in

THE ORIENTAL INSURANCE COMPANY LIMITED
Broker Divisional Office,
Oriental House, 4th Floor,
7, J. Tata Road, Churchgate,
Mumbai - 400 020.
Phone : 2204 2621 Fax : 2204 1284
E-mail : 124500@orientalinsurance.co.in

- 2 -

Contd.......

3.9 Due Diligence

The insured shall use diligence and do and concur in doing all things reasonably practicable to avoid or diminish any loss herein insured.

Under these circumstances, we hereby disown our liablility and repudiate the claim preferred by you.

Thanking You,

Yours faithfully,

For and on behalf of
The Oriental Insurance Co. Ltd.

Divisional Manager

33. In order to arrive at that conclusion, the Insurance Company has taken recourse to clause 2.9 and 3.2 of the policy conditions to repudiate the same. We affirmatively reject the said conclusion and hold that a grave error has been committed by the Insurance Company by invoking the said two clauses of misrepresentation and non-disclosure which are not attracted at all on the facts of this case. The Insurance Company has therefore found an excuse, based on wrong facts, to dislodge the claim of the complainant and we accordingly deprecate the same. The letter of repudiation is therefore absolutely untenable on that score.

34. We now proceed to consider the second ground of repudiation regarding the provocative comments made by the Producer that allegedly aggravated the loss presumably on the ground that any statement of the Producer had brought about a fuelling of the Telangana agitation which consequently resulted in the claimed losses. For this, the Insurance Company has invoked clause 3.9 of the policy as already extracted in the letter of repudiation above to hold that the complainant did not exercise his diligence for doing all things reasonably practicable to avoid or diminish any loss.

35. We have examined the pleadings in this regard and the allegation is that the Producer of the film, Mr. Kodalimani had allegedly made certain public statements, which according to the Insurance Company had detained the release of the film which could not be screened and this loss to the Distributor was on account of such provocation for which the complainant was also responsible, and therefore is not indemnifiable. We may point out that the Insurance Company has been unable to lead any evidence nor are there any pleadings that the complainant, who is the Distributor had aided or abetted the Producer in his oratory or announcements made by him which could be termed as provocative at the instance of the complainant. We fail to understand as to how the policy can take within its fold any such provocation by a third party to attribute it as a cause for aggravating the loss without any evidence to substantiate the same. It is not the case of the Insurance Company in the letter of repudiation that the complainant had participated in any agitation or involved himself in any manner that could have possibly aggravated the situation. To our mind, such a ground for repudiation is, to say the least, purely speculative and is yet another lame excuse adopted by the Insurance Company to deny a legitimate claim of the complainant. We are constrained to observe that in view of the provisions of Section 64UM of the Insurance Act, 1938, unless the report of the Surveyor can be said to be uncredit worthy, the same cannot be discarded even by the Insurance Company and what is more revealing is that the Surveyor in his final recommendation in clause 4.9 has categorically recorded that the case of loss of revenue of the Distributor is genuine and there is no finding by the Surveyor that the Distributor had in any way acted or conducted himself so as to aggravate the loss. Interestingly, the Surveyor in his report while recording facts, has also stated that the film was released under tight security on 13.01.2010 following a directive of the Andhra Pradesh High Court. We fail to see as to how the complainant who is a Distributor had acted in any manner so as to aggravate the loss on the alleged provocative comments made by the Producer. The complainant cannot even be held to be vicariously liable as there is no reason to presume that the Producer will act against his own interest and destroy his business by fuelling an agitation not is there any evidence to that effect.

36. It is understandable that the agitation, which was an on-going demand of a separate State of Telangana, due to its political overtones may have been opposed to the screening of the film as it was a Jr. N.T.R. starrer, who could obviously be seen as a person associated with the then ruling Telugu Desam Party, but an opposition to the screening of the film on such political considerations was a part of the agitation by the TJAC (Telangana Joint

Action Committee) and the agitators might have found this to be another ground for them to raise their voices in protest, but this cannot be sufficient to infer that the complainant, who is a Distributor had aggravated the losses. By any stretch of logic or for that matter by any stretch of imagination, we are unable to sustain the second ground of repudiation as well and we accordingly hold that the repudiation letter dated 12.06.2012 is a nullity as it is founded on complete erroneous assumptions of fact and non-consideration of relevant material including the Surveyor's report dated 03.09.2010 being based on surmises and conjectures. The Surveyor has also commented by reciting that the agitation was instigated by the Telangana Party. Reference be had to clause 4.4.5 and 4.4.6 of the Surveyor report dated 03.09.2010.

37. We may now refer to the provisions relating to the policy coverage and the exclusions. The policy is in two parts as indicated above, the first being relating to the loss of revenue to the Distributor and the second is any loss suffered on account of publicity expenses. Coming to the first part, the same relates to the main policy regarding loss of revenue to indemnify upto a sum of Rs. 10 Crores against any drop in collections that may arise out of any obstruction in the screening of the film due to the occurrence of any of the insured perils as mentioned in the policy and the second part is contained in the extension cover for prints and publicity expenses for a sum of Rs. 1 Crore separately. The policy is effective for a period of 60 days from the date of release and it covers the loss of publicity expenses which commences 7 days prior to the commencement of the policy. The perils covered under the policy includes force majeure, riot, strikes, malicious damage, *bandh* call, ban call of the particular movie given by a political or non-political organisation, blockade of public access roads due to dispute, public demonstration and civil commotion. These heads have been categorically mentioned under clause 4(i), (iii) and (v) of the insured perils. Clause 6 of the policy refers to the “exclusion”. Sub-clause (iv) excludes loss due to banning of the movie by any State / Central Govt. or Municipal Authority or Courts for whatsoever reason.

38. A combined reading of the coverage coupled with the exclusion leaves no room for doubt that the Telangana movement had led to a ban call by the Telangana Joint Action Committee (TJAC) which can be termed as a political or a non-political organisation. The ban was neither by the Central or the State Govt. or for that matter by any authority or Court. This call of ban accompanied by *bandh* and public demonstration through a purely political or non-political outfit, all stands therefore covered under clause 4 of the policy referred to hereinabove. The Insurance Company in the counter affidavit has taken a stand that this amounts to a ban of the movie as per the exclusion clause which is not correct as concluded above.

39. We may point out that this reason of applicability of the exclusion clause is not mentioned in the letter of repudiation. It is therefore apt to apply the law laid down by the Apex Court in the case of ***Galada Power & Telecommunication Ltd. Vs. Unite India Insurance Co. Ltd., (2016) 14 SCC 161*** and once again reiterated in the case of ***Saurashtra Chemicals Limited Vs. National Insurance Company Limited, (2019) 19 SCC 7***, followed by another decision by the Apex Court in the case of ***New India Assurance Co. Ltd. vs. M/s. Mudit Roadways, (2024) 3 SCC 193*** where observations have been made in the respective judgments that are extracted hereinunder:

In the case of ***Galada Power & Telecommunication Ltd. Vs. United India Insurance Co. Ltd., (supra)*** in paragraphs 13 to 18, the Apex Court discussed the issue of waiver and after referring to the proposition as spelt out in various decisions in the above noted paragraphs it ultimately went on to hold as follows:

> *"18………..Additionally, as has been stated earlier, in* ***the letter of repudiation, it only stated*** *that the claim lodged by the insured was not falling under the purview of transit loss.* ***Thus, by positive action, the insurer has waived its right to advance the plea that the claim was not entertainable because conditions enumerated in duration clause were not satisfied.****"*

The aforesaid ratio found approval by the Apex Court in yet another judgment in the case of ***Saurashtra Chemicals Limited Vs. National Insurance Company Limited, (supra)*** in paragraphs 11 to 23. Paragraph 23 of the said judgment is extracted hereinunder:

> *"23. Hence, we are of the considered opinion that the law, as laid down in Galada [Galada Power & Telecommunication Ltd. v. United India Insurance Co. Ltd., (2016) 14 SCC 161 : (2017) 2 SCC (Civ) 765] on Issue (2), still holds the field.* ***It is a settled position that an insurance company cannot travel beyond the grounds mentioned in the letter of repudiation****. If the insurer has not taken delay in intimation as a specific ground in letter of repudiation, they cannot do so at the stage of hearing of the consumer complaint before Ncdrc."*

The matter further came for consideration once again in the case of ***New India Assurance Co. Ltd. & Ors. Vs. Mudit Roadways (supra),*** where the same ratio was reasserted in paragraphs 33 and 34 as follows:

*"**33.** Notably, in earlier cases like Galada Power & Telecommunication Ltd. v. United India Insurance Co. Ltd. [Galada Power & Telecommunication Ltd. v. United India Insurance Co. Ltd., (2016) 14 SCC 161 : (2017) 2 SCC (Civ) 765] and Saurashtra Chemicals Ltd. v. National Insurance Co. Ltd. [Saurashtra Chemicals Ltd. v. National Insurance Co. Ltd., (2019) 19 SCC 70 : (2020) 4 SCC (Civ) 298] , **it was declared that new grounds for repudiation cannot be introduced during the hearing if they were not included in the repudiation letter. This legal principle was reiterated** in JSK Industries (P) Ltd. v. Oriental Insurance Co. Ltd. [JSK Industries (P) Ltd. v. Oriental Insurance Co. Ltd., (2022) 17 SCC 340 : 2022 SCC OnLine SC 1451] : (JSK Industries case [JSK Industries (P) Ltd. v. Oriental Insurance Co. Ltd., (2022) 17 SCC 340 : 2022 SCC OnLine SC 1451] , SCC para 12)*

*"12. Mr Gopal Sankaranarayanan, learned Senior Counsel for the appellants has argued both on substantive and procedural points to assail the aforesaid orders. His first submission is that **the insurance company cannot resist a claim petition on grounds beyond those cited by them while repudiating a claim**. In support of this argument, a decision of this Court in Saurashtra Chemicals Ltd. v. National Insurance Co. Ltd. [Saurashtra Chemicals Ltd. v. National Insurance Co. Ltd., (2019) 19 SCC 70 : (2020) 4 SCC (Civ) 298] has been cited. In this judgment, it has been held : (SCC p. 78, para 23)*

*'23. Hence, we are of the considered opinion that the law, as laid down in Galada [Galada Power & Telecommunication Ltd. v. United India Insurance Co. Ltd., (2016) 14 SCC 161 : (2017) 2 SCC (Civ) 765] on Issue (2), still holds the field. **It is a settled position that an Insurance Company cannot travel beyond the grounds mentioned in the letter of repudiation**. If the insurer has not taken delay in intimation as a specific ground in letter of repudiation, they cannot do so at the stage of hearing of the consumer complaint before NCDRC.' "*

34. Canvassing supplementary arguments during the hearing, (beyond those in the insurer's repudiation letter), is explicitly prohibited. Consequently, it is held that the insurer cannot introduce additional reasoning beyond those detailed in their letter, to justify the repudiation."

40. Consequently, in the absence of any such reason given in the letter of repudiation, the plea taken by the Insurance Company cannot be entertained.

41. Coming to the Surveyor's report, we find that the Surveyor, while referring to the computation of the Net Assessed Loss, has observed that due to the Producer's provocative comments, the TJAC banned the screening of the film, though a ban of a film by a political or a non-political organisation is an insured peril under the policy. Thus, the Surveyor has admitted in the report that the ban by TJAC is by a political / non-political organisation and is therefore an insured peril under the policy.

42. With this material on record, it is abundantly clear that the peril was covered under the terms of the policy and the exclusion clause does not apply at all on the facts of the present case.

43. Having said that, we now proceed to consider the claim regarding the quantum as set out by the complainant in his claim.

44. For this, we may point out that the complainant had responded to the queries raised by the Surveyor on 18.05.2010 by their reply dated 31.05.2010. This was followed by a comprehensive submission in support of the claim to the Surveyor on 09.08.2010. The same is extracted hereinunder:

Asian Theatres Pvt. Ltd.

August 09, 2010

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Mr. R G Verma
Chartered Accountant
101, Swastik Bhavan
Ranjit Nagar Commercial Complex
New Delhi 110 008.

Dear Sir,

CLAIM UNDER DISTRIBUTOR LOSS OF PROFITS POLICY NO. 124500/48/2010/3456 (THE POLICY) ISSUED BY ORIENTAL INSURANCE COMPANY LIMITED, MUMBAI (INSURER) FOR THE TELUGU FEATURE FILM 'ADHURS' (THE FILM).

With reference to our series of discussions on the captioned claim, we are pleased to record our submissions as under:

1. THE POLICY

We, Asian Theatres Private Limited, Secunderabad have on December 12, 2009 proposed to Oriental Insurance Company Limited, Brokers Divisional Office, Mumbai (The Insurer) for issue of a Special Contingency Policy to indemnify itself against any drop in collections / loss of revenues that may arise out of the screening of the Telugu Feature Film "ADHURS" (The Film) due to the occurrence of any of the insured perils.

The Insurer vide Policy no. 124500/48/2010/3456 has issued a Special Contingency Policy titled "Distributor Loss of Profits" (The Policy) to indemnify us up to a sum of Rs. 10 Crores against any drop in collections / loss of revenues that may arise out of the screening of the Telugu Feature Film "ADHURS" (The Film) due to the occurrence of any of the insured perils as mentioned in the Policy. The Insurer has also issued an extension cover for Prints & Publicity expenses for a sum insured of Rs. 1 crore. The Policy is effective for a period of 60 days from the date of release of the film.

2. ABOUT US

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We are present in the Film Industry for more than 20 years and our focus is on Exhibition & Distribution of film content for the Nizam Area in the State of Andhra Pradesh.

The Nizam Area is the largest film territory in the State of Andhra Pradesh comprising of the Twin Cities of Hyderabad & Secunderabad and the 10 revenue districts viz., Adilabad, Karimnagar, Nizamabad, Medak, Warangal, Khammam, Hyderabad, Rangareddy, Nalgonda, and Mahaboobnagar (The Nizam Area).

As a Distributor, we regularly distributes films for theatrical exhibition in the Nizam Area and as an Exhibitor, we operate many theatres in the Nizam area (including the Twin Cities) as an operational lessee.

3. OVERVIEW OF THE INDIAN FILM INDUSTRY

The Indian Film Industry comprises of 3 segments viz., Production, Distribution & Exhibition. Though each segment in inter-dependant, the activities of each segment is independent of the other.

Production

The Producer is the person who conceives the idea to transform a written communication into a visual communication. The Producer, who is the owner of the film puts together a team of individuals viz., Director, Artistes etc., and comes out with an end product that is suitable for public viewing. Having produced the film, the Producer assigns the theatrical rights of the film to the next segment called the Distributors. The Producer through various different channels exploits the other rights associated with a film viz., Home Video, Satellite, Overseas exploitation, Music Rights etc..

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Distribution

The Distributor acquires the right to exploit the film from the Producer for a consideration and in the process, acts as an intermediary between the Producer and an Exhibitor, the last segment in the Media & Entertainment value chain.

The Producer would either:

1. Sell the rights to the distributor on an outright basis for a one-time consideration, in which case, the distributor becomes the owner of the rights; or

2. Would assign the distribution rights of the film for a limited period, for which the distributor is paid a commission on the revenues generated, in which case, the proceeds generated by the distributor is passed on to the distributor after deducting his commission; or

3. Has the option of assigning the rights an a minimum guarantee basis, in which case the distributor pays the minimum guarantee amount before release of the film and agrees to share the overflow on such terms as may be agreed by the Producer and the Distributor.

The terms of assignment between the Producer and the Distributor therefore vary on case-to-case basis and are documented in the form of an agreement. The Distributor then uses the exhibition infrastructure (theatres) of an Exhibitor to screen the film for public viewing.

Exhibition

The Exhibitor provides the infrastructure to screen the film content through his theatres whereby the content is converted into revenue. The Exhibitor may either share the net revenues generated from exhibiting the film with the distributor on pre-agreed terms or may charge a fixed rent for using the exhibition infrastructure. Depending on the strength and quality of the

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content, the distributor would stipulate a minimum guarantee to the exhibitor, in which case, the Exhibitor shall pay the minimum guarantee amount to the distributor irrespective of the revenues generated in the box office.

Depending on the arrangement, the terms of exhibition are fully documented in the form of an agreement between the Distributor and the Exhibitor.

Net revenues for this purpose would mean the gross revenues generated by the sale of tickets in the box office and as reduced by the amount of entertainment tax and such other levies as may be levied by the Government. Entertainment Tax is a state subject and is usually an amount equivalent to a percentage of the gross revenues.)

In the present scenario, Vaishnavi Arts produced the subject film ***ADURS*** and were assigned the distribution rights for theatrical exhibition of the film in the Nizam area in the State of Andhra Pradesh. The terms of arrangement between the Producer and ourselves are documented in the form of an agreement.

As mentioned earlier, we are present in both the Distribution and Exhibition segments. As a Distributor, we regularly distribute films for theatrical exhibition in the Nizam Area. As an Exhibitor, we have as many as 180 theatres in the Nizam area (including the Twin Cities) under our operational management.

As far as the release of ADHURS is concerned, we released the film in 86 theatres in the Nizam Area, out of which 36 theatres are under our operational management. Therefore, in so far as these 36 theatres are concerned, we are the Distributor as well as the Exhibitor.

Here again, it may be noted that we do not own the theatres but only operate them as a lessee and pays a fixed rental to the owner on a weekly basis. In the absence of ownership, we are neither liable nor obligated to

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pay any taxes or levies relating to the theatres operated (including the entertainment tax) to the Government. The onus therefore lies on the Owner of the theatre to collect and remit the entertainment tax to the Government.

4. THE FILM

Produced by Mr. Kodali Mani & Mr. Vamshi under the banner 'Vaishnavi Arts Private Limited', ***ADHURS*** is an action / romance film starred by Mr. Junior NTR, Nayanthara & Others and is directed by Mr. Vinayak.

ADHURS was released world-wide on January 13, 2010 (release date) and we hold the distribution rights for theatrical exhibition in the Nizam Area.

We released the film on the release date in 86 theatres in the Nizam Area, out of which 36 theatres were under our operational lease and the balance 50 theatres that are not under our control as listed hereunder:

Theatres under our operational management:

S No	Theatre	Location	City / District
1	Oden Dlx	R.T.C. X Roads	Twin Cities
2	Mallikarjuna	Kukatpally	Twin Cities
3	Konark	Dilsukhnagar	Twin Cities
4	Cineplanet	Kompally	Twin Cities
5	Raghavendra	Malkajgiri	Twin Cities
6	Shashikala	Moosapet	Twin Cities
7	Ranga	Jeedimetla	Twin Cities
8	Indira	Karmanghat	Twin Cities
9	Sridevi	RC Puram	Twin Cities
10	Satyam	Ameerpet	Twin Cities
11	Amba	Mehendipatnam	Twin Cities
12	Vijetha	Borabanda	Twin Cities
13	HI Tech	Madhapur	Twin Cities
14	Sushma	V S Puram	Twin Cities
15	Super	Balapur	Twin Cities
16	Krishna	Nagaram	Twin Cities
17	Rama	Bahadurpura	Twin Cities
18	Laxmi	Shamshabad	Twin Cities
19	Ganga	Dilsuknagar	Twin Cities
20	Rajyalakshmi	Uppal	Twin Cities

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21	Ramraj	Narsampet	Warangal
22	Aditya	Khammam	Kammam
23	Udaybhasker	B Chalam	Kammam
24	Venkatdurga	Aswaraopet	Kammam
25	Natraj	Nizamabad	Nizamabad
26	Priya	Kamareddy	Nizamabad
27	Saibaba	Shadnagar	Mehaboob Nagar
28	Tirumala	Nalgonda	Nalgonda
29	Cinemax	Zaheerabad	Medak
30	Lakshmi	Manchiryal	Adilabad
31	Sailaja	Vikarabad	Ranga Reddy
32	Vijaya	Hanamkonda	Warangal
33	Seetarama	Yellendu	Kammam
34	Shanthi	Madira	Kammam
35	Ramakrishna	Bellampally	Adilabad
36	Maheshwari	Sadashivapet	Medak

Theatres not under our operational management:

S. No	Theatre	Location	City / District
1	Talkie Town	Miyapur	Twin Cities
2	Prasanth	Secunderabad	Twin Cities
3	Radhika	Kapra	Twin Cities
4	Santosh	Abids	Twin Cities
5	Vimal	Balanagar	Twin Cities
6	Venkateshwara	Patancheru	Twin Cities
7	Sensation	Khairatabad	Twin Cities
8	Mukund	Metchel	Twin Cities
9	Raam	Warangal	Warangal
10	Laxmi	Marripeda	Warangal
11	Bharath	Karimnagar	Karim Nagar
12	Balaji	Jagityal	Karim Nagar
13	Laxmi	Siricilla	Karim Nagar
14	Venugopal	Palwancha	Kammam
15	Ramakrishna	Wyra	Kammam
16	Balaji	Sattupally	Kammam
17	Nartaki	M B Nagar	Mehaboob Nagar
18	Bhavani	Kottakota	Mehaboob Nagar
19	Laxmi	Achampet	Mehaboob Nagar
20	Kishore	Suryapet	Nalgonda
21	Raghurama	Nakrekal	Nalgonda
22	Krisnapriya	Kodad	Nalgonda
23	Omkar	Bhuvanagiri	Nalgonda
24	Venkateshwara	Miryalguda	Nalgonda
25	Achireddy	Halia	Nalgonda

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26	Venkateshwara	Toopran	Medak
27	Natraj	Adilabad	Adilabad
28	Laxmi	Tandur	Ranga Reddy
29	Srinivasa	Wanaparty	Mehaboob Nagar
30	Manikanda	Chevella	Ranga Reddy
31	Sriramana	Nagarkurnool	Mehaboob Nagar
32	Parameshwari	Kottagudam	Kammam
33	Mukund	Mehaboobabad	Warangal
34	Seetarama	Manuguru	Kammam
35	Balaji	Siddipet	Medak
36	Venkatramana	Jadcherla	Mehaboob Nagar
37	Urvasi	Bhoopalpally	Ranga Reddy
38	Urvasi	Godavarikhani	Karim Nagar
39	Maheshwari	Narayanpet	Mehaboob Nagar
40	Venkateshwara	Nirmal	Adilabad
41	Apsara	Deverkonda	Nalgonda
42	Jaya Deluxe	Parakala	Warangal
43	Murali Dlx	Jammikunta	Karim Nagar
44	Natraj	M B Nagar	Mehaboob Nagar
45	Anji Reddy	Choutuppal	Nalgonda

The list does not include 5 theatres in Twin Cities where the film was screened and the share was directly paid to the Producer of the film.

As per the general practice in the Film Trade in the State of Andhra Pradesh, we pay a fixed weekly rental to the Theatre Owner. The Theatre Owner sells the tickets in the box office (Gross collections) and deducts the applicable taxes payable to the State Government (Entertainment Tax).

The balance amount is known as 'Net collections'. Out of the Net Collections, the Theatre Owner deducts the agreed weekly rental (Theatre Share) and pays the balance (Distributor Share) to us.

The loss of revenues suffered by us is the loss in the Distributor Share due to any drop in collections due to the occurrence an insured peril in a particular day (affected day). The Distributor Loss of Profits Policy indemnifies us from such losses.

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The screening of the film was affected on January 13, 20 & 21 and from February 8, 2010 till March 13, 2010 due to the Telangana agitation resulting in loss of revenues to us and hence the claim under the Policy.

5. RELEASE OF THE FILM

The release of the film was postponed several times. The film was originally scheduled for release on December 23, 2009, which was subsequently postponed to December 30, 2010. The release was further postponed and was finally released on January 13, 2010.

On December 17, 2009, we have vide an Electronic Mail intimated Alliance insurance Brokers on the change in the release date of the film from December 23, 2009 to December 30, 2009.

Since the film was not released on December 30, 2009, as soon as the date of release of the film was finalized by the Producer, our authorized representative Mr. A S Sathish Kumar has vide his e-mail of January 11, 2010 informed Alliance Brokers, who had in turn vide their electronic mail of January 12, 2010 informed the Insurer on the revised release date to the Insured. Copies of the e-mails referred herein are attached for ease of reference. The revised release date has therefore been communicated to the Insurer before the actual release date.

6. MISREPRESENTATION OF MATERIAL FACTS

While on this, we note your observation on the non-intimation of the revised release date to the Insurer and that such an act would tantamount to a misrepresentation of material facts under the Policy and would render the Policy as null and void.

'Misrepresentation' means a written or oral statement that is false. As soon as the date of release of the film was finalized by the Producer, our authorized representative has vide his e-mail of January 11, 2010 informed Alliance Brokers, who had in turn vide their e-mail of December 12, 2010 informed the Insurer on the revised release date to the Insured.

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The revised release date has therefore been communicated to the Insurer and hence there is no misrepresentation or concealment of any material information.

In this context, we also submit that upon every earliest available opportunity, we had intimated every event which resulted in the postponement of the release date of the film to the Insurer thro' Alliance Insurance Brokers Private Limited, Mumbai (The Broker), who had also immediately passed on the said information to the Insurer. Details of every such communication is listed as under and copies of the same are attached herein for your ease of reference:

S no	Date	Sender	Recipient	Subject	Mode
1	Jan 11, '10	Insured	Alliance Insurance Brokers Pvt Ltd	Revised release date as Jan 13, 2010.	E-mail
2	Jan 12, '10	Alliance Insurance Brokers Pvt Ltd	Insurer	Revised release date as Jan 13, 2010. Insured's mail of Jan 11 '10 was forwarded.	E-mail

You would therefore appreciate that we have been diligent and honest in representing all material facts at the earliest available opportunity to the Insurer and that we have never made any statements that are false nor have concealed any material facts or circumstances concerning this insurance. We also add that we have made repeated reminders to the Insurer, but none of our communications have evoked any response from the Insurer.

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7. CHRONOLOGICAL SEQUENCE OF EVENTS

DATE	DESCRIPTION	MODE
Dec 14, 2009	Covering letter enclosing Proposal Form & Cheque for premium amount	Letter
Dec 17, 2009	Intimation of postponement of release from Dec 23, 2009 to Dec 30, 2009	Electronic Mail
Dec 31, 2009	Intimation of Claim for Rs. 23 lacs towards Publicity Expenses.	Letter
Jan 8, 2010	Reminder on intimation of claim	Electronic Mail
Jan 11, 2010	Intimation of postponement of release to Jan 13, 2010	Electronic Mail
Jan 14, 2010	Intimation of Claim - loss of revenues on Jan13, 2010	Letter
Jan 18, 2010	Reminder on intimation of claim	Electronic Mail
Feb 4, 2010 & Feb 18, 2010	Communication on Break-up of loss	Electronic Mail
Feb 19, 2010	Intimation of Indicative estimate on loss	Electronic Mail
Mar 19, 2010	Intimation of progress in computation of losses	Electronic Mail
April 13, 2010	Intimation of loss of Rs. 3,93,96,635/-	Letter
April 16, 2010	Reminder on intimation of loss of Rs. 3,93,96,635/-	Electronic Mail
May 8, 2010	Reminder for appointment of Surveyor	Letter
May 10, 2010	Communication from Insurer on appointment of Surveyor	Electronic Mail

Copies of the communications referred herein are attached for ease of reference.

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8. INTIMATION OF LOSSES

1. We have vide our letter dated December 31, 2009 addressed to the insurer intimated our claim under 'Prints & Publicity Expenses Cover' well within the 72-hour deadline stipulated under the Policy. The Insurer neither responded not took any steps.

2. We suffered losses on January 13, 2010. At the first available opportunity and as soon as practicable, we have vide our letter dated January 14, 2010 addressed to the Insurer intimated the claim under loss of revenues under clause 3.2 of the Policy. The Insured neither responded nor took any steps.

3. The losses continued till March 13, 2010 and we computed the losses and as soon as practicable, on March 13, 2010, intimated the losses to the Insurer vide our letter dated April 13, 2010. The Insurer neither responded nor took any steps.

4. The loss amount was once again communicated by us to the Insurer vide an e-mail of April 16, 2010. The Insurer neither responded nor took any steps.

5. On May 8, 2010, we communicated by our letter of even date to the Insurer on the inordinate delay in appointing the Surveyor. The Insurer responded by an e-mail of May 10, 2010 by mentioning that '*the appointment of the Surveyor has been referred to the Higher Authorities as the estimated loss is beyond the financial authority of the Broker Divisional Office*'.

You would observe from the above that we have on December 31, 2009 requested the Insurer to appoint the Surveyor when the estimated losses stood at Rs. 23 lacs, but got the 1st response from the Insurer after 4 months and 9 days.

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9. REASONS FOR VARIATION IN LOSSES

The losses reported by us on April 16, 2010 were computed on the basis of the earnings, while the policy stipulates assessment of losses on the basis of occupancy achieved. The losses were then re-computed based on the Policy guidelines and hence the variation in the figures.

10. DELAY IN RESPONSE

It is worth mentioning that Insurer has in his e-mail of May 10, 2010 gone on record by mentioning that the appointment of the Surveyor has been referred to the Higher Authorities as the estimated loss is beyond the financial authority of his office, while we had requested the Insurer on December 31, 2009 to appoint the Surveyor when the estimated losses then stood at Rs. 23 lacs, an amount which is well within the financial powers (Rs. 50 lacs) of the Divisional Office which has issued the Policy.

A question therefore arises as to why the Insurer has not acted upon the our requests Insured to appoint a Surveyor when the claim was within its financial authority.

It is therefore abundantly clear that we have fulfilled our obligations under the Policy by communicating with the Insurer on time. We made the 1st intimation of claim under the Policy on December 31, 2009 but the Surveyor was appointed after 4 months and 10 days on May 11, 2010. Each and every communication of ours makes it clear that the film was released on January 13, 2010 and that the screening was affected by Insured perils and not even once the Insurer has responded or disagreed with the contents of the Insured's letters.

The fact that the Insurer has not disagreed with any of our statements since December 31, 2010 till May 10, 2010 makes our claim under the Policy fully tenable and cannot be repudiated or disallowed by the Insurer on any valid grounds.

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11. CLAIMS UNDER THE POLICY

We have made the following claims under the Policy:

Claim under Print & Publicity Cover

Following the postponement of the release of the film, we incurred losses on the publicity part as the Telangana activists damaged most of the hoardings that were erected. We have therefore on December 31, 2009, lodged a claim for a sum of Rs. 23 lacs under the Prints & Publicity Expenses Cover and inter alia mentioned that the release of the film has been postponed due to riots and threats perceived for the film on account of the Telangana agitation.

Claim under Loss of Revenues

January 13, 2010

The screening of the film was partially affected due to disruption by Telangana activists and the Insured estimates the loss of revenues at Rs. 10.29 lacs. Newspaper reports also confirm that top functionaries of the Telangana Party had instigated its supporters to disrupt the screening of the film.

January 20 & 21, 2010

The screening of the film was affected on both these days due to a bandh called by the Telangana Party and normal life was paralyzed on both these days in the Nizam Area. All establishments remained closed due to the bandh call and this is evident from newspaper reports. Consequently screening of the film in as many as 78 theatres were affected on both these days and the insured estimates the losses at Rs. 36.19 lacs and Rs. 37.82 lacs for January 20 & 21, 2010 respectively.

From February 8, 2010 to March 3, 2010

The Telangana Joint Action Committee banned the screening of the film in the Nizam Area effective February 8, 2010. The Insured therefore

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estimates its losses for the entire period from February 8, 2010 to March 3, 2010 at Rs. 373.80 lacs.

Though we can claim for loss of revenues until March 13, 2010, we have restricted our claim until March 3, 2010 since the Comparative Theatre terminated the screening of the film on March 3, 2010.

12. METHODOLOGY FOLLOWED FOR COMPUTING LOSS OF REVENUES

Claims made by us for loss of revenues suffered on January 13, 20 & 21, 2010 have been computed as explained hereunder.

For the period from February 8, 2010 to March 3, 2010, in the absence of any screening of the film by the theatres in the Nizam Area, the occupancy achieved by Leel Mahal Theatre, Vizag for each day is multiplied with the House Full Distributor Share of the affected theatres in the Nizam Area to arrive at the loss of revenues.

The necessary figures have been derived from the Theatre Agreements entered into by us with the affected theatres, the Daily Collection Reports of all the affected theatres and of the comparable theatre and all these documents along with the computation sheets are submitted along with this letter for your scrutiny and verification.

While the relevant Daily Collection Reports (DCR), Theatre Agreements and confirmation from all the theatres have been submitted to substantiate our claim with respect to the loss of revenues suffered in theatres that are not under our operational management, in respect of theatres under our operational management, we have apart from the DCR, submitted a written confirmation confirming the relevant details in lieu of the Theatre Agreements and Theatre Confirmation as in these cases, we are both the distributor and the exhibitor.

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As per the Policy document, the first and foremost parameter for assessing the loss is to compare the performance of an affected theatre with that of a comparable theatre.

In line with our earlier discussions, we have designated Odeon Theatre, Hyderabad as the Comparable Theatre for January 13, 2010 and Leel Mahal AC DTS, Vizag as the Comparable Theatres for computing the loss of revenues on January 20, 21, 2010 and for the period from February 8, 2010 to March 3, 2010.

For computing the loss of revenue for the '*ban period*', we have taken into account only those theatres where the film was last screened on February 8, 2010. Theatres where the screening was terminated before February 8, 2010 have not been considered for computing the loss of revenues during the '*ban period*'.

It may also be mentioned that while computing the losses, we have followed the guidelines laid down in the Policy and have accordingly restricted claims under partial losses to 80% of the loss of revenues. Further, we have also has also not considered the losses in cases where the occupancy achieved by the affected theatres is less than or equal to 10% of the occupancy achieved by the Comparable Theatre.

In line with the Policy document, the following steps have been followed for estimating the loss of revenues:

STEP	DESCRIPTION
1	The distributor share on House Full Occupancy of all the theatres where the film was screened and affected was collected. This figure was verified with the Theatre Agreements entered into by the Insured with each affected theatre.
2	The actual occupancy achieved by the Comparable Theatre was collected. This is the total number of persons who viewed the film in the comparative theatre on both the affected days and appears in the Daily Collection Report.
3	The actual occupancy achieved by the affected theatres for both the affected days were collected. This is the total number of

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	persons who viewed the film on both the affected days and is as per the data appearing in the Daily Collection Reports. The distributor share for the affected theatres was computed as a % of the house full share of revenues.
4	The actual occupancy achieved by the affected theatres was compared with the occupancy achieved by the comparable theatre and the difference is the loss of occupancy.
5	The difference in the occupancy computed as per Step 4 was multiplied with the House Full Distributor Share of the affected theatres (as collected under Step 1) and this is the loss of the revenue of the affected theatres.
6	The amount so arrived in the Step 5 was reduced by 20% (to give effect to the variation as per the policy document) to arrive at the final estimated loss of revenue. In case of a Total Loss, the amount arrived under Step 5 has been treated as the final estimated loss of revenue.

We request you to kindly assess the losses and do the needful in this matter and should you need any further information or clarifications, please feel free to contact Mr. A S Sathish Kumar, our authorized representative.

Thank you,

Yours truly,

NARAYANDAS NARANG
DIRECTOR

45. Consequent to the same, the Surveyor tendered his report on 03.09.2010, which is extracted hereinunder:

R. G. Verma
B.Com. (Hons.) A.I.C.W.A., F.C.A.
CHARTERED ACCOUNTANT

101, Swastik Bhawan,
Ranjit Nagar Commercial Complex
New Delhi – 110 008
Off: (011) 25706379, 25706380
Fax: (011) 25708963
Res.: (011) 25790142
Cell: 98 114 13816
E-mail: :rgvermaca@yahoo.com

REF: RGA/ADHURRS/OIC/2010-11 DATED: 03/09/2010

To
The Senior Divisional Manager
The Oriental Insurance Co. Limited,
Brokers Divisional Office
4th Floor, Oriental House, 7, J.Tata Road
Churchgate, Mumbai.- 400 020.

(Without prejudice and subject to the terms and conditions of the policy issued.)

DISTRIBUTOR'S LOSS OF REVENUE SURVEY REPORT

(Privileged for consideration of the concerned insurers and their legal advisors only.)

Sub:- Claim under Distributors' loss of profit policy of film 'ADHURS', A/c Asian Theatres Pvt. Limited, worth about Rs. 3.96 crores, covered under Special Contingency Policy no. 124500/48/2010/3456.

Dear Sir,

In accordance with the instructions received from your head office. I, the undersigned conducted the survey at the concerned places and submit our survey report as follows:

1. The Insured

Asian Theatres Private Limited
396-97, Jain Estate, Park Lane,
Opp. Nanking Restaurant,
Secunderabad (Andhra Pradesh)

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2. The Cover

The insured have covered their risks with the insurer viz.:-

The Oriental Insurance Company Limited,
Brokers Divisional Office
4th Floor, Oriental House, 7, J.Tata Road
Churchgate, Mumbai.- 400 020.

Special contingency insurance policy no. 124500/48/2010/3456 had been issued to the insured. Details of policy are as follows: -

Distributor's Loss of Revenue insurance

Policy No.	124500/48/2010/3456	
Insured	ASIAN THEATRES (P) LTD.	
Address	396-97 JAIN ESTATE, PARKA LANE, OPP NANKING RESTAURENT, SECUNDERABAD 500003.	
Title (Name of Film)	ADHURRS	
Policy Period	23.12.2009 to 22.02.2010 Print and Publicity cover will start 7 days before the release date	
Scope of cover	As per policy wording attached	
Deductibles	INR 5,00,000/- for each & every claim.	
Additional Exam	Print and Publicity Expenses cover for Rs. 1 Crs.	
Details of Territories covered	Nizam Area (Including the twin cities) in A.P.	
Broker name	Alliance Insurance Brokers Pvt. Ltd.	
Receipt no.	CD A/c No. AB0000017186	
Service Tax Regn. No.	AAACT 06 27 R ST 308	
Broker Code		1217
Total Sum Insured		11,00,00,000/-
Premium		5,50,000/-
Add Service Tax	10.30 %	Rs. 56,650/-
Total Premium		Rs. 6,06,650/-

Distributor's Loss of Revenue Insurance

Policy no.	124500/48/2010/3456	Endt. No.	124500/48/2010/001
Cover Note No.	-	Cover note Date	-
Insured,s Code	-	Issue office code	124500
	Asian Theatres (P) Ltd.	Issue office name	Broker D.O.
Address	396-97 Jain Estate, parka Lane, Opp Nanking Restaurent, Secunderabad 500003.	Issue office address	4th floor, oriental house, 7 J. Tata Road, Mumbai 400020
Development officer		Agent/ Broker	LC0000000036 ALLIANCE INSURANCE BROKER
Period of Insurance	30.12.2009	to	27.02.2010
C.D A/c No.	AB0000017186	Collection Date	15.12.2010

Endorsement

Notwithstanding anything herein to the contrary in the mentioned policy it is hereby agreed & declared that the correct policy period should be read as mentioned below:

Correct policy period

From 30.12.2009 to 27.02.2010

Indemnity

Insurer's liability would be to pay for loss of revenue income either total and/or partial loss of earning, with or without physical damage to theatres within the first 60 days from the date of release of movie arising due to any of the insured perils in all the territories as specified in the schedule. There will be no liability under this policy on expiry of 60 days from the date of release of the firm.

Policy period

The policy will be operative for 60 days from the date of release of the film.

2.1. Insured Perils/Coverages

Insured hereby agrees, subject to the limitations, terms and conditions herein after mentioned to indemnify the insured for their loss of revenue accruing to the insured due to any drop in collections/revenue directly attributable to:

1. Force Majeure and riot, strike, Malicious Damage
2. Epidemics, national and state morning,
3. Strike bandh call, ban call of the particular movie given by a political or a non-political organization.
4. Any act of terrorism and/or threat thereof (whether actual or perceived) regardless of any other cause or event contributing concurrently or in any other sequence to the loss and also any loss resulting from or on connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism or fear thereof.
5. Blockade of public, access roads due to dispute, public demonstration, riots strike and civil commotion, malicious damage.
6. Act of God perils.

Giving rise to business interruption, with or without physical damage to theatre in the territories mentioned in the schedule attached.

2.2. PUBLICITY EXPENDITURE EXTENSION

POLICY PERIOD : 16.12.2009 TO 22.02.2010

INSURED PERILS:
To indemnify the insured the additional expenditure incurred on publicity of the film due to postponement or re-scheduling of the release directly attributable to:-

1. Riots, Strikes and malicious Damage
2. Terrorism or any terrorism like situation

Activity Covered:

Publicity expenses and the use of publicity materials in all the mediums of communications including but not limited to Television, internet, Multimedia, Radio Broadcast, Print Media etc.

SUM INSURED:

The liability of the insurer would not exceed the publicity expenses declared Seven days prior to the release of the film.

R. G. VERMA

Definitions;

Publicity Expenses

Shall mean all expenses that may be incurred for the publicity and promotion of the film, including but not limited to posters, hoardings and all forms of advertisement.

Publicity Material

Shall mean all promotional and publicity material for the film of whatever description including without limitation to still photographers, trailers etc from time to time during the term specified in the schedule.

Release date

Shall mean the date of the first theatrical exhibition of the film to members of the public who have paid a fee to view the film.

CONDITIONS

3.2. Preliminary notice of loss

The insured shall advise insurer in writing of any occurrence that may give rise to a loss in the opinion of the insured's risk management department as soon as practicable, after the insured's risk management department has been so advised.

(See annexure no. 1 for Policy and proposal form)

3. Incidence and modus operandi of Claim under Distributors' loss of profit policy of film 'Adhurs' A/c Asian Theatres Pvt. Limited worth about Rs. 3.96 crores covered under contingency Policy no. 124500/48/2010/3456.

3.1. The insured

M/s Asian theatres Pvt. Limited is in the business of distribution and screening of Telegu films under arrangement with various exhibitors in the Nizam area to exhibit films in their theatres. Office of the insured is located at 396-97, Jain Estate, Park Lane, Opp. Nanking Restaurant, Secunderabad – 500003 (Andhra Pradesh).

3.2. About the Incident

The insured had taken distribution rights from the producer M/s Vaishnavi Arts Pvt. limited for exhibiting the film 'Adhurs' in the theatres in Nizam area consisting of following districts:-

1. Hyderabad
2. Ranga reddy
3. Medak
4. Nizamabad
5. Adilabad
6. Karim nagar
7. Mahaboob nagar
8. Khammam
9. Warangal
10. Nalgonga

The film 'Adhurs' was originally slated for release on 23/12/2009, later postponed to 30-12-09 and finally released in 13/1/2010.

In the mean time agitation was going on in Andhra Pradesh for demand of separate Telangana state by Telangana joint action committee. The main actor in the film 'Adhurs' is JR. NTR, grand son of late Shri N.T. Rama Rao whose family is against separate Telangana state. That is why the Telangana joint action committee was against screening of the film 'Adhurrs' in the Nizam area. It may be noted the Nizam area is demanded by the Telangana joint action committee for formation of separate state.

Subsequent to the release of the film, there have been several instances of cancellation/interruption of shows in various theatres where the film 'Adhurs' was screened in Nizam area. Insured peril like band calls, public demonstrations etc, resulting in blockade of roads amongst others affected normal life & prevented access to transport, roads etc. Due to these occurrences, the screening of the film was affected on dated 13/01/2010, 20/01/2010 and 21/01/2010.

On 08/02/10 the Telangana joint Action Committee banned screening of the film in the Nizam area. Screening was therefore terminated in all the theatres in Nizam area. But the film did excellent business in the other two distribution areas viz: Rayalseema (ceded) districts and also in Circar districts in the coastal areas of Andhra Pradesh.

4. Survey and assessment

4.1. About our visit

In due course of survey, we visited the insured and concerned places. We also met concerned persons and verified relevant papers/ documents concerning the claim.

4.2. About the Insured

M/s Asian theatres Pvt. Limited is in the business of distribution and screening of Telegu films under arrangement with various exhibitors in the Nizam area to exhibit films in their theatres. Office of the insured is located at 396-97, Jain Estate, Park Lane, Opp. Nanking Restaurant, Secunderabad – 500003 (Andhra Pradesh). The following are directors in the company:-

1. Mr. Narayan Das Narang
2. Mr. Bharath Narang S/o Mr. Narayan Das Narang
3. Mrs. Sunita Narang W/o Mr. Narayan Das Narang – Managing Director
4. Mr. D Suresh Babu
5. Ms. D Neeraja
6. Ms. Lakshmi Vijay Raghavan

The Insured is present in the Film Industry for more than 20 years and focuses on Exhibition & Distribution of film content for the Nizam Area in the State of Andhra Pradesh. The Nizam Area is the largest film territory in the State of Andhra Pradesh comprising of the Twin Cities of Hyderabad & Secunderabad and the 10 revenue districts viz., Adilabad. Karimnagar, Nizamabad, Medak, Warangal, Khammam, Hyderabad, Rangareddy, Nalgonda, and Mahaboobnagar (The Nizam Area).

As a Distributor, the Insured regularly distributes films for theatrical exhibition in the Nizam Area. As an Exhibitor, the insured operates many theatres in the Nizam area (including the Twin Cities) as an operational lessee.

(See annexure no. 2 for detail)

4.3. About the Film (ADHURS)

Produced by Mr. Kodali Mani & Mr. Vamshi under the banner 'Vaishnavi Arts Private Limited', ADHURS is an action / romance film starred by Mr. Junior NTR, Nayanthara & Others and is directed by Mr. Vinayak.

ADHURS was released world-wide on January 13, 2010 (release date) and the Insured holds the distribution rights for theatrical exhibition in the Nizam Area. The Insured released the film on the release date in 86 theatres in the Nizam Area, out of which 36 theatres were under operational lease of the Insured and the balance 50 theatres that are not under the control of the insured. As per the general practice in the Film Trade in the State of Andhra Pradesh, the insured pays a fixed weekly rental to the Theatre Owner. The Theatre Owner sells the tickets in the box office (Gross collections) and deducts the applicable taxes payable to the State Government (Entertainment Tax). The balance amount is known as 'Net collections'. Out of the Net Collections, the Theatre Owner deducts the agreed weekly rental (Theatre Share) and pays the balance (Distributor Share) to the Insured.

The loss of revenues suffered by the Insured is the loss in the Distributor Share due to any drop in collections due to the occurrence an insured peril in a particular day (affected day). The Distributor Loss of Profits Policy indemnifies the insured from such losses.

The screening of the film was affected on January 13, 20 & 21 and from February 8, 2010 till March 13, 2010 due to the Telangana agitation resulting in loss of revenues for the Insured and hence the claim under the Policy.

4.4.1. Release of the film

The release of the film was postponed several times. The film was originally scheduled for release on December 23, 2009, which was subsequently postponed to December 30, 2009. The release was further postponed and was finally released on January 13, 2010.

On December 17, 2009, the Insured vide an Electronic Mail intimated Alliance insurance Brokers on the change in the release date of the film from December 23, 2009 to December 30, 2009.

Since the film was not released on December 30, 2009, as soon as the date of release of the film was finalized by the Producer, the authorized representative of the Insured has vide his e-mail of January 11, 2010 informed Alliance Brokers, who had in turn vide their electronic mail of January 12, 2010 informed the Insurer on the revised release date to the Insured.

The revised release date was therefore been communicated to the Insurer before the actual release date.

(Please see Annexure '3' for copies of the e-mails referred herein).

S. VERMA
NEW DELHI

4.4.2. Disclosure of material facts

Upon every earliest opportunity, the Insured had intimated every event which resulted in the postponement of the release date of the film to the Insurer thro' Alliance Insurance Brokers Private Limited, Mumbai (The Broker), who had also immediately passed on the said information to the Insurer.

Details of every such communication are listed as under and copies thereof are enclosed.

S. no	Date	Sender	Recipient	Subject	Mode
1	Jan 11, '10	Insured	Alliance Insurance Brokers Pvt Ltd	Revised release date as Jan 13, 2010.	E-mail
2	Jan 12, '10	Alliance Insurance Brokers Pvt. Ltd	Insurer	Revised release date as Jan 13, 2010. Insured's mail of Jan 11 '10 was forwarded.	E-mail

It is thus clear that the Insured was diligent and honest in representing all material facts at the earliest available opportunity to the Insurer.

4.4.3 Claim Under Publicity Cover

Consequent to the delay in the release of the film, the Insured on December 31, 2009 vide its letter addressed to the Insurer lodged a claim for a sum of Rs. 23 lacs under the Prints & Publicity Expenses Cover and inter alia mentioned that the release of the film has been postponed due to riots and threats perceived for the film on account of the Telangana agitation.
(See annexure no. 3.a. for publicity claims papers.)

4.4.4 Intimation of Losses

1. The Insured vide its letter dated December 31, 2009 addressed to the insurer intimated its claim under 'Prints & Publicity Expenses Cover' well within the 72-hour deadline stipulated under the Policy. The Insurer neither responded nor took any steps.

(See annexure no. 3.1. for copy of letter dated 31-12-09.)

2. The Insured suffered losses on January 13, 2010. At the first available opportunity and as soon as practicable, the Insured vide its letter dated January 14, 2010 addressed to the Insurer, intimated the claim under loss of revenues under clause 3.2 of the Policy. The Insured neither responded nor took any steps.

(See annexure no. 3.2. for copy of letter dated 14-01-10.)

3. The losses continued till March 13, 2010 and the Insured computed the losses and as soon ads practicable on March 13, 2010, intimated the losses to the Insurer vide its letter dated April 13, 2010. The Insurer neither responded nor took any steps.

(See annexure no. 3.3. for copy of letter dated 13-04-10.)

4. The loss amount was once again communicated by the Insured to the Insurer vide e-mail of April 16, 2010. The Insurer neither responded nor took any steps.

(See annexure no. 3.4. for copy of mail dated 16-04-10.)

5. The Insured vide its letter dated May 8, 2010 communicated to the Insurer on the inordinate delay in appointing the Surveyor. The Insurer responded by an e-mail of May 10, 2010 by mentioning that *'the appointment of the Surveyor has been referred to the Higher Authorities as the estimated loss is beyond the financial authority of the Broker Divisional Office'*. The Insured has on December 31, 2009 requested the Insurer to appoint the Surveyor when the estimated losses stood at Rs. 23 lacs, but the Insured got the 1st response from the Insurer after 4 months and 9 days.

(See annexure no. 3.5. for copy of letter dated 08-05-10.)

4.4.5. About the Incidence

January 13, 2010

The screening of the film was partially affected due to disruption by Telangana activists and the Insured estimates the loss of revenues at Rs. 10.29 lacs. Newspaper reports also confirm that top functionaries of the Telangana Party had instigated its supporters to disrupt the screening of the film.

(Please see Annexure '4' for copies of Newspaper clippings as appeared in Deccan Chronicle on January 13/14, 2010)

4.4.6. January 20 & 21, 2010

The screening of the film was affected on both these days due to a bandh called by the Telangana Party and normal life was paralyzed on both these days in the Nizam Area. All establishments remained closed due to the bandh call and this is evident from newspaper reports.

Consequently screening of the film in as many as 78 theatres were affected on both these days and the insured estimates the losses at Rs. 36.19 lacs and Rs. 37.61 lacs for January 20 & 21, 2010 respectively.

Since a bandh call is an insured peril under the Policy, claim made by the insured and computed as per the guidelines stipulated under the Policy for loss of revenues for both these days is allowed. The loss of revenues computed as per the Policy works out to Rs. 36.19 lacs & Rs. 37.61 lacs for January 20 & 21, 2010 respectively.

(Please see Annexure '4.1.' for copies of Newspaper clippings as appeared in Deccan Chronicle on January 20/21, 2010).

4.4.7. Between February 8, 2010 & March 3, 2010

The Telangana Joint Action Committee banned the screening of the film in the Nizam Area effective February 8, 2010. Screening of the film was terminated forthwith in all the screens and the Insured has estimated estimates its losses for the entire period from February 8, 2010 to March 3, 2010.

Though the Insured can claim for loss of revenues until March 13, 2010, the Insured has restricted its claim until March 3, 2010 since the Comparative Theatre terminated the screening of the film on March 3, 2010.

(Please see Annexure '4.2.' for copies of Newspaper clippings as appeared in Deccan Chronicle on February 9, 2010 evidencing the occurrence of events)

4.5. Chronological Sequence of events

DATE	DESCRIPTION	MODE
Dec 14, 2009	Covering letter enclosing Proposal Form & Cheque for premium amount	Letter
Dec 17, 2009	Intimation of postponement of release from Dec 23, 2009 to Dec 30, 2009	Electronic Mail
Dec 31, 2009	Intimation of Claim for Rs. 23 lacs towards Publicity Expenses.	Letter
Jan 8, 2010	Reminder on intimation of claim	Electronic Mail
Jan 11, 2010	Intimation of postponement of release to Jan 13, 2010	Electronic Mail
Jan 14, 2010	Intimation of Claim - loss of revenues on Jan13, 2010	Letter
Jan 18, 2010	Reminder on intimation of claim	Electronic Mail
Feb 4, 2010 & Feb 18, 2010	Communication on Break-up of loss	Electronic Mail
Feb 19, 2010	Intimation of Indicative estimate on loss	Electronic Mail
Mar 19, 2010	Intimation of progress in computation of losses	Electronic Mail
April 13, 2010	Intimation of loss of Rs. 3,93,96,635/-	Letter
April 16, 2010	Reminder on intimation of loss of Rs. 3,93,96,635/-	Electronic Mail
May 8, 2010	Reminder for appointment of Surveyor	Letter
May 10, 2010	Communication from Insurer on appointment of Surveyor	Electronic Mail

(See Annexure no. 5 for sequence of events and letter of insured dated 9-8-2010.)

4.6. Verification of Documents

We have while assessing the loss of revenues, placed reliance on the following documents that were made available to us for inspection:

- Agreement between the Producer and the Insured evidencing assignment of the Distribution Rights to the Insured.

(See annexure no. 5.1. for copy of agreement with producer)

- Daily Collection Reports of all the affected theatres.

(See annexure no. 5.2. for day wise break up of loss.)

- Theatre Agreements of the affected theatres confirming the house Full Occupancy (Seats), Gross Collections, Deductibles, Share of the Distributor on House Full Occupancy.

- Confirmation from the affected theatres confirming the Start date of screening, End date of screening and Actual Share of the Distributor during the screening period.

- Confirmation from the Comparable Theatre on House Full Occupancy and on the actual occupancy achieved on the affected days.

(See annexure no. 5.3. for comparable theatre confirmation and DCR.)

4.7. Method and steps taken for assessment of loss

Claims made by Insured for loss of revenues suffered on January 13, 20 & 21, 2010 have been computed as explained hereunder.

For the period from February 8, 2010 to March 3, 2010, in the absence of any screening of the film by the theatres in the Nizam Area, the occupancy achieved by Leel Mahal Theatre, Vizag for each day is multiplied with the House Full Distributor Share of the affected theatres in the Nizam Area to arrive at the loss of revenues.

While computing the losses, reliance is placed on the Theatre Agreements entered into by the Insured with the affected theatres and the Daily Collection Reports of all the affected theatres and the comparable theatre that were produced before us for verification.

As per the Policy document, the first and foremost parameter for assessing the loss is to compare the performance .of an affected theatre with that of a comparable theatre.

The Insured, in consultation with us, has designated Odeon Theatre, Hyderabad as the Comparable Theatre for January 13, 2010 and Leel Mahal AC DTS, Vizag as the Comparable Theatres for computing the loss of revenues on January 20, 21, 2010 and for the period from February 8, 2010 to March 3, 2010.

For computing the loss of revenue for the 'ban period', the Insured has taken into account only those theatres where the film was last screened on February 8, 2010. Theatres where the screening was terminated before February 8, 2010 have not been considered by us computing the loss of revenues during the 'ban period'.

It may also be mentioned that the Insured while computing the losses has followed the guidelines laid in the Policy and has accordingly restricted claims under partial losses to 80% of the loss of revenues. Further, the Insured has also not considered the losses in cases where the occupancy achieved by the affected theatres is less than or equal to 10% of the occupancy achieved by the Comparable Theatre.

In line with the Policy document, the following steps have been followed for estimating the loss of revenues:

STEP	DESCRIPTION
1	The distributor share on House Full Occupancy of all the theatres where the film was screened and affected was collected. This figure was verified with the Theatre Agreements entered into by the Insured with each affected theatre in respect of theatres not under the control of the insured and in respect of the theatres that are under the control of the insured, a written confirmation has been obtained from the insured.
2	The actual occupancy achieved by the Comparable Theatre was collected. This is the total number of persons who viewed the film in the comparative theatre on the affected days and appears in the Daily Collection Report.
3	The actual occupancy achieved by the affected theatres for the affected days were collected. This is the total number of persons who viewed the film on the affected days and is as per the data appearing in the Daily Collection Reports. The distributor share for the affected theatres was computed as a % of the house full share of revenues.
4	The actual occupancy achieved by the affected theatres was compared with the occupancy achieved by the comparable theatre and the difference is the loss of occupancy.
5	The difference in the occupancy computed as per Step 4 was multiplied with the House Full Distributor Share of the affected theatres (as collected under Step 1) and this is the loss of the revenue of the affected theatres.
6	The amount so arrived in the Step 5 was reduced by 20% (to give effect to the variation as per the policy document) to arrive at the final estimated loss of revenue. In case of a Total Loss, the amount arrived under Step 5 has been treated as the final estimated loss of revenue.

4.8. Calculation of loss of revenues

4.8.1. Summary of Losses

ASIAN THEATRES PRIVATE LIMITED - SECUNDERABAD					
DAY-WISE BREAK UP OF ESTIMATED LOSSES					
DATE	NO. OF THEATRES AFFECTED	REASON FOR LOSS	COMPARABLE THEATRE		ESTD. LOSS AMOUNT (Rs.)
			NAME & LOCATION	OCCUPANCY ACHEIVED %	
13-Jan-10	29	Screening disrupted in certain theatres by Telanga Actists	Odeon Theatre, Hyderabad	100	1,029,025
20-Jan-10	78	Bandh call by Telangana Party in support of a separate Telangana State.	Leel Mahal, Vizag	100	3,619,573
21-Jan-10	77		Leel Mahal, Vizag	100	3,761,804
8-Feb-10	56	Screening of the Film was banned by the Telangana Joint Action Committee	Leel Mahal, Vizag	64	2,007,890
9-Feb-10	56			59	1,851,024
10-Feb-10	56			48	1,505,917
11-Feb-10	56			49	1,537,291
12-Feb-10	56			60	1,882,397
13-Feb-10	56			90	2,823,595
14-Feb-10	56			81	2,541,236
15-Feb-10	56			45	1,411,798
16-Feb-10	56			44	1,380,424
17-Feb-10	56			43	1,349,051
18-Feb-10	56			45	1,411,798
19-Feb-10	56			38	1,192,185
20-Feb-10	56			49	1,537,291
21-Feb-10	56			61	1,913,770
22-Feb-10	56			37	1,160,811
23-Feb-10	56			34	1,066,692
24-Feb-10	56			33	1,035,318
25-Feb-10	56			33	1,035,318
26-Feb-10	56			35	1,098,065
27-Feb-10	56			45	1,411,798
TOTAL ESTIMATED LOSSES					39,564,070

Gross Assessed Loss

The Insured has claimed a sum of Rs. 4,47,09,287.00 for all the affected days from 13 jan 2010 to 13 march 2010.

Computation of Net Assessed Loss

- Having verified the receipts and vouchers submitted by the Insured relating to the claim for Publicity Expenses amounting to Rs. 23 lacs, it is observed that the vouchers, bills and receipts are in the name of the Producer of the film. Since the Producer does not have any insurable interest in this Policy, the claim lodged by the Insured for Publicity Expenses amounting to Rs. 23 lacs cannot be allowed. The insured has not given original bills in support of publicity claims and neither any proof of payment. The claim for publicity does not pertain to the period of indemnification as per the policy.

- Losses suffered on January 13, 2010 are due to disruption of screening in certain theatres by Telangana Jagruti Activists, a cultural arm of the Telangana Party. However, the film was released amidst tight security following a directive of the Hon'ble Andhra Pradesh High Court directing the Director General of Police to provide protection for release of the film. The directive was issued following a petition filed by the Producer of the film Mr. Kodali Nani in the Hon'ble High Court of Andhra Pradesh.

  It may be observed that such a disruption of screening does not constitute an Insured Peril under the Policy and in the absence of an occurrence of an insured peril, the amount of Rs. 1029025/- claimed as losses for January 13, 2010 cannot be allowed.

- Losses suffered on January 20 & 21, 2010 are due to disruption of screening of the film following a bandh call by the Telangana Joint Action Committee, during which normal life was paralyzed in the Telangana region where the Nizam Area is located. Many theatres among other establishments remained closed during both these days resulting in partial loss in certain theatres and total loss in certain theatres.

  It may be observed at any loss of revenue due to drop in collections directly attributable to a bandh call is an insured peril under the Policy and hence the amount of Rs. 36,19,573 /- and Rs. 37,61,804 /- claimed as losses for January 20 & 21 respectively is admissible under the Policy.

- Losses for the period from February 8, 2010 to March 3, 2010 are due to the termination of the screening of the film following a ban on the screening by the Telanga Joint Action Committee (TJAC). The TJAC had banned the film

Insd: Asian Theatres P Ltd.
Movie: Adhurs

following intemperate comments of Mr. Kodali Nani, the Producer of the film against the separate state movement and its leaders.

Had the Producer of the film not made any such comments, the screening of the film would not have been disrupted and the film would have run normally in all the theatres. In short, the comments of the Producer have provoked the TJAC to ban the screening of the film, though a ban of a film by a Political or a non-political organization is an insured peril under the Policy.

Claim under this category from 8-2-2010 onwards cannot be allowed because the ban call by telengana joint action committee was as a result of the comments of the Producer and not otherwise. Further the telegu film industry also distanced itself from the comments of Mr. kodali mani. The movie artist association, the A.P. film chamber of commerce, the telegu film producers council, and the telegu movie directors association also condemned the remarks. Further the insured did not act as if uninsured by not taking any action against the producer to get himself indemnified for the losses due to remarks by the producer.

<u>Gross loss assessed from 13 jan, 2009 to 27 Feb, 2010 of Rs. 3,95,64,070.00</u>

Net assessed loss is computed as under:

Affected Days	Amount Claimed	Assessed Losses
Publicity Claim	23,00,000	Nil
January 13, 2010	10,29,025	Nil
January 20, 2010	36,19,573	36,19,573
January 21, 2010	37,61,804	37,61,804
February 8, 2010 to feb 27, 2010.	3,11,53,668	Nil
TOTAL from 13 jan to feb 27, 2010 (Rs.)	**3,95,64,070**	**73,81,377**
Less: Policy Excess		**5,00,000**
Net Loss (Rs.)		**68,81,377**

<u>Net assessed loss calculated of Rs. 68,81,377.00 after Policy excess of Rs. 5,00,000.00.</u>

(Please see Annexure '6' for detailed computation of loss of revenues)

Insrd : Asian Theatres P Ltd

Movie : Adhurs.

4.9. Final recommendation

We have presented all the facts to the underwriters for necessary decision at their end. We have submitted our independent report without prejudice.

1. It is a genuine case of distributor loss of revenue.
2. Net Loss has been assessed to Rs. 68,81,377.00.
3. Cause of loss is covered in the insurance policy issued to the insured.
4. The underwriters may deal with the claim in the manner they deem fit in view of not informing insurers of release date postponement from 30/12/09 to 13/01/2010.

5. About claim by insured

The insured has claimed a sum of Rs. 4,47,09,287.00. on account of loss due to occurrence of insured perils.

6. Conclusion

6.1. Gross loss is assessed at Rs. 3,95,64,070.00.

6.2. Net loss is assessed to Rs. 68,81,377.00 as per policy terms and conditions. The underwriters may deal with the claim in the manner they deem fit in view of not informing insurers of release date postponement from 30/12/09 to 13/01/2010.

7. Remarks

The report is submitted without prejudice and subject to following:-

7.1. Terms & conditions of the policy.

7.2. Any other formality required by the insurers.

Thanking you and assuring you best of our services at all times.

Bill for services rendered is enclosed separately.

Yours faithfully,

(R.G.Verma)
Chartered Accountant
Sla no. 11362/2005-2010/Exp. 7/11/2010.

Encls: as per list of annexure.

46. The matter was delayed and once again the complainants sent their reminders on 23.12.2010, 27.01.2011, 17.02.2011, 25.04.2011 and then a complaint to the Insurance Regulatory Authority and then again a reminder on 18.01.2012 when ultimately the repudiation emanated after more than 2 years on 12.06.2012 already extracted hereinabove.

47. We also find that the Insurance Company in spite of the report having been tendered on 03.09.2010 violated the timelines and guidelines mentioned under the IRDA Regulations meant for protecting the interest of the Policyholders, which requires claims to be finalised within a short period, but not later than 6 months. In the instant case, all documents were complete and duly recorded by the Surveyor in the report dated 03.09.2010, yet the

Insurance Company took more than 2 years and rather 4 years from the date of the incident to repudiate the claim.

48. The deficiencies therefore on all counts are clearly established.

49. However, coming to the quantum part, we find that the Surveyor had also made deductions for which we hardly find any valid reason. A perusal of the report would indicate that the Net Assessed Loss which has been computed in a chart quoted above, the Surveyor has denied the entire publicity claim of Rs. 23 lakhs, the loss suffered on 13.01.2010 to the tune of Rs. 10,29,025/- and has denied the entire claim for the period from 08.02.2010 to 27.02.2010 to the tune of Rs. 3,11,53,668/-. The loss has therefore been reduced accordingly and assessed at Rs. 68,81,377/- only after deducting the policy excess of Rs. 5 lakhs.

50. From the computation made by the Surveyor, we find that against the head of "Publicity Expenses" amounting to Rs. 23 lakhs, it was observed that the vouchers, bills and receipts are in the name of the Producer of the film and since the Producer does not have any insurable interest in the policy, the claim lodged by the Insured for publicity expenses cannot be allowed. The Surveyor has also observed that the insured has not given the original bills in support of the publicity claims and neither any proof of payment. The claim for publicity according to the Surveyor did not pertain to the period of indemnification as per the policy.

51. On this count, we find that the claim of loss of Rs. 23 lakhs was alleged by the complainant in relation to the expenses incurred that seems to have been intimated by the letter dated 31.12.2009 extracted hereinabove. The date of release was extended and postponed due to riots and threats apprehended and perceived by the complainant on account of the Telangana agitation. It is on the basis of the said perception that it was claimed that the loss of expenses for publicity that was made in the form of hoardings had occurred that were erected at various locations in the territory covered under the policy. We may observe that the Producer had been himself extending the dates of release and the sum of Rs. 23 lakhs claimed is for the period prior to the date of release that had been postponed from 23.12.2009 to 30.12.2009. The expenses according to the complainant in the letter dated 31.12.2009 had been incurred prior to 23.12.2009. There was no release of the film which stood postponed by the Producer. The terms of the policy define the “date of release” under the Publicity Expenditure Extension Policy to mean “the date of the first theatrical exhibition of the film to members of the public who have paid a fee to view the film”. Admittedly, the film was not released on the date fixed earlier and was postponed twice, once for 30.12.2009 and the second time for 13.01.2010. As already indicated above, the film was released under Police security as directed by the High Court on 13.01.2010. Thus, the date of release was 13.01.2010. The publicity expenses 7 days prior to this date could have been claimed. There is nothing to indicate that original bills or vouchers between 06.01.2010 to 13.01.2010 were produced. Thus, expenses incurred prior to 23.12.2009, the bills and vouchers whereof are in the name of the Producer, in our opinion, do not qualify for payment or fall within the liability clause of the Publicity Expenditure Extension Policy, which categorically states that the liability of the insurer would not exceed the publicity expenses declared 7 days prior to the release of the film.

52. We therefore do not find any material to support the claim of publicity losses keeping in view the definition of the phrase "release date" and the other terms of the policy as well as the absence of any material to support this claim of publicity loss. The conclusion drawn by the Surveyor on this count, therefore, cannot be overruled and as such the complainant is not entitled for the publicity loss of Rs. 23 lakhs as claimed by it.

53. We then find that the Surveyor has declined to assess the loss for 13.01.2010 which is the date of release for a sum of Rs. 10,29,025/-. For this, the Surveyor has indicated that on 13.01.2010, the losses were due to disruption at some of the places, but the film was released amidst tight security following a directive of the Andhra Pradesh High Court to the DG, Police to provide protection. The Writ Petition before the High Court has been filed by Mr. Kodali Mani, the Producer and as such on the date of the release there seems to be an absence of any occurrence of any insured peril. On facts, we find that the film was released, even though under police security and therefore 13.01.2010 cannot be said to be contributing towards the losses in the background of the said fact. There were disruptions no doubt, but the film was released with minimal disruptions. We do not find any error so as to discount the Surveyor's report on that ground and we therefore find that the said deduction from the assessment of losses is also justified.

54. The third deduction, however, from February 8, 2010 to February 27, 2010 to the tune of Rs. 3,11,53,668/- has been reduced on the ground that it was on account of the provocative comments of the Producer that led to the ban call by the Telangana Joint Action Committee. We have already dealt with this issue in detail hereinabove and we have held that any such provocation by the Producer as alleged is not established and even otherwise any adverse comments by the Producer cannot be attributed to the complainant. The Surveyor has observed that had the Producer of the film not made any such comments, the screening would have not been disrupted and the film would have run normally. As already reasoned out by us, while dealing with the second ground of repudiation we have found that the complainant, who is only a Distributor, had not in any way acted or conducted himself so as to aggravate the loss. The provocative comments of the Producer allegedly were neither instigated nor abetted by the complainant. The movement was not sparked because of the film. The Telangana agitation was continuing from decades and as observed by us, the agitators may have found the screening of the film to be another ground for them to raise their protest. The complainant is not accused of inflaming any passions regarding the Telangana movement nor is there any material to that effect. The complainant is only a Distributor of the film and therefore the conclusion drawn by the Surveyor for denying the loss for the aforesaid period for all the reasons recorded above is unjustified. We therefore find this deduction of Rs. 3,11,53,668/- to be totally unwarranted.

55. Having dealt with the deductions, we find that the calculations made have been dealt with by the Surveyor in paragraph 4.7 of his report. The calculations have been limited and have been computed for the loss of revenue taking into account only such of those theatres where the film was last screened and the calculations by the Surveyor also approves of the method of calculation adopted by the complainant to the extent of partial losses of 80%. The details have been provided in paragraph 4.7 and which we find to be perfectly in order. It is on the said basis that the estimated loss for the period was indicated by the complainant to the tune of Rs. 3,95,64,070/-. Out of the said amount, a sum of Rs. 10,29,025/- has been reduced and after making further deductions, the Surveyor has calculated the loss to the tune of Rs. 3,11,53,668/- apart from the losses of 20.01.2010 and 21.01.2010. However, while computing the assessed loss, the Surveyor has reduced it to Rs. 73,81,377/- by deducting the publicity claim, the claim for 13.01.2010 and the claim for the period from 08.02.2010 to 27.02.2010.

56. We have found two of the deductions on publicity claims and the loss on 13.01.2010 to be justified, but for all the reasons discussed hereinabove, we do not find any justification for deducting the amount of Rs. 3,11,53,668/-. We therefore uphold this claim of the complainant and allow it along with the other components as follows:

Affected Days	***Losses Suffered***
January 20, 2010	*36,19,573*
January 21, 2010	*37,61,804*
February 8, 2010 to February 27, 2010	*3,11,53,668*
Total	***3,85,35,045/-***

Thus the total net loss comes to Rs. 3,85,35,045/-.

57. A sum of Rs. 5 lakhs has to be deducted as Less: Policy Excess. The net payable amount of loss therefore would be Rs. 3,80,35,045/-. We find this entire amount to be payable and we accordingly allow the complaint for the said amount of Rs. 3,80,35,045/- together with 6% interest from the date of filing of the complaint i.e. 06.05.2013 to the date of actual payment. We direct that this payment shall be made within a period of three months from today. In the event of any default of payment of the said amount, within the said period, the rate of interest shall stand enhanced to 9% till the date of actual payment.

58. A sum of Rs. 1 lakh shall be paid as compensation on account of the delayed processing of the claim and causing harassment to the complainant and a sum of Rs. 50,000/- shall be paid as litigation costs.

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(A.P. SAHI, J)
PRESIDENT

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(BHARATKUMAR PANDYA)
MEMBER

Pramod / Arif /Court-1/CAV