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GG/HC/10004/4113/15

O/c

Dated: 30th April, 2015

To,

Special Director,
Directorate of Enforcement
Government of India, Ministry of Finance,
Department of Revenue,
101, Janambhoomi Chambers,
Walchand Hirachand Marg,
Mumbai - 400 001.

Dear Sir,

Ref: Show Cause Notice SCN No. T-4/01-B/SDE/SWN/2015/374 dated 11.02.2015 based on complaint dated 19.01.2015 filed by Shri P.K. Nark, Asstt. Director (ED)

Sub.: Preliminary reply to the Show Cause Notice referred above.

1. We address this communication under instructions and on behalf of our client Mr. Lalit Kumar Modi.
2. We had received the Show Cause Notice issued on 11th February, 2015 alongwith annexed complaint bearing No. T-3/46/B/08/PKN dated 19th January 2015 on 16th February, 2015.
3. We have gone through the same we intend to file a detailed reply to the same. Please treat this reply as our interim reply as we are handicapped in making a detailed reply due to non supply of necessary and relevant documents.
4. We had by our communication dated 21 April 2015 requested for supply to us of the documents relied upon in the Show Cause Notice but not supplied to us to enable us to make a proper reply to the Show Cause Notice and sought four weeks time from supply of those documents to file reply. The documents sought in our communication dated 21 April 2015 were as under:

1. *"Statements of Mr. Venu Parmeshwaran Nair, Director of M/s. World Sports Group were recorded on 16.08.2010, 17.08.2010, 18.08.2010, 19.08.2010 and 20.08.2010. However, all the statements though are in continuation – statement dated 17.08.2010 has not been supplied.*
2. *Further, in the statement dated 16.08.2010 of Mr. Venu Parmeshwaran Nair – after response to Question-1, has been extensively asked about Cricket Rights Agreement dated 14.01.2008 and the same has also been relied upon in para-4 of the complaint and statement of Kunal Das Gupta but the said agreement has not been supplied.*
3. *Further, in the statement dated 16.08.2010 of Mr. Venu Parmeshwaran Nair, after response to Question-2, three letters have been relied upon written by WSG to Enforcement Directorate alongwith various annexures dated 06.07.2010, 12.07.2010 and 26.07.2010. However, those letters have not been supplied. They have been extensively relied upon in statements of Mr. Nair and without them the statement of Mr. Nair is incomplete.*
4. *Further, in the statement dated 16.08.2010 of Mr. Venu Parmeshwaran Nair, the answer to Question No.2 is based on Agreement dated 20.02.2008 between WSGM and WSGI as also termination letter of WSGM with WSGI dated 01.01.2010 which have not been supplied. These documents have been relied upon in para 4 of the complaint. Similarly, there is reliance upon January, 2008 (later corrected to January, 2010) Agreement between WSGI and WSGS which has not been supplied. This is also relied upon in para 4 of the complaint. Further, in the statement reliance has been placed on Agreement between WSGI and M/s. Primetime Kagiso (P) Ltd. dated 07.04.2009 which has not been supplied.*
5. *Further, in the statement dated 18.08.2010 of Mr. Venu Parmeshwaran Nair, copies of following documents are relied upon which have not been supplied:*

- 1) Copy of Agreement with Sachin Tendulkar effective from 01/01/2008
 - 2) Copy of Agreement with Gautam Gambhir dated from 23/08/2009
 - 3) Copies of Agreements dated 22/05/2008 with Sunil Gavaskar & Ravi Shastri.
 - 4) Copy of New commentator services agreement with BCCI effective from 01/04/2008
 - 5) List of Directors of WSGM including the dates of Appointment.
 - 6) Copy of old agreement between BCCI & WSGI dated for commentator services was submitted to your office vide letter dated 06/07/2010
 - 7) Copy of sub-Licensees of WSGM around the world.
6. Further, in the statement dated 18.08.2010 of Mr. Venu Parmeshwaran Nair, in Question-9 Mr. Venu Parmeshwaran Nair has relied upon draft agreements sent to MSMS by WSGM which were provided to the ED. However, copies of the same have not been supplied.
7. Further, in the statement dated 19.08.2010 of Mr. Venu Parmeshwaran Nair, at internal page No.1 letter dated 16.03.2009 written by WSGM to NDTV – WML has been relied upon but the copy has not been supplied to us. Also at internal page No.2 Deed of Termination between WSGI and MSMS has been relied upon but copy of the same has not been supplied to us. Further, in answer to Question-6, bank advises in respect of payment by MSMS to WSGM has been relied upon but copy of the same has not been supplied to us. The agreement between WSGM and NDTV and deed of termination between WSGI and MSMS have been relied upon in para 4.2 and 4.3 of the complaint respectively.
8. Further, in the statement dated 19.08.2010 of Mr. Venu Parmeshwaran Nair, in Question-10 Mr. Venu Parmeshwaran Nair

has relied upon assignment between WSGI/WSGM and Park House Holdings Ltd. (PHH), Umbrella Deed between WSGI/PHH and Lagardere as well as Conditional Deed. However copies of the same have not been supplied.

9. *Further, in the statement dated 19.08.2010 of Mr. Venu Parmeshwaran Nair, in answer to Question-10 Mr. Venu Parmeshwaran Nair has been asked to refer and rely on three e-mails dated 23.03.2009 including one marked 'X'. However copies of the same have not been supplied. In the statement of Mr. Manjit Singh also the three e-mails dated 23.03.2000 have been relied upon but have not been supplied. They have also been relied upon in para 14(x) of the complaint.*
10. *Further, in the statements dated 20.08.2010 of Mr. Venu Parmeshwaran Nair, in answer to Question-3 Mr. Venu Parmeshwaran Nair has relied upon unsigned letter of extension dated 23.03.2009 has been provided to him by Paul – Manning. However a copy of the same has not been supplied. In the statement of Paul Manning, extension letter dated 23.03.2003 has been relied upon in answer to Question No.1 of statements dated 29.09.2010 but the same has not been supplied.*
11. *Further, in the statements dated 20.08.2010 of Mr. Venu Parmeshwaran Nair, copy of deed of assignment dated 08.07.2009 relied upon in Question No.11 has not been supplied.*
12. *Further, in the statements dated 20.08.2010 of Mr. Venu Parmeshwaran Nair, e-mail trail dated 22.03.2009 relied upon in Question No.18 has not been supplied.*
13. *Further in the statement of Shri N. Srinivasan recorded on 8.7.2010, copies of emails dated 6th April, 2009 and 7th April, 2009 exchanged by Mr. Srinivasan with Mr. Sundar Raman with Mr. Lalit Modi's purported reply and Mr. Shashank Manohar's observations and Mr. Lalit Modi's purported reply have been relied on but not supplied.*

14. *In the statement of Mr. N.P. Singh recorded on 2.7.2010 in response to the second question in internal page 2 letter dated 25.6.2010 written by BCCI to MSMS has been relied on but has not been supplied. Similarly the three emails referred to at internal page 3 dated 23.3.2009 have not been supplied.*
15. *In the statement of Mr. Nitin Nadkarni recorded on 18.6.2010 as well as on 19.6.2010 he has referred to and relied upon statement of Mr. Manjit Singh recorded on 22.4.2010 by Income Tax Authority which was confirmed by Mr. Nitin Nadkarni. However, the statement of Mr. Manjit Singh recorded on 22.4.2010 has not been supplied.*
16. *In the statement of Paul Manning, dated 30.09.2010 in answer to Question No.4 e-mail dated 19.03.2009 purportedly sent by Mr. Lalit Modi and draft agreement dated 19.03.2009 have been relied upon but have not been supplied.*
17. *In the statement of Paul Manning, dated 30.09.2010 in answer to Question No.18 two e-mails dated 18.03.2009 purportedly sent by Mr. Lalit Modi have been relied upon but have not been supplied.*
18. *It appears that as a part of the statement of Paul Manning, dated 30.09.2010 all e-mails in his possession on the matter of WSG/WSGM/BCCI/MSMS/IMG between 14.03.2009 and 25.03.2009 have been supplied to the ED (please see Internal Page-13 of the statement). These have been relied upon in para 15.12 of the complaint. However, they have not been supplied.*
19. *Copies of e-mails dated 23.03.2009, 24.03.2009, 25.03.2009 relied upon in para 15.12 of the complaint have not been supplied.*
20. *In the statement of Andrew Wildblood dated 12.10.2010 a letter sent by him to MSMS dated 09.05.2008 has been relied on in answer to Question No.8 but has not been supplied.*
21. *In the statement of Seamus O'Brien, dated 30.04.2011 all prior drafts of WSGM-MSMS Agreements (prior to 25.03.2009) have been relied upon in answer to Question No.18 but have not been supplied".*

5. However thereafter we received your communication dated 16 April 2015 asking us to file reply by 30 April 2015. We reiterate that the documents sought in our communication dated 21 April 2015 are a must for giving proper reply to the Show Cause Notice. The complainant of the matter thereafter on evening of 28 April 2015 handed over first tranche of documents sought for while giving assurance to supply the balance documents soon. In the short time available we have not been able to go through documents supplied on 28 April 2015 and still await supply of balance documents.
6. The adjudication proceedings under FEMA are governed by the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 (**"the said Rules 2000"**). Rule 4 of the said Rules 2000 decides the procedure for holding an enquiry and is quoted as under:

"4. Holding of inquiry

1. *For the purpose of adjudicating under section 13 of the Act whether any person has committed any contravention as specified in that section of the Act, the Adjudicating Authority shall, issue a notice to such person requiring him to show cause within such period as may be specified in the notice (being not less than ten days from the date of service thereof) why an inquiry should not be held against him.*
2. *Every notice under sub-rule (1) to any such person shall indicate the nature of contravention alleged to have been committed by him.*
3. *After considering the cause, if any, shown by such person, the Adjudicating Authority is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through his legal practitioner or a chartered accountant duly authorised by him.*
4. *On the date fixed, the Adjudicating Authority shall explain to the person proceeded against or his legal practitioner or the chartered accountant, as the case may be, the contravention, alleged to have been committed by such person indicating the provisions of the Act or of rules, regulations, notifications, direction or orders or any*

condition subject to which an authorisation is issued by the Reserve Bank of India in respect of which contravention is alleged to have taken place.

5. *The Adjudicating Authority shall, then, give an opportunity to such person to produce such documents or evidence as he may consider relevant to the inquiry and if necessary, the hearing may be adjourned to a future date and in taking such evidence the Adjudicating Authority shall not be bound to observe the provisions of the Indian Evidence Act, 1872 (1 of 1872).*
6. *While holding an inquiry under this rule the Adjudicating Authority shall have the power to summon and enforce attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the Adjudicating Authority may be useful for or relevant to the subject matter of the inquiry.*
7. *If any person fails, neglects or refuses to appear as required by sub-rule (3) before the Adjudicating Authority, the Adjudicating Authority may proceed with the adjudication proceedings in the absence of such person after recording the reasons for doing so.*
8. *If, upon consideration of the evidence produced before the Adjudicating Authority, the Adjudicating Authority is satisfied that the person has committed the contravention, he may, by order in writing, impose such penalty as he thinks fit, in accordance with the provisions of section 13 of the Act.*
9. *Every order made under sub-rule (8) of the rule 4 shall specify the provisions of the Act or of the rules, regulations, notifications, direction or orders or any condition subject to which an authorisation is issued by the Reserve Bank of India in respect of which contravention has taken place and shall contain brief reasons for such decisions.*
10. *Every order made under sub-rule (8) shall be dated and signed by the Adjudicating Authority.*

11. *A copy of the order made under sub-rule (8) of rule 4 shall be supplied free of charge to the person against whom the order is made and all other copies of proceedings shall be supplied to him on payment of copying fee @ Rs. 2 per page.*
12. *The copying fee referred to in sub-rule (11) shall be paid in cash or in the form of demand draft in favour of the Adjudicating Authority."*

Thus Rule 4(3) of the said Rules 2000 contemplates that after considering the cause, if any, shown by such person if the Adjudicating Authority is of the opinion that an inquiry should be held, he shall issue notice for appearance.

7. The Hon'ble Supreme Court in **Natwar Singh v/s. Director of Enforcement, 2010(13) SCC 255**, held that prior to opinion being formed against a person under Rule 4(3) the person has a right to seek all relied upon documents from the Enforcement Directorate. In this regard the following relevant paragraphs of the aforesaid judgment are being quoted

"31. The concept of fairness may require the adjudicating authority to furnish copies of those documents upon which reliance has been placed by him to issue show-cause notice requiring the notice to explain as to why an inquiry under Section 16 of the Act should not be initiated. To this extent, the principles of natural justice and concept of fairness are required to be read into Rule 4(1) of the Rules. Fair procedure and the principles of natural justice are in-built into the Rules. A notices is always entitled to satisfy the adjudicating authority that those very documents upon which reliance has been placed do not make out even a prima facie case requiring any further inquiry. In such view of the matter, we hold that all such documents relied on by the authority are required to be furnished to the notices enabling him to show a proper cause as to why an inquiry should not be held against him though the Rules do not provide for the same. Such a fair reading of the provisions would not amount to supplanting the procedure laid down and would in no manner frustrate the apparent purpose of the statute."

"36. In the present case, the inquiry against the notice is yet to commence. The evidence as may be available upon which the adjudicating authority may place reliance, undoubtedly, is required to be furnished to the person proceeded against at the second stage of inquiry into allegations of contravention. It is at that stage, the adjudicating authority is not only required to give an opportunity to such person to produce such documents as evidence as he may consider relevant to the inquiry, but also enforce attendance of any person acquainted with the facts of the case to give evidence or to produce any document which in its opinion may be useful for or relevant to the subject-matter of the inquiry. It is no doubt true that natural justice often requires the disclosure of the reports and evidence in the possession of the deciding authority and such reports and evidence relevant to the subject-matter of the inquiry may have to be furnished unless the scheme of the Act specifically prohibits such disclosure."

8. That in Kothari Filaments V/s. CCE 2009(2) SCC 192 the Hon'ble Supreme Court has indicated that non supply of documents would violate principle of natural justice and vitiate adjudication.
9. The Show Cause Notice and the Complaint upon which it is based rely upon various documents, some of which have not been supplied to us. Without those documents, we would be seriously prejudiced and handicapped in preparing any meaningful and effective reply.
10. We wish to point out that in order to prepare a complete and effective reply to the show cause notice we require the documents relied upon in the Show Cause Notice and annexed complaint set out in para 4 above.
11. We also request you that you may kindly disclose to us if there is any other document, material collected and statement recorded during the investigation and if so, a copy of the same may kindly be provided to us.
12. We further request you to grant us a reasonable opportunity to inspect the records and the file and take copies of any other documents/materials etc.,

which we may find relevant for the purposes of drafting the final reply to the Show Cause Notice and also in order to compare the records.

13. We submit that the proceedings initiated by you are quasi judicial proceedings where principles of natural justice are required to be complied with.
14. That so as not to prejudice the case of our client pending before you, while reiterating our request to supply the documents sought for, we are submitting the instant communication to you putting on record our preliminary reply. This preliminary reply is being filed on a without prejudice basis and we reserve our right to file a detailed reply upon supply of all the documents by you as sought by us.

Scope of Show Cause Notice

15. The Foreign Exchange Management (Adjudication proceedings and Appeals Rules) 2000 mandate that for the purpose of adjudication whether any person has committed any contravention, the Adjudicating Authority shall issue a notice to such person requiring him to show cause as to why an inquiry should not be held against him. It is clear from a bare reading of the rule that show cause notice to be so issued is not for the purposes of making any adjudication into alleged contravention but only for the purpose of deciding whether an inquiry should be held against him or not. That after considering the cause, if any, shown by such person, the Adjudicating Authority is required to form an opinion as to whether an inquiry is required to be held into the allegations of contravention. It is only then the real and substantial inquiry into allegations of contravention begins. We submit that there is no good ground of initiating any substantive inquiry against our client and the proceedings against him are required to be dropped.
16. It is pertinent to point out here that the FEMA permits participation in such proceedings through authorized representatives. It is pertinent to point out that the said show cause notice has been issued in respect of player agreements signed by the BCCI. The adjudication proceedings are essentially directed against the BCCI. The alleged infringement of not

obtaining prior approval of the BCCI is also technical in nature and there are various instances where ex post facto approval is given by RBI.

17. The Show Cause Notice indicates that notice has been issued to our Client with the aid of Section 42 of the FEMA which provides for vicarious liability.
18. Our Client through us has voluntarily received the show cause notice from the office of the Enforcement Directorate so that he can participate in the adjudication proceedings. The Enforcement Directorate (ED) Show Cause Notices reveal that ED has been investigating alleged violations under FEMA in relation to BCCI contracts and in respect of the general conduct of the IPL. The allegations reflect collective responsibilities rather than personal responsibilities. It is significant to note that the Enforcement Directorate has not identified any specific contravention under FEMA committed by our Client.
19. Before making interim submissions on the Show Cause Notice, we wish to place on record certain facts in respect of BCCI and IPL, as these would have bearing upon the allegations leveled in the Show Cause Notices under reference.

BCCI/IPL

20. The Board of Cricket Control of India (BCCI) is a society registered under the Tamil Nadu Societies Registration Act, 1975. It has its own Memorandum of Association and Rules and Regulations. The President, the Secretary and the Treasurer are the office bearers of BCCI. Our Client is NOT an office bearer of the BCCI.
21. A subcommittee of BCCI was set up known as Indian Premier League (IPL) to establish and oversee the operation of a domestic Twenty20 competition in India. IPL is not a separate entity but forms part of BCCI and is managed by a Governing Council having 14 members in which the office bearers of the BCCI are ex officio members. IPL as a sub-committee does not have any independent existence. It also does not have financial drawing or disbursing powers and all bank accounts are BCCI bank accounts operated by the Treasurer, BCCI. The Governing Council submits a report of its

activities and decisions as well as audited final accounts for the approval of general body of the BCCI at its AGM.

22. The IPL as a sub-committee was brought about in existence when on 13th September, 2007 the Working Committee of the BCCI approved the launch of Indian Premier League and set up a sub-committee. Vide amendment in Memorandum of Association and Rules and Regulations of BCCI on 16th December, 2007, IPL was made a standing committee of BCCI.
23. Thus IPL like any other committee of BCCI for example Finance Committee, Legal Committee or Marketing Committee is merely to assist and aid the BCCI. The members of such Committees including the Chairman thereof can not be said to be person in-charge of or responsible to the BCCI for the conduct of business of the BCCI. This is so because IPL is merely a sub committee of the BCCI and has no control over the affairs of BCCI rather it is controlled by BCCI. IPL also has no say upon any financial drawings, disbursements or remittances as such matters are controlled by persons who are incharge of BCCI namely the President, the Secretary and the Treasurer. IPL does not also have any separate existence.

Key Role of Mr. N. Srinivasan

24. At the time of formation of IPL, Mr. N. Srinivasan was the Treasurer of BCCI. Since IPL was not a separate entity but only a sub-committee of the BCCI, all decisions in respect of IPL which had any financial implication or required drawing or disbursing of any funds or providing any guarantees or decisions which required financial compliances including RBI approvals were taken by Mr. N. Srinivasan. Without his being at the centre of such decision making- being incharge of and responsible for all financial matters, none of these decisions could have been made. Further, compliance with obligations of BCCI including giving of funds and guarantees was the responsibility of the Treasurer in the internal working of BCCI. It has been the standard practice of BCCI that all FEMA compliances and RBI approvals are required to be taken by the Treasurer's office. Mr. N. Srinivasan was the Treasurer of BCCI at that time.

25. Another aspect of the matter is that India Cement Ltd. whose promoter is Mr. N. Srinivasan, participated in the IPL Franchisee Auction and was awarded the Chennai Franchisee of IPL namely the Chennai Super Kings. Thus, Mr. N. Srinivasan as the defacto owner of Chennai Super Kings was at all times well aware both as officer bearer of BCCI and owner of franchisee about the entire working of IPL and was at all times personally interested in its pecuniary and financial matters.
26. On 27th September, 2008 Mr. N. Srinivasan became the Secretary of BCCI and Mr. M.P. Pandove became the Treasurer of BCCI. However, even after Mr. N. Srinivasan came to occupy Secretary's chair he continued the old reporting structure by which all clearances of guarantees, individual bills, payment approvals, disbursement, approvals from regulatory bodies continued to be routed through him. In fact, all of the bills which were sent to the Treasurer's office to pay were routed through the office of the Secretary. Mr. N. Srinivasan as Secretary made the office of Treasurer almost redundant and unconstitutionally took over his work too.

Finance and Administrative Department of IPL:

27. That the IPL itself had a finance department. This finance department was reporting to the office of the Treasurer, BCCI and was headed by Mr. Prasanna Kannan who was the Chief Financial Officer of the IPL. The finance department also functioned in tandem with the Secretary's office. The financial consultant of IPL was Mr. P.B. Srinivasan who was as well the internal auditor of BCCI. These two persons namely Mr. Prasanna Kannan and Mr. P.B. Srinivasan are closely connected to India Cements Ltd. Mr. Prasanna Kannan is employee of India Cements Ltd. while Mr. P.B. Srinivasan is an internal auditor of India Cements Ltd.. All contracts and other actions having the financial implication were cleared by the finance department of the IPL. This clearance was done with a priori approval of Mr. N. Srinivasan and then was processed through the Treasurer's office. The financial persons of IPL namely Mr. Prasanna Kannan and Mr. P.B. Srinivasan directly reported to Mr. N. Srinivasan. Thus, Mr. N. Srinivasan was at the fulcrum of the entire financial dealings of IPL. Mr. N. Srinivasan conflict of interest was highlighted at various times by our client and this

resulted into Mr. N. Srinivasan harboring malice against our client. The COO of IPL Mr Sundar Raman was also closely associated with with Mr N.Srinivasan and used to personally report to him.

Role of our Client:

28. That our client Mr. Lalit Kumar Modi was Chairman of Governing Council of Indian Premier League. All activities of IPL are acts that have documented approval from collective Governing Council or Working Committee Meetings in accordance with BCCI/IPL process. Our client has earlier provided documentary evidence to the complainant which illustrate collective council or board approval for all activities. Thus, no action of our client can be termed as unauthorized, unilateral actions on his behalf.
29. In so far as the role of our client is concerned it is significant to point out that the Enforcement Directorate has not identified any specific contravention under FEMA committed by our client.
30. It is important to state that our client was not in any manner, ever involved in any monetary transactions concerning the BCCI or the IPL. He had no cheque signing power. He was not mandated with any authority to exercise control over BCCI accounts, either operationally or in respect of withdrawals or payments. Thus, he had no role to play in any of alleged contraventions under FEMA.

Media Rights Contracts:

31. On November 30th, 2007, the BCCI floated a tender for Media Rights pertaining to the IPL tournament for a period of 10 years commencing 2008 and ending 2017 for the entire world. The entities eligible to participate in the tender process were broadcasters and/or marketing agencies.
32. Three bids were received, in time, in response to the said bid. These were from (1) WSG India, (2) MSMS & (3) ESPN. While MSMS and ESPN participated as broadcasters, WSG India, a part of WSG group having leading presence in sports rights in Asia participated as Marketing Agency.
33. Prior to the opening of these bids, MSMS informed BCCI that it was withdrawing its individual bid to partner as per it's internal arrangement with

WSG. This left only two bids in the fray, viz the bid of WSG India and the bid of ESPN.

34. The bid of ESPN was found to be fundamentally non-compliant. This bid was therefore not considered further. This left only the bid of WSG India in the fray.
35. The bidding process clearly demonstrated that WSG India and MSMS had a business arrangement with each other. In fact the profile submitted by WSG India clearly stated that even prior to this bid, WSG and MSMS had dealt and/or collaborated with each other.
36. A perusal of the bid submitted by WSG India revealed that:-
 - (i) WSG had reached an agreement with MSMS that WSG would sub license the media rights for territory of India to MSMS ; and
 - (ii) the Media Rights Agreement submitted along with the bid made the Minimum Guaranteed amounts for years 2 to 5, dependent upon the tournament achieving specified viewership ratings (TAM).
37. Faced with the predicament that the bid might be non-compliant and considering the fact that there was only one bidder at the table, discussions between BCCI, WSG India and MSMS and BCCI-IPL corporate lawyers (IMG) took place. During these discussions WSG India suggested that they and MSMS had reached an understanding that they will sort their internal agreements and the original sub license arrangements contemplated between WSG India and MSMS can be substituted by the following arrangement, if BCCI agrees:-
 - a. Two separate agreements can be executed, one between BCCI and WSG India and the other between BCCI and MSMS ;
 - b. The MSMS agreement would be for the Indian sub-continent rights and have a term of five years. MSMS had an option to extend the agreement for another 5 years, provided MSMS and WSG India jointly executed an extension notice.

- c. WSG India Pvt. Ltd would enter into a 10 year agreement with BCCI for the rest of the world (ROW) rights. Also WSG India would retain the residual period of 5 years of the years 6 to 10 of India rights.
 - d. In the event the TAM ratings fell below a prescribed norm, MSMS would not be liable to pay the additional amount under its agreement.
 - e. In such event, WSG would pay a top up fee, if some or all portion of the rights fee under the MSMS Agreement which was dependent on achievement of average TAM Ratings was not paid so that BCCI gets the minimum guaranteed amount.
 - f. This arrangement would help in achieving the tender conditions and the bid would become compliant to BCCI getting the minimum guaranteed amount.
38. This indicated that there was a separate internal arrangement between MSMS and WSG for making the bid compliant and for the possible extension of MSMS's term. The BCCI including our Client was completely unaware of the commercial transactions that may have been set out in the internal arrangement between MSMS and WSG at that point of time beyond the broad provisions stated above and it is only through press release issued by MSMS on 23.4.2010 that our Client subsequently came to know that MSMS was paying WSG (India) US\$ 25 Millions as option fees if it wished to extend the rights to years 6 -10 and the potential exposure of WSG to the rating incentive at the end of the year 5 of US \$ 35 millions.
39. The Governing Council of the IPL in its meeting held on 14.01.2008 had noted as under:

The MSMS -WSG bid was complaint to eligibility criteria. The WSG bid mentioned that a part of its Rights Fee was reliant on the ratings delivery (TAM). However, it was suggested by the Chairman and IMG and agreed by the representatives of both MSMS and WSG that in the event of a shortfall between an amount paid over the five year term and minimum licence fee per season, then that shortfall

would be made good at the end of the term to ensure compliance with the requirement of reserve price per season by both the parties.

It was agreed between the parties that between IPL and MSMS the Indian Sub-continent rights are valued at US\$ 276 million and between IPL and WSG for 10 years global media rights with a carve out for the first 5 years of the Indian Sub-Continent media rights are value at US\$ 642 million. In conclusion WSG MSMS won the bid with an offer of US\$ 1.026 billion over a period of 10 years.

40. Accordingly, two separate agreements were executed on 21st January, 2008. These agreements were expressly approved by the governing council at its meeting held on 25.01.2008.
41. Clause 29 of the agreement dated 21st January 2008 executed with WSG India (WSGI), is important and is therefore extracted below:-

if the MSMS Agreement ends for whatever reason prior to the end of the Rights period, the Licensor will be required to meet with the Licensee as soon as practicable with a view to agreeing in good faith which of the parties and on what basis the rights pursuant to the MSMS Agreement will be exploited within the Indian Subcontinent. Licensor acknowledges that a failure to comply with the clause may have a material impact on the Licensee's rights and obligations pursuant to this Agreement.

42. WSGI agreed with the BCCI that if MSMS made any deductions on account of TAM rating, WSGI would pay that amount up to USD 35 Million to the BCCI at the end of year 5. The details of the internal arrangement between MSMS and WSG India which was confidential at the time became known when MSMS issued a Press Release on 23 April 2010 by which it made known that if it exercised its rights in the Option Deed with WSG for years 6 to 10 MSMS was to pay WSG the option fee of US\$25 million plus up to US\$35 million on account of TAM related payment.
43. The amounts which BCCI was to receive under the two agreements with MSMS and WSG are set out in a tabular statement below:

Amounts receivable by MSMS -WSG under original agreements dated 28/1/2008 (based on a 59 match schedule)

S. No.	Year	MSMS (Original Agreement- 28/1/2008) (Figures in cr)	WSG(I) (Original Agreement- 28/1/2008) (Figures in cr)	BCCI (Original) (Figures in cr)
1.	2008	220	16	236
2.	2009	220	20	240
3.	2010	220	24	244
4.	2011	220	28	248
5.	2012	224	32	256
6.	2013	-	472	472
7.	2014	-	476	476
8.	2015	-	489.6	489.6
9.	2016	-	499.2	499.2
10.	2017	-	510.4	510.4

44. In the first year, IPL became a huge success, however unfortunately the TAM rating of the event was around 4.9, and therefore slightly less than the contractually stipulated minimum of 5. MSMS therefore insisted on deducting US\$ 10 million from the payments to be made to BCCI. After IPL - 1 MSMS declined to pay \$ 10 million to BCCI. BCCI was upset with this approach and raised various other issues of MSMS's performance and live telecast to put pressure upon it to pay the deducted TAM amount. Meanwhile because of MSMS's refusal to grant on-air sponsorship to BIGTV, BIGTV walked out of BCCI ground sponsorship agreement. Under the agreement BCCI was to get Rs. 34.27 Crores per year for the next four years from BIGTV. Thus on one hand while MSMS wanted to deduct amounts for non-achievement of TAM rating on the other hand it had

caused direct loss to BCCI of BIGTV sponsorship. BCCI told MSMS that it can take the ground sponsorship from BCCI but would in any case have to pay the same amount to BCCI as BIGTV was paying, MSMS however refused. BCCI contended that MSMS had breached its obligations under the agreement (pertaining to issues of air rights of BIG TV; dirty feed; incorrect declaration of commercial time sold; and failure to provide requisite air time to BCCI). BCCI through Mr Paul Manning of IMG, issued legal notices to MSMS on 3rd, 10th, 11th and 14th February 2009 alleging various breaches by MSMS and pointing out therein that BCCI is entitled to terminate the agreement forthwith. MSMS disputed this and threatened to take the matter to Court in the event of a termination. Ashok Nambissan, General Counsel of MSMS sent a mail to the effect that BCCI should send a revised invoice of \$ 45 million instead of \$ 55 million. This was the position even after first set of notices for termination were sent to MSMS in February, 2009. Additionally BCCI looking to the success of the event wanted to introduce provisions of time outs during which advertisements could be run and BCCI wanted a revenue of Rs 75 Crore for year 2 to 5 and Rs 150 Crore for year 6 to 10 in respect of the same. In respect of time outs the MSMS's initial contract did not provide for flexibility of BCCI introducing strategic time outs to enhance revenue. BCCI wanted payment of time outs not only for year 2 to 5 but right until year 10. MSMS was telling BCCI that they were still not interested in year 6 to 10 rights from WSG. MSMS stated that they would have to make WSG agree for liability of time outs payments for year 6 to 10. MSMS initially proposed a revenue share for the strategic time outs without fixed numbers for year 2 to 5 and after many negotiations reluctantly agreed to pay Rs.68 crores to BCCI for year 2 to 5. BCCI told MSMS that MSMS and WSG must resolve issue of years 2 to 10 mutually and should come to BCCI for the whole period of years 2 to 10 at the numbers BCCI wanted. The Governing Council of IPL in its meeting dated 05.02.2009 passed the following resolution :-

"Members took serious note of the breach of MSM (MSMS) and the subsequent notice sent by IPL for the breach for not providing the first right of refusal for IPL sponsor (Big TV) and the pull out of Big TCV for that. Chairman also pointed out the other material breaches

by MSM (MSMS) and the members authorized Chairman to take necessary action against MSM and try and sort out the same and if no solution is found to the satisfaction of the IPL, Chairman was authorized to find an alternate solution. In finding a solution, Chairman was authorized to finalise adding a 5 minute break after every 10 overs and also negotiate financial revenue for the same to IPL.

This meeting was attended by members of Governing Council including Mr. Arun Jaitley and Mr. Chirayu Amin.

45. BCCI also started discussions with ESPN Star for India rights. Mr. Andrew Marshal, the General Counsel of ESPN Star was apprehensive of complications due to possible legal action by MSMS. Paul Manning of IMG started drafting new media rights agreement with ESPN Star in Macau. ESPN Star had called for a meeting in Macau. In the new contract, the value of rights was increased over MSMS contract but ESPN was reluctant to negotiate with BCCI until MSMS's contract was terminated properly as they feared legal consequences. BCCI tried to assuage ESPN fears and convince them to enter into negotiations with BCCI. ESPN were also concerned about WSG agreeing to pass year 6 to 10 India rights to them. They were also concerned about the size of the agreement. Even for 2 to 5 years, if MSMS contract was terminated, WSG would have been required to be involved as per the original agreement. The meeting in Macau was thus inconclusive.
46. Subsequently BCCI and IMG met ESPN in Singapore. This was around 8th and 9th March, 2009. The proposed meeting did not take place with ESPN. ESPN was not willing to meet until MSMS agreement was terminated and they were given certain assurances in the form of indemnity against possible legal action by MSMS. ESPN had given a document in Macau which contained indemnity clause to ensure that BCCI would cover any risk of loss that may fall upon them due to any claim made by MSMS.
47. WSG was taking a position that the issues between BCCI and MSMS do not pertain to their contract. MSMS meanwhile informed BCCI that WSG was reluctant to increase their fees for season 6 to 10 for the time outs and that

BCCI may work out with MSMS the price each year based on the value sold in the previous year. MSMS also threw the idea that BCCI should take a tender out for time out rights and the right to match the highest bid should be given to MSMS. It appeared that MSMS was forcing BCCI to prolong the entire matter so that the season could get underway and the parties negotiating position would then change and was not willing to close various issues and their strategy was to take legal recourse without committing the increased amount which BCCI wanted. In between MSMS started marketing ground plus on air sponsorship rights without even agreeing terms with BCCI creating further suspicions. MSMS sent an agreement where they put liability of minimum amount of Rs.150 crores of WSG for year 6 to 10. Further they were willing to take liability for grounds sponsorship, if BCCI was willing to sue Big TV. They were further not willing to provide bank guarantee for TAM amount short fall and time outs and wanted a credit period of 180 days for payment of amount for time out. Meanwhile it came to knowledge of BCCI that MSMS was looking to exploit written communications, if any from BCCI, asking for higher amounts and take a stand that there was no breach on their part and BCCI's actions were primarily to seek higher amounts for time outs.

48. It appeared that MSMS was purposely delaying the negotiations and freezing a contract. BCCI thereafter asked Akhila Kaushik , lawyer of BCCI and who reported directly to Mr Shashank Manohar the President to file Caveat on behalf of BCCI lest MSMS move for interim order in event of impending termination. BCCI asked Paul Manning of IMG to draft a letter to potential interested parties to invite offers for IPL media rights for India. BCCI was concerned that MSMS may seek prevent BCCI from entering into alternative contract for IPL media rights with third parties. In this background as BCCI and MSMS were far from reaching consensus, BCCI terminated the MSMS agreement by addressing a letter dated 14.03.2009.
49. This termination happened when the IPL Season-II Tournament was around the corner and IPL was scheduled to start from 8th April 2009. BCCI-IPL corporate lawyers as well as BCCI in house lawyers were acutely conscious that MSMS would immediately challenge this termination in Court. MSMS had, in fact, threatened in earlier conversations to move court

in the event of a termination and take recourse to legal remedies to full extent. BCCI had, even prior to the termination therefore also been exploring other options with other broadcasters/ parties including ESPN, Star Group and NDTV to ensure that third party rights could immediately be created so that in the event of MSMS termination, alternate arrangement for media rights could be put in place and also keeping in view of the practical position so that MSMS did not have any opportunity to move court and obtain a restraint order.

50. BCCI under Clause 29 of the WSG India Agreement was required to agree in good faith with WSG as to which of the parties and on what basis Indian sub-continent rights would be exploited. Simultaneously, it appears even MSMS had kept WSG India in the loop as it wanted a tripartite understanding involving BCCI, WSG India and MSMS should be arrived at so that any additional amount paid by it in the event TAM ratings were not achieved could be adjusted against WSGI in the event of exercise of its option to renew the Agreement for year 6-10. This is clear from the MSMS press release of 2010. MSMS had also wanted WSG to take liability of amounts of time out for year 6 to 10.
51. The termination notice was sent out by B.C.C.I at 8.14 p.m. on Saturday i.e. 14.03.2009 to MSMS. Caveats had already been filed by the BCCI. MSMS responded to this letter of termination almost immediately by their advocates letter dated 14.03.2009, served on the solicitors of BCCI by email at about 10.15 p.m. informing them that MSMS would be moving court at 11.00 a.m. the following morning 15th March 2009(Sunday) for urgent interim relief.
52. BCCI was extremely concerned that should MSMS get any interim relief the next morning, it would seriously prejudice the BCCI. Time was of the essence. Firstly, the IPL Tournament was likely to commence soon and it was essential that an arrangement for broadcast of the matches be put in place immediately. Secondly the legal advice at the time to the BCCI was to try and put in place an arrangement with the third party be put in place before MSMS moved court for interim relief.
53. Such was distrust with MSMS that IMG advised the BCCI to be circumspect while dealing with MSMS and that BCCI should have no direct

communications lest he may be quoted in any MSMS affidavit in Court proceedings.

54. As WSG India was the original successful bidder in 2008, BCCI, having terminated MSMS, was required under its contract with WSG India to agree with WSG India as to which of the parties and on what basis Indian sub-continent rights would be exploited. The BCCI was keen to increase the value of its India sub-continent rights. BCCI asked WSG India to consider an arrangement where there would be a mutually agreed termination of the WSG India agreement dated 21st January 2008 so that BCCI could sever and aggregate the India Sub Continent Rights for the longer period 2009-2017 for a significantly increased amount. Without this agreement to aggregate, BCCI could not have achieved much, if any, increase in value. It was further agreed that since this was the sole purpose of the termination and as WSG's model of utilization of IPL rights was built largely on the to sub-licensing, ROW rights would be granted to WSG India on the same terms as before.
55. The negotiations which had been continuing between BCCI & WSG resulted in an agreement being concluded at 3.00 a.m. on 15.03.2009. This agreement was arrived pursuant to the negotiation with Mr. Venu Nair and Mr. Andrew Georgiou who represent the WSG Group and were common directors both in WSG India as well as WSG Mauritius. The result of these negotiations was that WSG agreed that it would acquire the rights for the remaining 9 years (2009 to 2017) for the Indian Sub Continent. WSG designated its pre-existing Mauritian arm, WSG Mauritius Pvt. Ltd (WSGM) as the designated company which would enter into and perform the said agreement. The agreement clauses were negotiated and drafted by BCCI-IPL Corporate Lawyers on substantially similar terms, barring minor changes as in earlier agreement entered with WSG India.
56. During the negotiations between BCCI and WSG, WSG agreed to pay the amounts asked for by BCCI which MSMS was not prepared to pay. The agreement with WSG Mauritius for Indian Sub-Continent was on far more lucrative and beneficial terms for BCCI than the original MSMS agreement of 21st January 2008. The agreement executed between BCCI and WSG

(Mauritius) dated 15th March '09 brought to the BCCI an additional benefit of Rs.1705.49 crores. This agreement was thus clearly in the interest of BCCI and allowed BCCI to leverage its media rights in an unprecedented manner with resultant windfall gains. WSGM agreed to meet financial expectation of BCCI. They were ready to pay the increased amounts which BCCI was demanding from MSMS without grounds sponsorship rights for year 2 to 5. WSGM and WSG-I were part of the same group companies having common directorships.

57. If WSG India Agreement of 2008 had not been agreed to be mutually terminated, BCCI could only have sold the rights for the year 2 to 5 and any broadcaster taking 2 to 5 rights would have been apprehensive of WSG selling 6 to 10 years rights to competitors. Therefore, making WSG India agreed to terminate this contract was a major breakthrough. The WSGM contract did not require great deal of additional negotiations as the draft was similar to the earlier MSMS contract.
58. The choice of the Mauritius based company was made by WSG because of tax considerations. It also seemed that this might suit BCCI's legal strategy, since it was a separate legal entity to WSG India which had prior to bid entered into agreement with MSMS for media rights of Indian Sub-Continent.
59. As under the original agreement of BCCI dated 21.01.2008 with WSG India, provided that if MSMS did not exercise its option for years 6 to 10, the Indian Sub-continent rights would remain with WSG India, it was necessary to terminate the WSG India as well so that media rights could be reworked and rights for years 2 to 10 could be granted to WSG Mauritius. Accordingly, the agreement with WSG India was terminated through a Mutually Agreed Termination Deed which provided that new WSG India Rights agreements would be entered with WSG Mauritius for Indian Sub-Continent rights and with WSGM or WSG India for rest of the world (ROW) rights. Because of mutual agreement with WSG India rights for year 6 to 10 reverted back to BCCI. This made monetization of those rights for year 2 to 10 possible at significantly increased value. It would have been difficult selling rights for year 2 to 5 rather than year 2 to 10 since value benefits

would have come in later years which prior to this arrangement would have continued to be held by WSG.

60. The agreement with WSG Mauritius for Indian Sub-Continent was on far more lucrative and beneficial terms for BCCI than both the MSMS agreement dated 21st January 2008, which had been terminated as well as the proposal given by MSMS on 11.03.2009.
61. BCCI initial demand from MSMS for the commercial resolution of dispute were-
- (i) No deduction of additional amount on account of non-achievement of TAM ratings.
 - (ii) Payment of compensation for BIG TV loss of sponsorship at Rs.34.27 crores for four years in lieu where of MSMS was to get ground sponsorship right for one category.
 - (iii) Amount of Rs.75 crore for time outs for year 2 to 5 and an amount of Rs.150 crores for year 6 to 10.

However, MSMS refused to agree to BCCI's demands. WSGM agreed to more beneficial terms without asking for any ground sponsorship rights.

62. The agreement with WSG Mauritius brought to the BCCI the additional benefit of Rs.1705.49 crores, as set out in the table below :-

(Based on a 59 match tournament)

S. No.	Year	MSMS initial agreement with exercise of option (Figures in cr)	Amounts being demanded of MSMS by BCCI which MSMS refused to pay	WSG Mauritius (Figures in cr)
1.	2008	220	-	220
2.	2009	220	220+34.27+75 = 329.27	335

3.	2010	220	$220+34.27+75 = 329.27$	340
4.	2011	220	$220+34.27+75 = 329.27$	375
5.	2012	224	$224+34.27+75 = 333.27$	375
6.	2013	424.8	$424.8+150 = 574.8$	571
7.	2014	428.8	$428.8+150 = 578.8$	571
8.	2015	440.4	$440.4+150 = 590.4$	634.4
9.	2016	449.2	$449.2+150 = 599.2$	748
10.	2017	459.2	$459.2+150 = 609.2$	842.49
		Total= 3306.4	Total= 4273.48	Total = 5011.89

Gain from Initial MSMS figures (in cr) to BCCI = 1705.49

(Note: The gains would have further increased considering the fact that the there would have been a pro rata increase of rights fee based on 94 matches per tournament year 2011 onwards)

63. The Agreement was fully in the knowledge of all in the BCCI as its execution was witnessed by Sundar Raman, who was the COO of the IPL and Paul Manning of IMG, who drafted all the contract for BCCI.
64. As IPL-2 was around the corner it was imperative that WSG Mauritius who were a marketing agency had a confirmed arrangement with an Indian broadcaster. To safeguard the right of BCCI, a clause was introduced in the agreement that in the event of WSG Mauritius not sub licensing the agreement within 72 hours, the rights would revert to BCCI. The clause was specifically incorporated to ensure that BCCI had an exit option in the event WSG Mauritius, for any reason, was not able to obtain a back to back

arrangement (sub licence) with a broadcaster. Further since time was of the essence a stringent time line was put to protect the interest of BCCI.

65. As expected MSMS moved the court in the morning of 15th March 2009 (Sunday) for interim relief. The court was informed by BCCI litigation Lawyers that they had got notice of the interim application only at 10.00 a.m. and had not been able to obtain instructions from BCCI. The court therefore, passed an order restraining BCCI from entering into any agreement till 17th March and posted the matter for hearing on 16th March, 2009 (Monday). Shortly thereafter, the BCCI-IPL Corporate lawyers informed the BCCI lawyers present in court about the fact of execution of the agreement between BCCI and WSG Mauritius, early in the morning of 15th March 2009 and a copy of the agreement executed with WSG Mauritius was also made available to them. The BCCI litigation lawyers duly informed this fact to the Court. BCCI also affirmed an affidavit on behalf of the BCCI detailing the factum of the execution of the agreement with WSG Mauritius. The affidavit was drafted by BCCI's advocates Negandhi, Shah and Himayatullah (NSH) and the contents of the affidavit was also discussed with Sundar Raman, COO of the IPL and Ms Akhila Kaushik, BCCI's legal counsel and the IMG.
66. The matter was heard by the court again on 16.03.2009 when having regard to the fact that third party rights had already been created in favour of WSG Mauritius, the court did not continue the interim relief. The decision to execute the agreement with WSG Mauritius, immediately upon termination of the MSMS agreement therefore stood vindicated. MSMS thereupon moved an amendment application seeking additional reliefs that BCCI be restrained from approving the broadcaster which WSG Mauritius was required to appoint within 72 hours. Foreshadowing that such an application might be made, BCCI, by its letter dated 15.03.2009 itself granted its previous approval to WSG Mauritius in respect of certain specified broadcasters and also forwarded the template (standard format) of the approved Media Rights Sub-License Agreement to WSG Mauritius. The list of identified broadcaster included MSMS, NDTV, ESPN, Star, Neo Sports, TV 18, NDTV, Sun Astro and Doordarshan. This fact was also brought to

the notice of the Court. BCCI also gave a pre-approved draft sub licensee agreement to WSG Mauritius.

67. WSG Mauritius started negotiating sub-license agreement with various broadcasters keeping BCCI informed of the same. WSGM was in negotiation with NDTV and ESPN Star. On 16th March, 2008 a sub-license agreement was entered into conditionally between WSG Mauritius and NDTV Mauritius under which the obligation to pay the required Bank Guarantees to BCCI was retained by WSG Mauritius. This agreement was subject to the approval of the respective Boards of WSG and NDTV.
68. Pending the approval of agreement between WSG Mauritius and NDTV Mauritius by their respective boards and it translating into a binding and enforceable contract, other broadcasters, including MSMS and ESPN-Star Sports also continued to negotiate with WSG Mauritius. BCCI was kept abreast of such developments by WSG Mauritius. ESPN-Star wanted indemnity from BCCI in case any loss was caused to it due to legal proceedings arising out of MSMS termination.
69. In the meanwhile, on 17th March 2009 the BCCI granted an extension to WSG Mauritius for creating a sub license till 21st March 2009 which was further extended on 20th March 2009 up to 24th March 2009. The issuance of extension letters was to ensure that the agreement between BCCI and WSG Mauritius did not lapse. Had this happened, the consequences for BCCI could have been disastrous. MSMS might have sought a further injunction, which it failed to get in the first instance , because third party rights had already been created. The execution of the Extension Letters was as per the advice of Ms. Akhila Kaushik, Legal Adviser, BCCI, who was supervising the on going litigation on day to day basis. In fact Ms. Akhila Kaushik had directed BCCI-IPL Corporate Lawyers to draft extension letters. These Extension Letters record that WSG Mauritius was in an advanced stage of negotiations with several parties including MSMS for sub-licencing television rights. These Extension Letters also recorded that they were being issued to ensure that no prejudice was caused to either party in the pending legal action. Another extension letter dated 23rd March,

2009 was prepared by BCCI in house lawyer Akhila Kaushik which our Client did not sign and was not issued to WSGM.

70. Realizing that it may lose the Indian subcontinent media rights, MSMS pursued its negotiations with WSG Mauritius for taking sub-license rights for Indian Sub-Continent. During these discussions MSMS again insisted that it would like to have previous arrangement of direct license rights from BCCI. In essence it meant that WSG Mauritius would not be able to proceed, as had been contemplated, with MSMS as a sub licensee and that WSGM would have to give up its rights for the Indian sub-continent so that BCCI could then grant them to MSMS.
71. It is apparent from the annexures to Show Cause Notice that from 16th March, 2009 WSG Mauritius and MSMS were in negotiations with each other. This continued on 17th March, 2009 also that MSMS and WSGM arrived at broad consensus on the compensation that would be paid to WSG Mauritius, in case WSGM stepped aside for BCCI to enter into a direct deal with MSMS and that the negotiations continued on 18th March, 2009 and the final understanding was arrived between MSMS and WSG on 18th March, 2009. On 18th or 19th March 2009 WSG and MSMS representatives had a meeting with BCCI. WSG also informed the BCCI that they had agreed that MSMS could have a direct license with BCCI for India rights as was the case with the first MSMS agreement. WSG informed that they would step aside so that rights are granted to MSMS and on that basis MSMS would withdraw their petition in Mumbai High Court.
72. MSMS wanted direct India rights and this was only possible, if WSG did not have rights for India. The rights had to come back to BCCI for a direct deal rather than a sub license for them to be granted to MSMS. For this WSG were ready to step aside and mutually terminate their contract.
73. After WSG stated that they had reached an understanding with MSMS our Client wrote emails to the legal team and others that the deal with MSMS is done. He also wrote email to various media agencies and advertisers that BCCI was back with MSMS. Our Client wrote an email to BCCI litigation team saying that settlement with MSMS is underway and that the Court should be informed of the same. These emails were written on 18.3.2009

and 19.3.2009. Accordingly, upon advice of BCCI-IPL Corporate lawyers, it was decided that, as was done on 21st January 2008, a separate agreement for the Indian Sub Continent could be executed with MSMS and a separate agreement for the ROW would be executed with WSG. WSG Mauritius also agreed to this rather than have MSMS as a sub licensee. All these developments were in complete know of the then President Mr. Shashank Manohar and then Secretary Mr. N. Srinivasan.

74. WSG around the same time informed Paul Manning of IMG that they and MSMS had reached an understanding to protect WSG's interest as MSMS was to be a direct BCCI licensee rather than a WSG sub-licensee.
75. Around 21st or 22nd March, 2009 Paul Manning of IMG circulated draft of BCCI agreement directly with MSMS which contained the Clause which WSG and MSMS had agreed to be inserted to protect WSG's interest.
76. In the initial draft circulated by Paul Manning, WSG had got the reversion of rights, if MSMS contract was terminated prior to year 10. BCCI wanted changes in the document and wanted those rights to revert to BCCI, if MSMS contract now was terminated. BCCI also wanted to have right to retain increase in the number of franchises and prorata increase of the rights fee.
77. Based on these Paul Manning circulated a new MSMS draft contract which contained a clause agreed both by MSMS and WSG Mauritius to the effect that upon notice of MSMS's breach of its agreement with WSGM, BCCI was required to terminate MSMS. This was not an unusual clause because of MSMS's request for a direct contract rather than to act as sub licensee. However, MSMS reverted with major corrections in draft sent by Paul Manning. MSMS did not want to increase the amount of money payable on increase in the number of teams and more alarmingly wanted a non terminable contract. This was clearly unacceptable to BCCI as being against BCCI's interest as this could compromise BCCI future position. Negotiations thereafter continued not on any matter concerning MSMS and WSG but concerning MSMS and BCCI. The members of Governing Council and office bearers of BCCI were in know of all these developments.

78. However, Nick Fitz Patrick, the MSMS lawyer sent a draft which amongst other things wanted limitation on BCCI's termination rights as well as on limitation on increase of number of teams. This was not acceptable to the BCCI. ESPN had also sent its details to WSG which they forwarded to BCCI and BCCI instructed Paul Manning to prepare draft agreement based on ESPN term sheet protecting the rights of BCCI to increase the number of terms. MSMS wanted to limit the number of teams to 8 and was insisting on a non terminable contract. On 22.3.2009 our Client wrote a email that MSMS's insistence on non terminable contract was not acceptable. Thereafter WSG was in contact with MSMS to resolve the issue of a termination clause in the contract and for increase of rights fee for BCCI on pro rata basis depending on number of games. Because of MSMS's insistence for a non terminable contract, the consent term which were contemplated at one time to be filed, could not be filed before the High Court.
79. In the meanwhile, having regard to the statement made by the then Home Minister Shri P. Chaidambaram about the inability of the government to provide security for the IPL tournament, the BCCI Working Committee at its emergent meeting held on 22nd March, 2009 passed a Resolution to move the IPL tournament to South Africa or England. The BCCI chose South Africa as the venue. At this meeting the termination of MSMS and execution of the agreement between BCCI and WSG Mauritius was extensively discussed. The relevant extract of the Resolution passed by the Working Committee is extracted below:-

"Mr. Lalit Modi also brought to the attention of the members the issue between the official broadcaster "MSM" and IPL. IPL terminated the contract with MSMS due to multiple breaches in contract terms by MSMS. The total contracted revenue of the IPL till last week was Rs. 9068 crores. He further stated that the Board had immediately signed a fresh agreement with WSG. Mr. Modi added that MSMS breached that contract in all 59 matches of IPL by overlaying advertisements on our clean feed. According to the BCCI guidelines in a T20 game a total of 2000 seconds is stipulated for advertisements but MSMS breached by inserting 3200 seconds i.e. over 60% of allowed

inventory. The value of the revised contract entered into with WSG is for Rs. 14,068 cr. Over the period of 9 years an increase of Rs. 5000 Cr. MSMS has agreed to match the amount which WSG has agreed to pay BCCI.

He further stated that on the suggestion of our lawyers we have agreed to an out of court settlement with MSMS effective 6.30 am today morning. One of the major points of this agreement was that MSMS wanted this agreement to be a non terminable agreement which we have denied to MSMS after discussion with the President.

Secondly we also had a restriction on increasing the number of teams from 8 to 10 in the 4th and 5th year. What we have reached in the agreement is we can increase the teams in IPL at any point at their discretion to 10 teams. Further, we can increase to number of teams as and when we want to win the first right to refusal with MSMS on a pro rata basis to match the number within 15 days. If not, like in England it would be open to all broadcasters to bid. He also added that average price per match according to the old contract was one million dollars moving to two million dollars per game for the next 5 years which is close to 200% increase compared to the last contract."

80. The BCCI strategy to pass on the rights to WSG Mauritius proved judicious when the Bombay High Court delivered its judgment on 23rd March 2009 dismissing the injunction application filed by MSMS for the reason that BCCI had already transferred its rights. The said judgment records that on 15.03.2009 when the matter had come up the court had initially passed order restraining the BCCI to enter into agreement upto 17.03.2009 and the matter was directed to be listed on 16.03.2009 at 11.00 a.m. However, on 15.03.2009 itself the lawyers for the BCCI served on the lawyers for MSMS an affidavit along with copy of the agreement stating that they had already signed an agreement with WSG Mauritius. Further the order records that thereupon MSMS sought an amendment and also sought an injunction that under clause 6.2 of agreement dated 15.03.2009 no broadcaster should be allowed to be appointed. Upon this the court enquired whether the BCCI

had approved appointment of broadcaster wherein matter was kept back till 4.30 p.m. for taking instructions. At 4.30 p.m. on 16.03.2009 the lawyers for BCCI tendered a copy letter dated 15.03.2009 from the our Client pointing out that approval pertaining to broadcasting is already granted to WSGM. It was also mentioned that a template of license agreement to be signed by WSGM had already been approved by BCCI. The Court further noted that BCCI had submitted the agreement with WSG Mauritius is a concluded contract where the transfer of rights from BCCI to WSG Mauritius had taken place. The Bombay High Court held that:

"Even assuming that the aforesaid submission made on behalf of the petitioner would have prima facie been accepted by the Court, at this stage, the petitioner would not be entitled to any ad-interim relief on the ground that the same would directly and/or substantially affect and/or interfere with the enjoyment and/or exploitation by WSGM of their vested rights and present interest in the property which is the subject matter of the contract created in their favour and subsisting in presentii since WSGM is not made party to the present proceedings."

81. BCCI in fact benefited from the two extensions of time granted to WSG Mauritius on 17 and 20 March 2009 as the High Court judgment was predicated on the vesting of rights in a third party namely WSG Mauritius. These extension letters were fully in the knowledge of BCCI as these were drafted by Ms Akhila Kaushik in consultation with Paul Manning of IMG,. The judgment itself shows that entire facts were in knowledge of BCCI which was contesting the matter against MSMS. The extension letter was issued on 17th March, 2009 and 20th March, 2009 to keep the rights alive otherwise the BCCI would have been at risk of loss of litigation in Bombay High Court.
82. Though MSMS lost the court litigation, however, there were chances of its litigating further and filing a suit and there was pressure to freeze media rights contract while there was no court proceeding in place. On the evening of 23rd March, 2009, our Client left for South Africa. At that time through WSG was negotiating both with MSMS as ESPN since BCCI could not reach any finalization of its contract with MSMS. Until 23rd March, 2009

neither MSMS nor ESPN could bring their clauses in line with BCCI requirements. BCCI had to tie-up the media rights to secure BCCI's interest. BCCI therefore, instructed Paul Manning that, he should draft another agreement with WSG Mauritius not allowing them any exit for India's rights so that the amounts payable to BCCI could be secured. Mr. Venu Nair of WSGM signed a new agreement on behalf of WSGM for India rights which had no exit clause. However, as our Client was leaving for South Africa, he could not sign the said agreement and proposed to sign it after landing in South Africa. As per the new agreement India and ROW rights were firmly with WSG, who would then sub-license them the way they want giving BCCI the required amount. Since our Client had already written a email on 19th March, 2009 that MSMS was back with BCCI and advertisers could go ahead for booking their ads with MSMS, to dispel that message, our Client wrote further emails on 23rd March, 2009 to bring on record the position that MSMS was not back with BCCI and WSG had the rights.

83. WSGM were also at advanced stage of negotiations with MSMS, ESPN and NDTV. Therefore as far as BCCI was concerned any of these broadcasters would have been WSGM's sub license for India rights.
84. However, when our Client landed in South Africa in early hours of 24.3.2009, he received a call from Michael Lynton, Head of MSMS in Los Angeles and MSMS agreed for a terminable contract and also addition of two new teams and the amount of the media rights fee payable pro rata on increase of number of matches. Possibly MSMS realised by then that BCCI would not budge from his insistence on increase in number of teams and for BCCI to have the right to terminate the MSMS contract. It was then after these remaining obstacles were overcome that BCCI IMG legal team WSG legal team and MSMS legal team set across to finalize the agreements.
85. On 24th March, 2009 MSMS agreed to terminable contract and addition of teams to 10. The delay in closing media rights contract between 19th March 2009 to 25th March 2009 had nothing to do with any issue between WSG and MSMS rather the only outstanding issues were between BCCI and MSMS.

86. The requisite documentation between BCCI and WSG India and BCCI and MSMS was thereafter finalized by lawyers of all parties. These agreements were dated 25th March 2009. In the agreement executed between MSMS and BCCI, the consideration which was payable to BCCI was exactly the same consideration that was payable to BCCI by WSG Mauritius. Under the combination of the new BCCI –MSMS and BCCI-WSG Agreements the BCCI gained an additional sum of Rs.2577.24 crores over and above the amounts otherwise payable under old BCCI-MSMS and BCCI-WSG Agreements.

Amounts payable to BCCI under New Agreement

(based on a 59 match schedule)

S. No.	Year	MSMS (Agreement-25/3/2009) (Figures in cr)	WSG (Agreement-25/3/2009) (Figures in cr)	Total (Figures in cr)
1.	2008	220	16	236
2.	2009	335	20	355
3.	2010	340	24	364
4.	2011	375	28	403
5.	2012	375	32	407
6.	2013	571	47.2	618.2
7.	2014	571	47.68	618.68
8.	2015	634.4	48.96	683
9.	2016	748	49.92	797.92
10.	2017	842.49	51.04	893.53

BCCI Net gains (based on a 59 match schedule upto 2010)

and a 94 match schedule 2011 onwards)

S. No.	Year	BCCI (For Agreement 28/1/2008) (Figures in cr)	BCCI (For Agreement 25/3/2009) (Figures in cr)	Gain (Figures in cr)
1.	2008	236(59 matches)	236(59 matches)	0
2.	2009	240(59 matches)	355(59 matches)	115
3.	2010	244(59 matches)	364(59 matches)	120
4.	2011	395.11(94 matches)	642.06(94 matches)	246.95
5.	2012	407.86(94 matches)	648.44(94 matches)	240.58
6.	2013	752(94 matches)	984.92(94 matches)	232.92
7.	2014	758.37(94 matches)	985.69(94 matches)	227.32
8.	2015	780.04(94 matches)	1088.16(94 matches)	308.12
9.	2016	795.33(94 matches)	1271.26(94 matches)	475.93
10	2017	813.17(94 matches)	1423.59(94 matches)	610.42

Total Gain = 2577.27 (in cr)

87. Though BCCI was aware that WSG Mauritius and MSMS had reached an understanding that WSG Mauritius would step aside rather than insist on a sub licence thereby enabling MSMS's direct agreement with the BCCI, neither B.C.C.I nor the our Client was aware of the financial understanding

reached between the two as such information is confidential between MSMS and WSG. The clauses to ensure that WSG Mauritius be protected were agreed between WSG Mauritius and MSMS and subsequently given to BCCI-IMG lawyers there was nothing unusual in such clauses as in the case of sub-license structure in the event of MSMS committing default, WSG could have terminated such arrangement.

88. It appears from the media release issued by MSMS on 23rd April '10 that in the arrangement where WSG Mauritius gave up its rights, MSMS agreed to pay WSG an amount of US\$ 80 million over a period of 9 years. The press release records also that part of this consideration had already been paid. WSG is a marketing company and therefore would have marketed and or sold or licensed its rights in to a third party in the usual course of business and earned either a margin or commission with respect to such sales. MSMS had agreed that it would provide necessary protection to WSG Mauritius in the event that MSMS defaulted in making payments. Any provisions which may have been inserted in the agreements to ensure that WSG Mauritius was protected was pursuant to an arrangement between WSG Mauritius and MSMS and it is they who required that such clauses be inserted so that the inter party arrangement could be effectively implemented. The contract documentation therefore contained relevant clauses and were drafted by the BCCI lawyers including Paul Manning of IMG on behalf of BCCI who were in any event tasked with the preparation of the contracts. That there was nothing amiss or improper in the entire transaction is also evident from the press release issued by MSMS on 23rd April 2010. MSMS and BCCI executed the Media Rights Agreement for the India Sub continent on 25 March 2009. BCCI and WSG India executed the Media Rights Agreement dated 25 March 2009 for the Rest of the World territory.
89. The Agreement between BCCI and MSMS was in complete notice of the President as also the Secretary of BCCI as also members of the Governing Council of IPL. In fact the said Agreement was relied upon in various Court proceedings and affidavits were filed inter alia by Mr. N. Srinivasan the then Secretary BCCI in respect of contents thereof. While BCCI knew that WSG Mauritius had passed on its Indian sub-continent rights to MSMS for

consideration as a part of its usual business practice it was not aware of the consideration involved in the WSG Mauritius – MSMS arrangement. Neither BCCI nor our Client knew or were expected to be privy to the financial arrangement between WSG and MSMS which was purely their internal affair.

90. On 25 March 2009 the our Client sent a congratulatory email to Paul Manning copied into a number of people including Shashank Manohar, N Srinivasan and Akhila Kaushik stating in the material part: *'I would like to on behalf of IPL Governing Council and its stake holders thank you for your invaluable contribution in making the WSG MSMS deal happen'*. N Srinivasan in response to this email sent a message to our Client on 25 March 2009 stating *'My compliments on the MSMS deal. You are brilliant'*. On 11 April 2009, our Client forwarded a copy of the MSMS Agreement of 25 March 2009 by email to N Srinivasan, BCCI President, Akhila Kaushik, BCCI legal counsel, Prasanna Kannan, CFO of IPL and Sunder Raman, COO of IPL. Both the MSMS and WSG Mauritius media rights agreement were ratified by the Governing Council on 11 August 2009. These agreements were specifically considered by the Audit Committee and the questions raised therein were answered by the Governing Council.
91. As clarified by the Press Release of 23 April 2010 MSMS agreed to pay this amount to WSG Mauritius for the latter allowing its Indian sub continent rights to lapse so a direct contract between BCCI and MSMS could be facilitated. WSG Mauritius was in any event entitled to sub-license the agreement to either MSMS as a broadcaster or any other broadcaster and earn the said fees for itself.
92. Our Client has no interest in WSG India or WSG Mauritius or any entity of the WSG Group. He has no interest - direct or indirect in WSG-MSMS agreement. WSG is one the world's largest marketing rights agencies. It is jointly owned by the Lagarde of France and Dentsu of Japan. Lagarde has extensive interests the world over in sporting rights. Lagarde SCA had consolidated net sales for the year ending 31 December 2009 of 7.892 billion euros.

93. It is pertinent to point out here MSMS has issued a Press Release dated 23rd April, 2010 clarifying these facts. BCCI was not really concerned with the *inter-se* arrangement between WSG Mauritius and MSMS since it was receiving the same amount from MSMS that it was to receive from WSG Mauritius. The press release issued by MSMS also makes it apparent that there was an option fee of \$ 25 million along with potential compensatory fee of \$ 35 million payable by MSMS to WSG India even under earlier arrangements entered between them in January 2008 and that the facilitation services fee agreement was in fact for services rendered by WSG starting from finalization of initial media rights bid in 2008 culminating to MSMS agreement on 25th March, 2009.
94. WSG Mauritius was entitled to sub license the agreement to either MSMS as a broadcaster or any other broadcaster and earn a fee or margin for itself. This amount would never have been paid to the BCCI. The MSMS Agreement was being negotiated by various highly experienced parties and their well-qualified Lawyers at London, Los Angeles, Singapore and Mumbai. The original contract came from Los Angeles after signatures of MSMS's authorized signatory to our Client around 9th April 2009 for our Client's signature. After the our Client signed the said Agreement, the scanned copy of the same was forwarded immediately by him to the then President BCCI, the then Secretary, Akhila Kaushik (BCCI in house counsel), Prasanna Kannan (CFO IPL) and Sunder Raman (COO IPL) on 11th April 2009.
95. The details of the contract with WSG Mauritius and MSMS were all discussed with the President Mr. Shashank Manohar prior to Working Committee meeting on 22nd March 2009. Our Client and Mr. Manohar both agreed that the new contract with MSMS cannot contain a clause making it non-terminable. The President Mr. Manohar being a lawyer himself was keeping day to day track of the on-going litigation and subsequent settlement with MSMS right upto 25th March 2009. The physical copy of the contract after having been signed by our Client in South Africa on 9th April, 2009 was scanned and mailed to both the then President and the then Secretary on 11th April 2009 who were all along completely aware of its contents. The Governing Council had ratified the said contract which was

also duly considered by the audit committee of BCCI. BCCI had received amounts under the new agreements.

96. Our Client submits that all the developments leading to execution of MSMS Agreement and WSG India Agreement on 25.03.2009 were in complete notice of members of the Governing Council. Our Client had been given requisite authority to act by the Governing Council in its meeting dated 5.02.09 and these Agreements were subsequently approved by the Governing Council of IPL in its meeting dated 11th August 2009.
97. It is submitted that our client at the relevant time was one of the Vice President of the BCCI as well as the Chairman of IPL which was a sub-committee of the BCCI. He was not an office bearer of BCCI. He was not the person responsible for conduct of business of BCCI nor in-charge thereof. He had no financial powers. He was not involved in making of any remittances a foreign exchange or repatriation thereof. He was also not involved in issuing instructions or giving payment advice to AD. In these circumstances Section 42 has no application to him. The provisions of Section 42 of FEMA do not make any person liable for consequences. It is only that person who was in-charge and responsible for the business of the whole organization who can be made liable u/s 42.
98. That voluminous evidence was recorded in the Disciplinary Proceedings of BCCI (reply of our client in those proceedings has been relied by you in the Show Cause Notice). These included Peter Griffiths, John Loffhagen and Paul Manning from IMG, Sundar Raman from BCCI-IPL and N.P.Singh from MSMS. There is good deal of variance, if the statements of these witnesses as compared to their deposition before ED is taken into consideration. Besides Kunal Das Gupta was also examined in those proceedings. The statements of these witnesses along with material produced on Media Rights Contracts during those disciplinary proceedings alongwith other relevant material is being submitted as **APPENDIX** with this reply.

Re Show Cause Notice :

99. That contents of the Show Cause Notice and the annexed Complaint are specifically denied in toto. Unless specifically admitted all the parts of Complaint and the Show Cause notice may be treated to be specifically denied.
100. That in respect of para 1.1 to 1.10 it is submitted that the factual position in this regard has been narrated in preceding paras and all the actions undertaken in respect of Television Right Contracts were collective decision of the BCCI and in full knowledge of the then President Mr. Shashank Manohar and the then Secretary Mr. N. Srinivasan besides members of Governing Council, other officials and in house lawyers of BCCI.
101. That in respect of para 2 it is submitted that the Deed for provisions of Facilitation Services came to the notice of our client for the first time during the BCCI disciplinary proceedings against him. The payments made therein were not in connection with sale of media rights by BCCI to MSM but rather were for services provided by WSG to MSMS. Further the said deed was not between WSGI and MSMS rather the same was executed between WSGM and MSMS.
102. That in respect of para 3.1 to 3.3 it is submitted that the show cause notice issued by BCCI was actuated by malice on the part of Mr. N. Srinivasan and Mr. Shashank Manohar the then Secretary and the then President of BCCI and the same had been issued primarily due to internal fight for supremacy within the BCCI. The allegations made in the said show cause notice were wholly incorrect and were denied by filing a detailed reply to the said show cause notice by our client.
103. That in respect of para 3.4 to 3.11 the factual position has been set out in the preceding para. These were collective decisions of BCCI and in full knowledge of the members of the Governing Council of IPL as well as then President and then Secretary BCCI and other officials of BCCI like Mr. Sundar Raman and lawyers of BCCI. In respect of para 3.10 it is specifically submitted that the Deed for Facilitation Services dated 25.3.2009 or the amount of payment involved in the said deed was not in notice or knowledge of our client and the same was only brought to his notice only during the BCCI disciplinary proceedings by the BCCI.

104. That in respect of para 3.12 it is reiterated that Deed for Provisions for Facilitation Services was not in notice of our client till the same was produced during the course of disciplinary proceedings against him by the BCCI. It is submitted that while it is correct that there was no agreement between BCCI and WSG executed on 23.3.2009. However, as stated above on 23.3.2009 Mr. Venu Nair had signed a fresh agreement prepared by Mr. Paul Manning without an exit option giving WSG global rights. However, as our client was already on his way to South Africa to oversee the organization of IPL Season-2 as per the resolution passed by Working Committee of BCCI in its meeting dated 23.3.2009 the said agreement could not be signed by our client on behalf of BCCI. Our client reserves his right to cross-examination both Mr. Venu Nair and Mr. Paul Manning on this aspect as well as other aspects. That however, as stated earlier when our client landed in South Africa he received call from Mr. Michael Lynton that MSMS had agreed to a terminable contract as well as increase of number of teams from 8 to 10 obviating the necessity of our client signing the agreement dated 23.3.2009 on behalf of BCCI with WSG as the way was paved for a BCCI-MSMS Contract which eventually get signed on 25.3.2009.
105. That the contents of para 3.13 and 3.14 are denied and it is submitted that Clause 7 of the WSG agreement provided that the licensee shall pay Rs.335 Crores for 2009 IPL Season and the payment was to be made as per the payment schedule and any late payment would entail interest of 12% p.a. The MSMS agreement was terminated on the night of 14.03.2009. WSGM agreement was signed on 15.03.2009 before opening of the business hours at 3.00 a.m. On the same day around 10.30 a.m. the Single Judge of Bombay High Court passed an ad interim order against the BCCI. Though this interim order was not continued in the hearing which ended on the evening of 16.03.2009 however, as the hearing was going on day to day there was uncertainty as to whether BCCI's actions would be upheld. On 16.03.2009, WSGM entered into an agreement with NDTV subject to board approval of both parties. By 17.03.2009 they were in advance negotiations with both ESPN and MSMS and on 18.03.2009 they brought MSMS to match the offer given by them. The court litigation ended on 23.03.2009 in

favour of BCCI. Previous thereto from 19.03.2009 till 23.03.2009 looking to MSMS's desire for direct agreement there was negotiations between MSMS and BCCI which could not fructify as MSMS wanted a non-terminable agreement and cap on the number of teams. Further BCCI knew WSG and had been dealing with it for past one year in respect of IPL itself and was also having WSG's bank guarantees under the old contract. Thus BCCI was having necessary comfort with WSG and as MSMS was attacking in Court both BCCI and WSG-it was the court litigation that was upmost in mind in those initial days. It was in that period of 8 days of matter being under court scrutiny as well as parleys with various broadcasters by WSG that payment of 112.5 Crores was not insisted by BCCI. Needless to say WSG would have had to pay the amount as well the interest as per the agreement would have been claimed and received to the BCCI, if the rights eventually remained with it. There is nothing to suggest that WSGM could not have paid the bank guarantee.

106. That in respect of para 3.15 it is submitted that period of 72 hours to enter into sublicensing was kept for WSGM with a view to protect BCCI as IPL season 2 was round the corner and it was necessary for the BCCI that WSG finds a suitable broadcaster soon.
107. That contents of para 3.16 are denied and it is submitted that WSGM acting under its agreement was in negotiation with ESPN – Star, NDTV and MSMS and had brought all the three to BCCI. With ESPN – Star, Paul Manning had prepared agreements based on term sheet provided by WSG. The price that BCCI wanted from WSG would have had to be matched by any broadcaster. However, there would have been no MSMS deal even on matching the price unless it agreed to BCCI terms of terminable contract and right to increase the number of teams with BCCI. It was because of these two issues that the MSMS agreement was not signed by the BCCI even though MSMS and WSG had reached an understanding and MSMS had agreed to match the price of WSG which took place on 18-19 March, 2009.
108. That the contents of para 3.17 are denied and it is submitted that WSG is the largest stake holder in Asian Football. For the period 2000-2008 WSG

had won bid for World Cup right of Cricket. In this period it has also won the Worldwide right of Champion Trophy matches of cricket. WSG is owned by two big International business conglomerates namely Lagardier of France and Dentsu of Japan and is amongst world's leading media rights agencies. The media rights agencies have enough experience to deal with broadcasters and broadcasting rights.

109. That the contents of para 3.18 are denied. It is denied that WSGM had no credentials as a company engaged in any activity related to sports or broadcasting. WSGM is a group company of Lagardier France and sister concern of WSG Singapore and WSG India. As far as BCCI was concerned it was dealing with WSGI and WSGM was their sister company with common directors. It is denied that 72 hours was unrealistic or non cognizable. As the IPL Cricket Tournament was around the corner it was imperative that WSG Mauritius who were a marketing agency have a confirmed arrangement with a broadcaster. To safeguard the right of BCCI, a clause was introduced in the agreement that in the event of WSG Mauritius not sub licensing the agreement within 72 hours, the rights would revert to BCCI. The clause was specifically incorporated to ensure that BCCI had an exit option in the event WSG Mauritius, for any reason, was not able to obtain a back to back arrangement (sub licence) with a broadcaster. Further since time was of the essence a stringent time line was put to protect the interest of BCCI. It is denied that BCCI in any manner guaranteed and undertook upon itself an obligation to ensure that MSMS makes payment to WSG. Under its agreement with BCCI, WSGM had the right to sublicense the India Rights Agreement to any broadcaster. If it would have sublicensed the said rights, it was entitled to a sublicense fee. The agreement with MSMS, like it happened in 2008, was a sublicense turned into a direct license. Like in the year 2008, the commercial understanding between WSG & MSMS was their internal outlook. If the sublicensee would not have paid the fees, the licensee was entitled to terminate the agreement. Since there was no sublicense structure and MSMS wanted a direct agreement, both MSMS & WSG agreed that the clauses be inserted in the form they were inserted so that MSMS can have direct license agreement and that WSG can be protected with its sublicense

fee element. Since it was a sublicense turned into a direct license deal, the BCCI had no objection to the clause which had been mutually agreed between MSMS and BCCI. The BCCI was not required to pay any fee to WSG. It was however required to terminate MSMS just as WSG could have cancelled its sublicensee if it had not been paid. The option was with BCCI to continue MSMS by paying MSMS's default amount to WSG but obviously BCCI would have exercised this option after being paid for this amount or being secured for this amount by MSMS. Thus, the option to pay WSG was not an obligation of BCCI but only a choice available with BCCI and the same in no circumstances qualified as a guarantee.

110. That in respect of contents of para 3.19 it is submitted that our client had neither seen nor was aware of any of the terms or the exact nature of commercial understanding between MSM and WSG or the amount to be paid under the Deed for Facilitation Services. The same came in his knowledge much later- by the press release of MSM in April 2010 and during the course of BCCI disciplinary proceedings.
111. That in respect of contents of para 4 to 4.6 it is submitted that the same is not the true purport of statements of Mr Venu Parmeshwaran Nair and incorrect paraphrasing and picking and choosing of bits and pieces from his statements has been done. It is trite that a statement has to read as a whole. Further our Client submits that even the statements of Mr Venu Parmeshwaran Nair as recorded are not entirely the complete, full, true and correct description of the events and our client would therefore seek to cross examine him.
112. That in respect of contents of para 5 to 5.2, it is submitted that the statements of Mr N. Srinivasan as recorded before the ED are false in material particulars. The same is a result of conspiracy he hatched MSM executives as outlined below -
 - (1) The IPL tournament which is a T20 tournament is the single largest revenue earner for BCCI. The revenue comes from various IPL contracts entered by BCCI which include Media Rights contract, Theatrical Rights contract, Entertainment Rights contract, Sponsorships contracts etc. The IPL Media Rights Contract for

India is the single largest contract in terms of revenue for the IPL as well as the BCCI. At the time of IPL Season-3, the IPL Media Rights Contract in force for India was a contract dated 25th March, 2009 entered between BCCI and MSM.

- (2) Initially when IPL was formed there were eight city based teams owned by private franchisees. The format of IPL provided that there would be 59 matches played by these eight teams. The IPL Media Rights Contracts dated 25th March 2009 provided that on increase of two new teams the number of matches would increase per season to 94. The two new teams/franchisees were to be added from the year 2011 which would have corresponded to IPL Season-4. The IPL Media Rights Contract dated 25th March 2009 provided that there would be pro-rata increase in the media rights fee payable by MSM to BCCI with increase in number of matches. Thus BCCI fees from Media Rights contract was to significantly increase from year 2011 onwards. When the two new teams were auctioned by BCCI in 2010, the successful bidders Sahara Adventures Sports which had bid for Pune and Rendevouz Sports World which had bid for Kochi had based their calculations on the revenue to be generated by BCCI on 94 match schedule. The IPL Media Rights Contract with MSM of 25th March, 2009 provided for progressive increase in rights fee every year as set out below :-

Year 2010	Rupees 340 Crores (based on 59 match schedule)	
Year 2011	Rupees 375 Crores (based on 59 match schedule)	Rupees 597.50 Crores (based on 94 match schedule)
Year 2012	Rupees 375 Crores (based on 59 match schedule)	Rupees 597.50 Crores (based on 94 match schedule)
Year 2013	Rupees 571 Crores	Rupees 909.72 Crores

	(based on 59 match schedule)	(based on 94 match schedule)
Year 2014	Rupees 571 Crores (based on 59 match schedule)	Rupees 909.72 Crores (based on 94 match schedule)
Year 2015	Rupees 634.4 Crores (based on 59 match schedule)	Rupees 1010.74 Crores (based on 94 match schedule)
Year 2016	Rupees 748 Crores (based on 59 match schedule)	Rupees 1191.72 Crores (based on 94 match schedule)
Year 2017	Rupees 842.49 Crores (based on 59 match schedule)	Rupees 1342.28 Crores (based on 94 match schedule)

Value of IPL Media Rights for India based on 94 match schedule in period 2011-17 was thus Rs.6560 Crores. The above figures go on to show that with each passing year the value of IPL rights was increasing significantly.

- (3) At the time the IPL Media Rights Agreement dated 25th March, 2009 was executed with MSM, MSM had resisted the provision in the contract regarding increase in number of teams. The increase in number of teams would have resulted in MSM paying a significantly higher amount to BCCI. However, BCCI did not relent on this demand of MSM as the cash flow of IPL would have been significantly reduced with reduction in number of teams resulting in reduction in number of matches.
- (4) N. Srinivasan, along with his other accomplices in BCCI including Sundar Raman misled the members of the Governing Council of IPL by misrepresenting the facts in its meeting held on 25th June 2010. Before the said meeting N. Srinivasan had conspired with MSM officials in the month of May 2010 itself and reached a collusive understanding to reduce the number of matches, to give up 150

seconds FCT rights, to give up theatrical rights and to give up the IPL Entertainment Rights so as to benefit MSM, its officials and himself and cause loss to BCCI. These facts were suppressed by N. Srinivasan while briefing the members of the IPL Governing Council by stating that it would be favourable for the BCCI to cancel the earlier agreement with MSM dated 25th March, 2009. The Governing Council of IPL thus gave its approval for signing a fresh Agreement with MSM after cancelling its earlier agreement dated 25th March, 2009. Accordingly, the Shri N. Srinivasan signed the fresh Agreement with MSM on behalf of BCCI on 25th June, 2010.

- (5) N. Srinivasan in pursuance of the conspiracy rejigged the format of IPL so that even with ten teams the number of matches played were not 94 but were only 76 per season. The loss caused to BCCI on account of this rejigging and reducing the number of matches amounts to Rs. 1255.44 Crores as shown below:

YEAR	LOSS OF AMOUNT
2011 (18 matches played less)	Rs 114.40 Crores
2012 (18 matches played less)	Rs 114.40 Crores
2013 (18 matches played less)	Rs 174.20 Crores
2014 (18 matches played less)	Rs 174.20 Crores
2015 (18 matches played less)	Rs 193.54 Crores
2016 (18 matches played less)	Rs 228.20 Crores
2017 (18 matches played less)	Rs 256.90 Crores
LOSS IN THIS CATEGORY	Rs 1255.44 Crores

- (6) Under the IPL Media Rights Contract for India dated 25 March 2009, the BCCI was entitled for 150 second FCT per match to promote itself. FCT means free commercial time which is the time during match which can be commercially exploited by putting

advertisements. In IPL Season-3, BCCI decided after approval of IPL Governing Council to commercially exploit on experimental basis this promotional time of 150 second FCT by putting ad-inserts. For this purpose BCCI hired an agency namely Pioneer Digadsys on non-exclusive basis to put ad-inserts in the IPL feed, to sell FCT and generate income for BCCI. The sale of ad-inserts by Pioneer was experimental and virtually without any sufficient marketing time as the decision to exploit 150 second FCT per match was taken by BCCI just prior to start of IPL Season 3. Yet out of total inventory of 9000 seconds(150 seconds per match for 60 matches) BCCI was able to sell 5485 seconds of inventory and this generated to BCCI a billing of Rs.30,80,95,067/-. Thus from IPL Season-4 onwards with matches increasing from 60 to 94, the total inventory available per season for ad-inserts would have been 14100 seconds giving a minimum revenue ,even at IPL Season-3 rates, of Rs.79.20 Crores per year. The details of these calculations based on percentage increase of amounts in MSM agreement dated 25 March 2009 upto 2017 would be as under: -

Year 2011	Rupees 79.20 Crores
Year 2012	Rupees 79.20 Crores
Year 2013	Rupees 120.60 Crores
Year 2014	Rupees 120.60 Crores
Year 2015	Rupees 134 Crores
Year 2016	Rupees 158 Crores
Year 2017	Rupees 178 Crores
Total	Rupees 869.60 Crores

Even for the right of BCCI to exploit 150 seconds FCT initially lot of reluctance was shown by MSM but as the said 150 Seconds time belonged to IPL, MSM agreed to amendment of the agreement for

allowing BCCI to commercial exploit 150 seconds FCT by putting ad-inserts and BCCI did therefore, commercially exploit those rights in IPL Season-3.

- (7) BCCI had also entered into MOU Agreement with Viacom 18 (Colors TV) on 22nd January, 2010 for IPL Entertainment Rights for a period of 3 years (wherein IPL Players were to be permitted by BCCI to participate in various Colors channel programmes). The amount receivable under the said Agreement was Rs. 135 crores for 3 years till the year 2012. The total revenue generation from the above Entertainment Rights would have fetched a total revenue of Rs. 560 crores to the BCCI as per the details given below:-

YEAR	AMOUNT
2010- Colors	Rupees 35 Crores
2011 – Colors	Rupees 45 Crores
2012 – Colors	Rupees 55 Crores
2013 – Any other Channel Partner	Rupees 65 Crores
2014 – Any other Channel Partner	Rupees 75 Crores (Considering increment per year of Rs. 10 Crores as with Colors)
2015 – Any other Channel Partner	Rupees 85 Crores (Considering increment per year of Rs. 10 Crores as with Colors)
2016 – Any other Channel Partner	Rupees 95 Crores (Considering increment per year of Rs. 10 Crores as with Colors)
2017 – Any other Channel Partner	Rupees 105 Crores (Considering increment per year of Rs. 10 Crores as with Colors)

TOTAL VALUE OF THESE RIGHTS	RUPEES 560 CRORES
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This MOU with Viacom 18 was perceived by MSM to be diluting its brand association with IPL and was also to its dislike but as it was commercially beneficial to IPL the said MOU had been entered into by the BCCI.

- (8) BCCI had also entered in Theatrical Rights Agreement with Entertainment Sports Direct ("ESD") in January 2010 for showing IPL in movie Theatres and Clubs. The value of these rights was as under

YEAR	AMOUNT
2011	Rupees 11 Crores
2012	Rupees 12 Crores
2013	Rupees 14 Crores
2014	Rupees 15 Crores
2015	Rupees 20 Crores
2016	Rupees 25 Crores
2017	Rupees 30 Crores
2018	Rupees 30 Crores
2019	Rupees 40 Crores
Total	Rupees 197 Crores

Earlier to this agreement many such theaters and clubs were showing MSM Transmission of IPL matches.

- (9) Immediately after the end of IPL Season-3 Mr. N.Srinivasan, who at the relevant time was the Secretary of BCCI gained dominant control

of BCCI as well as of the IPL. N. Srinivasan, conspired with the other accomplices in BCCI and decided to terminate the original contract between BCCI and MSM of 25th March, 2010 and in furtherance of this conspiracy Shri N. Srinivasan misrepresented the facts before the IPC Governing Council Members in its meeting held on 25th June, 2010 by stating that the cancellation of old agreement of 25th March 2009 and replacing it by a fresh agreement would be more beneficial to BCCI. Further N. Srinivasan deliberately suppressed the fact of his collusive understanding with MSM officials to reduce the number of matches of IPL to give up 150 seconds FCT rights, to give up theatrical rights and to give up the IPL Entertainment Rights so as to benefit MSM, its officials and himself and cause loss to BCCI. By virtue of these misrepresentation the Governing Council authorized him to sign the fresh agreement on behalf of BCCI with MSM and accordingly N. Srinivasan signed the fresh Agreement with the MSM on 25th June, 2010.

- (10) On account of the conspiracy between N.Srinivasan and others in BCCI with officials of MSM, N. Srinivasan made BCCI give up the following valuable rights in favour of MSM and caused a wrongful loss to BCCI and wrongful gain to the MSM with ulterior motives. Details of these losses could be summarized as under:

- a. Loss caused due to reducing the number of matches -

Rs. 1255.44 crores

(Details of the same are given in para 7 above)

- b. Loss caused by giving up commercial exploitation FCT-

Rs. 869.60 crores

of 150 second per match

(Details of the same are given in para 8 above)

- c. Loss caused by giving up the IPL Entertainment Rights -

Rs. 560 crores

(Details of the same are given in para 9 above)

- d. Loss caused by giving up Theatrical Rights - Rs. 197 Crores

(Details of the same are given in para 10 above)

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Rs. 2882.04 Crores

- (13) N. Srinivasan entered into a conspiracy with the MSM and its key Executives, viz. Andrew Kaplin, Manjit Singh, N.P. Singh and Ashok Nambissan in the month May, 2010 with the intention of causing undue benefit to himself, MSM and its Executives and corresponding unlawful loss to BCCI by misrepresenting facts before the members of the Governing Council. By such misrepresentations he obtained the approval of the Governing Council and thereafter signed the fresh Agreement with MSM on 25th June, 2010 superseding the earlier Agreement of 25th March, 2009. The element of dishonest intention and suppression of facts and causing misrepresentation at various levels is also obvious from the fact that the original agreement between BCCI and MSM dated 25th March, 2009 was prepared by the BCCI -IMG corporate lawyer Mr. Paul Manning who was the authorized lawyer for preparation of various legal documents and agreements but before signing the new agreement with MSM he was neither consulted nor informed by N. Srinivasan. By virtue of this conspiracy he reduced the number of matches to be played in each season, gave up rights to exploit 150 seconds FCT per match, terminated the Entertainment Rights agreement with Colors, and also gave up the Theatrical Rights and thereby has caused wrongful loss to the tune of Rs. 2882 Crores to the BCCI and corresponding illegal gain to himself and MSM and its Executives. In this regard a complaint has also been filed before Mumbai Police and relevant documents in this regard are included in the Appendix.
- (14) Our client therefore seeks to cross examine Mr Srinivasan on the falsehood stated by him.

(15) In fact Mr. Srinivasan the then Secretary of BCCI, Mr Manohar the then President of BCCI as also members of the Governing Council of IPL were involved and in complete notice of BCCI -WSGM agreement dated 15.3.2009 and BCCI -MSM Agreement dated 25.3.2009 and BCCI -WSGI Agreement dated 25.3.2009. In fact the BCCI - WSGM agreement was relied upon in various Court proceedings and affidavits were filed in the matter. The BCCI -MSM Agreement dated 25.3.2009 was also relied upon in various Court proceedings and affidavits were filed in the matter inter alia by the Secretary BCCI N. Srinivasan in respect of contents thereof. While BCCI knew that WSG Mauritius had passed on its Indian sub-continent rights to MSM for consideration as a part of its usual business practice it was not aware of the consideration amount involved in interse WSG Mauritius – Sony arrangement. Neither BCCI nor our Client knew or were expected to be privy to the financial arrangement between WSG and MSMS which was purely their internal affair.

113. That in respect of contents of para 6 to 6.2 it is submitted that the same is not the true purport of statements of Mr Kunal Das Gupta and incorrect paraphrasing and picking and choosing of bits and pieces from his statements has been done. It is trite that a statement has to read as a whole. Further our Client submits that even the statements of Mr Kunal Das Gupta as recorded are not entirely the complete ,full , true and correct description of the events and our client would therefore seek to cross examine him.
114. That in respect of para 7 to 9.2 it is submitted that statements of Shri N.P Singh, Shri Nitin Nadkarani and Shri Man Jit Singh as recorded before the ED are false. The same is a result of conspiracy MSM executives hatched with N. Srinivasan as outlined above. Our client therefore seeks to cross examine these persons on the falsehood stated by them.
115. That in respect of contents of para 10 to 12 it is submitted that the same is not the true purport of statements of Mr Paul Maning, Mr Andrew Wildblood and Mr Seamus O Brien and incorrect paraphrasing and picking and

choosing of bits and pieces from their statements has been done. It is trite that a statement has to read as a whole. Further our Client submits that even the statements of Mr Paul Maning, Mr Andrew Wildblood and Mr Seamus O Brien as recorded are not entirely the complete ,full , true and correct description of the events and our client would therefore seek to cross examine them.

116. That the statements of Paul Manning, N.P. Singh and Kunal Das Gupta were also recorded in BCCI Disciplinary Proceedings. The said statements would show contradictions and inconsistencies with the statements made before ED which further indicates that the statements made before ED cannot be made basis to issue the show cause notice.
117. That in respect of contents of para 13, it is submitted that our client could not appear personally due to grave security threat and danger to his life , but he co-operated fully with ED . All the documents sought for in the summons were duly supplied and our client had offered to appear before ED through video link or answer any questionnaire that ED might like to send.
118. That the contents of para 14 are denied. The statements of Mr N. Srinivasan are false in material particulars .It is submitted that Mr Shashank Manohar, the President, Mr N. Srinivasan the Secretary , members of the Governing Council as well as members of Working Committee were all in complete know of negotiations and execution of BCCI -WSGM agreement dated 15.3.2009, BCCI- MSMS agreement dated 25.3.09 and BCCI- WSGI agreement dated 25.3.2009.However neither our client nor any in BCCI had known the terms of Deed for Facilitation Services executed between MSMS and WSGM on 25.3.2009 or the commercial understanding between them. Insofar as Paul Manning is concerned as lawyer seconded by IMG to BCCI he was of the opinion that the inclusion of clause 10.4 and 27.5 were only being put to replace the originally envisaged sublicensing structure where MSM would have been a sub licensee of WSG to a case where MSM would have been a direct licensee of BCCI. At no point did Paul Manning advise our client that such clauses were against BCCI's interest or otherwise harmful to it. Any insinuation to the contrary by Paul Manning or Andrew

Wildblood would be contrary to the facts. The circumstances in which MSM agreement dated 25.3.2009 was terminated and new agreement entered in June 2010 has been dealt with in preceding paras and the same was a part of conspiracy between MSM and N Srinivasan to cause loss to BCCI and aid Mr Srinivasan who held deep malice against our client to trump up allegations against our client. It is incorrect to state that amount of Rs 425 Crores was a part of consideration for media rights licensed to MSM by BCCI. It is submitted that WSG is a marketing agency and would in normal course for fees or sub license money have parted away or sublicensed broadcasting rights for India. If MSMS would have been sub licensee for WSGM (which sub licensing BCCI had already permitted WSGM to do), in that case MSMS's failure to pay sub license fee would have entitled WSGM to terminate MSMS. Therefore the insertion of condition in MSMS's direct contract with BCCI which WSG requested and MSMS agreed was in effect putting in place the same arrangement. Details of the amount of such fee were confidential information between WSG and MSMS and not known to our Client nor was our Client entitled to know it. Later in the MSMS media release on 25.04.2010 it became apparent that WSGM was to get Rs 425 Crores towards facilitation services. It needs to be taken in account that when in the first round i.e year 2008 the total contract value was around half of year 2009 than also MSMS was paying WSGM \$ 60 Million (\$25 Million for option fee to take broadcasting rights from 2 to 10 years and \$ 35 million of TAM payment from 2 years to 5 years). The IPL never achieved TAM of 5 in all its editions including IPL-6. A perusal of the facilitation deed indicates that the facilitation service for which fee was being paid included service rendered in the bid by WSG, entering into contract with BCCI through WSG in first contract and entering in the second contract with BCCI through WSG. It is denied that any terms of contracts between BCCI and WSGI or BCCI or MSMS were manipulated so that asset of Rs.425 Crores could be created under Deed of Facilitation Services. There is no creation of assets. There was no illegal act, no misrepresentation, no underhand dealing, no fraud committed by our client or BCCI. There is nothing to indicate that our client got any personal or pecuniary advantage in any dealing. Our client has never misled any body. It is denied that BCCI guaranteed payment of any amount to a person resident out of India. There was no guarantee. The

Deed for facilitation services as entered between MSMS and WSGM is an agreement between two foreign companies, executed outside India. there is nothing to indicate that the same is not in accordance with applicable laws or as per established international commercial transactions .Infact FEMA has no application to such transactions. No asset of Rs 425 crores was created outside India by the BCCI.Further the allegations regarding our client sending emails on 23.3.2009 fraudulently are incorrect. The copies of the emails have not been supplied to our Client and therefore he is not sure as to what exact emails are being relied upon. However the sequence of events are recounted as under-

- (i) On 18-19.03.2009 WSG had informed BCCI that they had arrived at understanding with MSMS and MSMS was agreeable to pay same amount to BCCI as paid by WSGM but like the agreement in the first year it wanted a direct license agreement with BCCI. Thereafter WSGM organized a meeting of MSMS representative with BCCI and other members of IPL team including Sundar Raman and Paul Manning. At that meeting MSMS representatives requested that since they were coming back with BCCI a settlement deed should be given in the court to show that compromise had been reached and as from 14.03.2009 their entire advertisement and marketing enterprise had come to a halt, our client should write a mail to various media companies and advertisement companies informing them that they can given their advertisement to MSMS. Believing in good faith that MSMS had agreed to BCCI terms and conditions our client sent mails on 18-19.03.2009 both to the legal teams asking them to file settlement/compromise in the MSMS matter and to media and ad agencies to provide advertisement to MSMS.
- (ii) On 18-19.03.2009 as between MSMS and WSG they had already arrived at understanding and the terms of such understanding and its commercial aspect was not in the knowledge of our client. On 19.03.2009 WSG and MSMS met IMG lawyer Paul Manning and told him that MSMS and WSG had agreed to insert a clause in the MSMS agreement that if MSMS fails to pay WSG then BCCI will terminate MSMS contract. It is submitted that WSG is a marketing agency and

would in normal course for fees or sub license money have parted away or sublicensed broadcasting rights for India. If MSMS would have been sub licensee for WSGM (which sub licensing BCCI had already permitted WSGM to do), in that case MSMS's failure to pay sub license fee would have entitled WSGM to terminate MSMS. Details of the amount of such fee were confidential information between WSG and MSMS.

- (iii) On 21.03.2009 believing that MSMS would agree to contract like it have previous occasion Paul Manning circulated an agreement for MSMS's signature. That agreement stated that if MSMS's agreement was to be terminated for any reason the rights would go to WSG. Our client wrote to Paul Manning to modify the agreement to provide that the right should come back to BCCI and not to WSGM. This itself shows that our client had only BCCI interest in mind. When the corrected draft was thereafter sent to MSMS, MSMS returned the draft with two very major changes which directly effected BCCI's interest (a) MSMS wanted that BCCI should come with a non-terminable contract, (b) MSMS wanted that number of teams and therefore number of matches should not increase as by such increase MSMS would have been liable to pay over Rs.3000 Crores to BCCI. It was in this background that on 22.03.2009 Working Committee meeting took place to decide whether IPL should be shifted out of country due to security threats/general elections.
- (iv) That the then President and Secretary of BCCI were fully aware of the developments going on with MSMS and WSG. In that meeting, it was pointed out that MSMS had agreed to an out of Court settlement and one of the points was that MSMS wanted the agreement to be non-terminable, which had been rejected by the respondent by the discussion of the President. Secondly, they also wanted a restriction on increasing the number of teams from 8 to 10, which also was not agreeable. Thus, it is clear that what was on stake in the negotiations was not inter-se issue between WSGM and MSMS but rather the inter-se issue between the BCCI and WSG. Since MSMS and BCCI

did not reach an understanding the out of Court settlement which was to be filed could not be filed.

- (v) Since our client had issued emails on 18th and 19th March, 2009 pointing out that IPL was back with MSMS, it became imperative to dispel the impression they had created as MSMS was not agreeing for IPL's right to terminate the contract or to increase the number of teams. Further on 23rd March, 2009, the Bombay High Court also gave its verdict in favour of BCCI by dismissing the interim application filed by MSMS. Our client was to leave for South Africa on 23rd March, 2009. Upper most in his mind was that the IPL rights could not be left loose ended and it was necessary and tie up the rights so that BCCI's interest could be secured. Our client felt that with MSMS wanting a non-terminable contract and ESPN wanting an indemnity from BCCI, if rights were left with WSG without an exit option BCCI's interest would be better secured. In these circumstances, Mr. Paul Manning prepared an agreement with WSGM removing exit clause so that BCCI's financial interest could be secured. Further since WSGM had got a Court verdict in its favour on the ground that BCCI had given the rights to WSGM, it could not be injuncted easily which was better than the circumstance, if the rights would have reverted back to the BCCI. Therefore our client felt that fresh agreement with the WSG should be signed and they should sub-license it to which ever broadcaster they wanted. It is our client's understanding that a fresh agreement on 23rd March, 2009 was signed by Mr. Venu Nair of WSG and our client felt that the same would come to him in South Africa for his signature. It was in these circumstances that our client had sent three emails out. Our client was of the view that the global rights were now with WSG and that intending broadcasters who would now be WSG sub-licenses and other advertising agencies should be informed of the same. Our client at the time of sending the email believed that since MSMS had not come on board, the rights would remain with WSG who could then sub-license them. Our client also intended to convey to MSMS that stand on BCCI's right to increase the number of teams as well as

the termination of the contract were not negotiable. However, when our client landed the South Africa, he received the call from MSMS's Director based in Los Angeles, who informed that MSMS had agreed to BCCI's demand of BCCI right to termination as well as increasing the number of teams to 10. As these were the only road block that prevented the new MSMS agreement, the same having been removed, it paved the way immediately for new MSMS contract.

- (vi) The Division Bench of Bombay High Court in its judgment dated 23.02.2011 has also held that there was no fraud in the entire transaction and has granted interim order in favour of WSG against BCCI. Further the Supreme Court has also in appeal against the said judgment passed order dated 21.4.11 on consent of BCCI and WSG to protect equities of both parties. The dispute between MSMS and WSGM was a commercial dispute and is now subject matter of international arbitration in terms of judgment dated 24.1.14 passed by the Supreme Court. Copies of judgment passed by Bombay High Court and orders passed by the Supreme Court are also annexed in the Appendix.
- (vii) It is denied that WSGM was brought in just to park the rights with them or any email was written to fork out money from MSM. Such allegations have not even been made by MSM. In fact the press release of MSM of April 2010 presents an entirely different picture and is therefore quoted below in entirety.

Press Statement from MSM Satellite (Singapore) Pte. Ltd. (MSM) on the IPL broadcast rights

Mumbai, Friday, April 23, 2010

This statement is with reference to media reports speculating on alleged irregularities in the IPL broadcast rights currently owned by MSM Satellite (Singapore) Pte. Ltd. (MSM).

We wish to state that all transactions relating to MSM's acquisition of the broadcast media rights in 2008 as well as 2009, have been undertaken with

full knowledge of all the parties; in an open and transparent manner and in keeping with applicable laws.

MSM strongly refutes all unsubstantiated allegations of any impropriety in this matter, as incorrect and inaccurate.

To clarify the situation and our position, we wish to highlight the following:

A quick summary

1. *On March 14, 2009, the BCCI unilaterally terminated the then existing broadcasting rights agreement dated 21 January 2008 with MSM.*
2. *MSM immediately initiated legal action against the BCCI in the Bombay High Court to stay the termination. However, BCCI had vested the Indian subcontinent broadcasting rights with WSG Mauritius, for a nine year period (2009-2017) under an agreement dated 15 March 2009.*
3. *Given that the contract had already been awarded to WSG Mauritius, the court did not grant MSM a stay leaving MSM the only recourse to sue BCCI for damages or try to secure the rights back through a commercial negotiation. MSM opted to enter into a commercial negotiation to try and re-secure the rights.*
4. *MSM's goals in the commercial negotiation were two-fold: i) to secure the rights that had been unilaterally terminated and for the entire 9 year period keeping BCCI unaffected by paying the same amount to BCCI as contracted by WSG Mauritius, and ii) It was MSM's clear position that to secure its business interests, the broadcasting rights agreement should be a direct contract with the BCCI, rather than as a sub-license under an agreement with WSG Mauritius, which had these rights, as per the agreement with BCCI dated March 15, 2009. To facilitate MSM's condition for a direct contract with BCCI, WSG Mauritius agreed to give up its broadcast rights for the Indian subcontinent in favour of MSM, thus paving the way for BCCI & MSM to enter into a contract directly. In consideration for this, MSM agreed to pay WSG Mauritius a facilitation fee.*

5. MSM wishes to re-emphasize here that the 'Facilitation Fee' of Rs.425 crores to WSG Mauritius is for :
 - a. the original option fee of \$25million (Rs.115 crores approximately) to extend the rights to years 6 till 10,
 - b. an additional fee over the 9 years of the contract of Rs.310 crores. These fees were to compensate WSG Mauritius for returning its rights for IPL season 2 – 10 to BCCI in favour of MSM and were necessary if MSM was to secure the rights to IPL season 2–10. However, the potential rating incentive at the end of year 5 of \$35 million (Rs.160 crores) under the agreement dated 21 January 2008 was eliminated, and
 - c. as a consequence of these commercial negotiations the net incremental amount attributable to WSG Mauritius giving up its IPL Indian subcontinent rights is Rs.150 crores.
6. MSM also wishes to state that the payments made to BCCI and WSG Mauritius have been in accordance with applicable laws and as per established international cross border banking norms and procedures.
 - i. MSM received tax advice from external tax experts that the transaction with WSG Mauritius did not attract India taxes and MSM has accordingly not withheld any Indian tax. MSM has accounted for the payments in its financial statements which have been audited and filed before statutory authorities.

MSM has acted at all times with impeccable integrity and highest ethical standards and Corporate Governance. MSM has complied with applicable laws. Allegations in certain sections of the media attributing wrongful conduct to MSM are incorrect and completely unfounded.

A detailed perspective

January 2008 – MSM acquires IPL broadcast rights for the first time

1. Pursuant to a public and competitive tender process in response to a global Invitation To Tender ('ITT') floated by the BCCI, WSG India acquired the broadcast rights for a period of 10 years (2008-2017) with MSM as the partner broadcaster. MSM's bid was for the Indian subcontinent broadcast rights for a period of 5 years (2008-2012) subsequent to which MSM entered into an agreement dated 21 January 2008 with BCCI for the same. WSG India acquired the world rights for 10 years (2008 – 2017) including the Indian subcontinent rights for years 6-10 (2013-2017) of the IPL tournament. MSM had an option to secure the Indian subcontinent rights for years 6 through 10 from WSG India on payment of an option fee of \$25 million with this fee being payable latest by year 3 of the contract or the option would lapse. In addition, there was a potential rating incentive of \$35million MSM would pay WSG India (who was obliged to pay this to BCCI) at the end of year 5 if the option was exercised.

March 2009 – Renegotiation of IPL Broadcasting Rights

1. On March 14, 2009, the BCCI unilaterally terminated the then existing broadcasting rights agreement dated 21 January 2008 with MSM.
2. MSM immediately initiated legal action against the BCCI in the Bombay High Court to stay the termination. However, BCCI had vested the Indian subcontinent broadcasting rights with WSG Mauritius, for a nine year period (2009-2017) under an agreement dated 15 March 2009.
3. Given that the contract had already been awarded to WSG Mauritius, the court did not grant MSM a stay leaving MSM the only recourse to sue BCCI for damages or try to secure the rights back through a commercial negotiation. MSM opted to enter into a commercial negotiation to try and re-secure the rights.
4. MSM's goals in the commercial negotiation were two-fold: i) to secure the rights that had been unilaterally terminated and for the entire 9 year period keeping BCCI unaffected by paying the same

amount to BCCI as contracted by WSG Mauritius, and ii) It was MSM's clear position that to secure its business interests, the broadcasting rights agreement should be a direct contract with the BCCI, rather than as a sub-license under an agreement with WSG Mauritius, which had these rights, as per the agreement with BCCI dated March 15, 2009.

5. Intense commercial negotiations ensued with other broadcasters also expressing interest making the situation extremely competitive. After protracted negotiations between MSM, WSG Mauritius and BCCI, MSM entered into a renegotiated agreement on the IPL broadcasting rights with the BCCI at the same consideration offered by WSG Mauritius and for the same duration (9 years), in lieu of WSG Mauritius relinquishing its rights, thereby achieving both its goals.
6. To facilitate MSM's condition for a direct contract with BCCI, WSG Mauritius agreed to give up its broadcast rights for the Indian subcontinent in favour of MSM, thus paving the way for BCCI & MSM to enter into a contract directly. In consideration for this, MSM agreed to pay WSG Mauritius a facilitation fee.
7. MSM wishes to re-emphasize here that the 'Facilitation Fee' of Rs.425 crores to WSG Mauritius is for :
 1. the original option fee of \$25million (Rs.115 crores approximately) to extend the rights to years 6 till 10,
 2. an additional fee over the 9 years of the contract of Rs.310 crores. These fees were to compensate WSG Mauritius for returning its rights for IPL season 2 – 10 to BCCI in favour of MSM and were necessary if MSM was to secure the rights to IPL season 2–10. However, the potential rating incentive at the end of year 5 of \$35 million (Rs.160 crores) under the agreement dated 21 January 2008 was eliminated, and
 3. as a consequence of these commercial negotiations the net incremental amount attributable to WSG Mauritius giving up its IPL Indian subcontinent rights is Rs.150 crores.

8. *Consequently, MSM entered into the fresh broadcasting rights agreement with BCCI, which also cross references the agreement between WSG Mauritius and MSM. Hence the two transactions were clearly in the knowledge of all the parties, including the BCCI.*
9. *Following this, MSM and BCCI withdrew the legal action initiated in the Bombay High Court after informing the court that an amicable settlement had been reached.*
10. *The manner in which MSM's rights were terminated, the ensuing litigation and the subsequent out of court settlement are all matters in the public domain. All the agreements entered into by MSM comply with applicable laws, are valid and subsisting.*

April 2010 – Current Situation & Contractual Transactions

11. *MSM has paid WSG Mauritius Rs. 125 crores till date, in keeping with the contractual terms and the balance of Rs. 300 crores is due and payable in eight installments spread over the next seven years of the contract.*
12. *MSM also wishes to state that the payments made to BCCI and WSG Mauritius have been in accordance with applicable laws and as per established international cross border banking norms and procedures.*
13. *MSM received tax advice from external tax experts that the transaction with WSG Mauritius did not attract India taxes and MSM has accordingly not withheld any Indian tax. MSM has accounted for the payments in its financial statements which have been audited by independent auditors and filed before statutory authorities.*
14. *During the survey conducted at the premises of MSM India on 21 April 2010, MSM has extended the fullest cooperation to the Indian Tax authorities and provided them with copies of all the agreements referred to above as well as details of all payments made to BCCI and WSG Mauritius. MSM is committed to extending all cooperation and assistance required by the authorities.*

MSM has acted at all times with impeccable integrity and highest ethical standards and Corporate Governance. MSM has complied with applicable laws. Allegations in certain sections of the media attributing wrongful conduct to MSM are incorrect and completely unfounded.

-- ENDS --

119. That in respect of para 15, our client is only concerned with averments made in para 15.2 Our client submits that the entire negotiations were done at the behest of BCCI. The then President, the then Secretary, The members of Governing Council and the Working Committee knew were fully involved and knew all the negotiations. The Governing Council vide by Minutes of Meeting dated 5.2.2009 to deal with MSMS ad find alternatives. The said minutes authorized our client to insert Time Out and find alternate ways, if MSMS did not agree for an increased amount. On the signature of the new agreement our client received congratulatory e-mails from office bearers of BCCI, members of Governing Council as well as various administrators on 25.03.2009 itself. The agreement was further ratified in the GC meeting dated 11th August, 2009. The agreement had been physically signed by our client on 7.4.2009 a copy of which had been sent to the Secretary, President and others shortly and there was nothing clandestine or underhand about the agreement. The BCCI WSGM agreement , BCCI MSMS agreement were even prior to year 2010 subject matter of various court proceedings and were relied on by BCCI. In respect of para 15.12, our client has not been supplied the various emails with agreements as set out therein.
120. That in respect to paragraph 16 to 20, it is submitted that there is neither violation of Section 3(d) of FEMA, 1999 nor of Section 3(j)(2) of FEMA 1999 or Regulation 3 of FEM (Guarantee) Regulation, 2000. It is submitted that Section 3 (d) of FEMA has following ingredients:
- (a) No person should enter into in financial transaction in India;
 - (b) as consideration for or in association with;
 - (c) acquisition or creation or transfer of a right to acquire;

(d) Any asset outside India by any person.

The explanation also provides the meaning of financial transaction which is quoted below:

"For the purpose of this clause, "financial transaction" means making any payment to, or for the credit of any person, or receiving any payment for, by order or on behalf of any person, or drawing, issuing or negotiating any bill of exchange or promissory note, or transferring any security or acknowledging any debt."

It is submitted that there is no financial transaction in India. Entire financial transaction if any, between MSMS or WSG would have taken place outside of India. It is submitted that the agreements dated 25.03.2009 between BCCI & MSMS and between MSMS & WSGM are independent and separate contracts and there is no linkage between two agreements or concurrence of the terms and conditions in the two agreements. BCCI on 23.05.2009 had no contractual relation with WSGM. BCCI has not entered into any financial transaction with WSGM in India. MSMS had entered into financial transaction in India to acquire an asset ("Media Rights") BCCI which assets were situated in India. Thus viewed from any angle there is no infraction of Sec 3 (d) of FEMA. The amount of Rs.425 Crores mentioned in the deed for facilitation service can not be termed as asset. The definition of asset as per Law Lexicon by P. Ramanatha Aiyer (2nd Edition) is as under:

'The word 'assets' is defined in the Century Dictionary as follows Property in general; all that one owns, considered as applicable to the payment of his debts. As a singular; Any portion of One's property or effects so considered. D.G. Gouse & Co. v. State of Kerala, AIR 1980 SC 271, 275. [Constitution of India Sch. 7 List 1 Entry 86]

The amount of Rs 425 Crore may qualify as a financial transaction but again cannot qualify as an asset. Thus a convoluted and contorted distortion of facts have been done by the complainant to somehow make a complaint for violation of Section 3(d).

It is submitted that neither as per Section 3(d) of FEMA, 1999 was there a financial transaction in India nor the same was a consideration to acquire

any asset outside India. In these circumstances, Section 3(d) of FEMA 1999 is ex-facie not made out.

The payment by MSMS to BCCI directly of amount in addition to the one being paid as per agreement dated 25.03.2009 was in terms of the separate agreement between MSMS & BCCI entered in June, 2010.

121. It is also submitted that no guarantee whatsoever has been given by the BCCI. The invocation of Section 6(3)(j) of FEMA r/w Regulation 3 of FEMA (Guarantee) Regulations is wholly un apposite.
122. The Show Cause Notice alleges that the BCCI has committed a contravention of Section 6(3) (j) of FEMA read with Regulation 3 of the Foreign Exchange Management (Guarantees) Regulation, 2000. BCCI has not guaranteed any amounts. The Complaint proceeds on the erroneous basis that BCCI had guaranteed the debts and obligations of MSMS. The Complainant has not appreciated that looking to terms of BCCI – MSMS agreement dated 25.03.2009 or BCCI – WSGI agreement dated 25.03.2009, it cannot be said that BCCI guaranteed the debt or obligation of another person. BCCI entered into the aforesaid agreement as a principal and on its own behalf and the obligations under the agreements were to be discharged as the principal contracting party. There was no guarantee extended by BCCI to either WSGM or WSGI. The term “guarantee” as defined in the Indian Contracts Act 1926, and the meaning of guarantee as understood in law envisage an obligation undertaken by one person to pay the debt of another which is not the case here.
123. The Complaint is also based on an erroneous construction of Section 6(3) (j) of FEMA, Regulation 3 of the Foreign Exchange Management (Guarantees) Regulation, 2000. The expression “guarantee or surety” in section 6(3) (j) of FEMA is followed by the crucial phrase “in respect of any debt, obligation or other liability incurred”. The section clearly applies only to a guarantee that is extended for a subsisting or “incurred” debt. The Section cannot apply to a debt that has not been incurred at all. Further, section 6(3) (j) relates to guarantees given which are capital account transactions, whereas the amounts due under the above Agreements were all current account transactions. Thus, the Complaint has no basis whatsoever in fact

or in law. It is submitted that the complaint has used the word "guarantee" in a loose and colloquial sense. Thus, it was not meant that BCCI guaranteed anything or gave a guarantee as understood in law.

124. It is submitted that even the Complaint does not allege that the office bearers or employees of BCCI have benefited in any way from these alleged contraventions or even that there has been any loss of foreign exchange to India as a result of these alleged contraventions. For all the above reasons, it is denied that there has been contravention of any of the provisions of FEMA.

125. Under the heading "Capital Account Transactions" section 6 of FEMA reads as under :-

"Without prejudice to the generality of the provisions of subsection 2, the Reserve Bank may, by regulations, prohibit, restrict or regulate the following—

a, b, c, d .. i,

j. giving of a guarantee or surety in respect of any debt, obligation or other liability incurred – (i) by a person resident in India and owed to a person resident outside India; or (ii) by a person resident outside India."

It is important to note that this provision is entitled "Capital Account Transactions". Secondly, subsection 3 only seeks to enlarge upon subsection 2 which empowers Reserve Bank to regulate Capital Account transactions. Therefore, it is clear that it is only the giving of guarantee in respect of a debt that is a capital account transaction would be governed by section 6(3) (j) of FEMA as well as the Regulations made thereunder. It will not have any application to the guarantees or similar transactions that are current account transactions which are governed by section 5 of FEMA.

126. Current Account Transactions are defined in Section 2(j) of FEMA as including "payments due in connection with foreign trade, other current business services and short term banking and credit facilities in the ordinary course of business".

127. Pursuant to the powers granted by section 6(2) of FEMA, Reserve Bank has issued Foreign Exchange Management (Guarantee) Regulation 2000. Regulation 3 of the said Regulation reads as under :-

"Save as otherwise provided in these regulations or with the general or special permission of Reserve Bank, no person resident in India shall give a guarantee or surety in respect of, or undertake a transaction, whatever name called, which has the effect of guaranteeing a debt, obligation or other liability owed by a person resident in India to, or incurred by, a person resident outside India".

128. While 2(3) (i) of the Regulations provide that words and expressions used in the Regulations shall have the same meanings as assigned to them in the Act, section 2 of FEMA does not define the term "guarantee". In accordance with established principles of interpretation, words and phrases of technical legislation should be assumed to be used in their technical meaning if they have acquired one. It cannot be disputed that the word "guarantee" has acquired a technical meaning. Both Parliament and Reserve Bank were aware of such technical meaning of the word "guarantee". Section 126 of the Indian Contract Act deals with contracts of guarantee and surety and reads as under :

'A "contract of guarantee" is a contract to perform the promise or discharge the liability of a third person in case of his default'.

It is well understood that the essence of guarantee is that a guarantor agrees to discharge his liability only in the event that the principal debtor defaults in his obligation. In other words, a guarantee presupposes the existence of a principal debtor and if in any contract there never was at any time another person who can properly be described as the principal debtor in respect of whose default the guarantor becomes liable, there cannot be said to be any guarantee.

129. It is submitted that all media right agreements that BCCI undertook were for services rendered by them to IPL and consequently were current account transactions since section 2(j) of FEMA includes within the meaning of current account transactions all payments due in connection with foreign

trade, other current business and services. Section 6 applies only to capital account transactions as is evident from the heading of the section as well as the specific words used in subsection (1). Further the FEM (Guarantees) Regulation 2000 are issued under section 6(2) by RBI which empowers RBI to specify what classes of capital account transactions are permissible. Therefore, section 6 can have no application to a current account transaction which is covered only by section 5 of FEMA. No doubt section 6(3) lists in clause (j) the "giving of a guarantee or surety". But this clause must be read as only referring to guarantees or sureties in respect of a debt, obligation or other liabilities incurred in respect of a capital account transaction. In fact, this is further reinforced by all the transactions referred to in clauses (a) to (i) of 6 (3) all of which deal only with capital account transactions such as issue of foreign security, borrowing, lending, deposits, immovable property, etc.

130. It is submitted that the obligations undertaken under the Agreements did not contravene section 6(3) of FEMA since BCCI did not guarantee the debt of another person. It is incomprehensible as to how the Complainant has come to the conclusions that BCCI has guaranteed the debt, obligation or liability of the MSMS. Section 126 of the Indian Contract Act, 1926 refers to a contract of guarantee as one in which a person agrees to discharge the liability of a third person. In order to give a guarantee, there must first be a principal liability of the principal debtor. In fact the Agreement does not use the word "guarantee" at all. Regulation 3 of FEM (Guarantees) Regulation 2000 only prohibits a person resident in India from giving "a guarantee or surety in respect of, or undertake a transaction, by whatever name called, which has the effect of guaranteeing a debt, obligation or other liability owed by a person resident in India to, or incurred by, a person resident outside India". This regulation presupposes that a debt has been assumed by a person which is guaranteed by another person which is not the case at hand.
131. A contract of guarantee has to necessarily be a tripartite agreement. There must first of all be a contract between the principal debtor and the creditor that lays the foundation for the transaction. There must be a contract by which the principal debtor expressly requests the surety to act as surety and

agrees to satisfy the claims of surety. Without such a privity between the principal debtor and the surety, there can be no contract of guarantee at all.

132. It is submitted that section 6(3)(j) of FEMA refers to "a guarantee or surety in respect of any debt, obligation or other liability incurred – (i) by a person resident in India and owed to a person resident outside India' ". On a plain reading, this section applies only to guarantees in respect of debts that have been "incurred". In other words, the debt must have been incurred, when the guarantee is given. This is again not the case at hand. Even assuming without admitting, that obligations undertaken by BCCI were guarantees, they were not in respect of debts "incurred".
133. It is submitted that no case for invoking provision for FEMA is made out. No liability attaches to our client. Neither BCCI nor our client has contravened Section 3(d) of FEMA 1999 nor Section 6(3)(j) r/w Regulation 3 of FEMA (Guarantees) Regulation 2000 and our client is also not liable under Section 42 of FEMA 1999.
134. The proceedings for adjudication under FEMA are penal in nature and it is a rule of construction in respect of penal provisions that no cases shall be held to fall within it which do not fall within the reasonable meaning of its term and within the spirit and scope of the enactment. No violence must be done to its language to bring people within it but rather care must be taken that no one is brought within it who is not within its express language. Where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning, the benefit of the doubt must be given to the citizen. It is submitted that on a reasonable construction of the contracts, no guarantees as understood in law have been extended on behalf of the Franchisees. If the meaning of the term guarantee or surety in FEMA and the Regulations were to be ambiguous, the benefit of the doubt must be given to BCCI. For all these reasons, it is submitted that there is no contravention of Section 3(d) of FEMA or Section 6(3) (j) of FEMA read with Regulation 3 of the (Guarantees) Regulations, 2000, or Section 42 FEMA as alleged.
135. Section 42 does not apply to a BCCI since it is a society of associations and not a company, firm, body corporate or association of individuals:

No adjudication proceedings can be held against our client and the reference to section 42 is wholly misplaced. Section 42 provides that:

"Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order, made thereunder is a company, every person who at the time the contravention was committed, was in charge of and was responsible to the company for the conduct of the business of the company shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing in this sub-section shall render any/such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised due diligence to prevent such contravention."

The Explanation to section 42 provides that:

"For the purposes of this section

- (i) "Company" means anybody corporate and includes a firm or other association of individuals and*
- (ii) "Director" in relation to a firm means a partner in the firm."*

The above section 42(1) read with the Explanation does not apply to BCCI for several reasons.

First, BCCI is a society registered under the Tamil Nadu Societies Registration Act 1975. As such it is not a Company or a Firm. It is not an association of individuals as its members are not individuals but other associations. It is not a body corporate as it has no corporate existence apart from its members. A body corporate has an entity apart from its constituent members and can hold property in its own name. However, the property of a registered society is vested in its Committee; section 18 of the Tamil Nadu Societies Registration Act 1975 states that "All property movable and immovable, belonging to a registered society, whether required before or after its registration, if not vested in trustees, shall vest in the committee and any such property may in legal proceedings be referred

to as the property of the committee." Therefore Section 42 has no application to a society.

Secondly, as section 42 refers to a person in charge of the business of the company it can apply only to entities carrying on business. It cannot be applied to a not-for-profit body whose activity is to promote a sport and whose charter prohibits it from using the funds for any purpose other than promotion of the objects.

136. BCCI is a Society and all its office bearers are in honorary position only. The Hon'ble Supreme Court of India in *Giridhar Lal Gupta v D. N. Mehta* AIR 1971 SC 28 has held that a person in charge must mean the overall control of the day to day business of the company or firm. Our client does not fulfil this criterion. The Supreme Court has also observed that section 23C (1) of Foreign Exchange Regulation Act 1973 (parimateria with section 42 of the Act) is a highly penal section since it makes a person vicariously liable for an offence committed by the person and therefore it must be construed strictly. In any case, there is no reason to proceed against the Society and the the office bearers for the same alleged contravention. Following the Calcutta High Court decision in *Sarah North Sen v Union of India* AIR 1975 Cal 337, the FERA Board has held that a separate penalty on the partners of the firm u/s 42 in addition to penalty on the firm is not justified. (*Seek B S H Export House v Director of Enforcement* (1988) 41 Taxmann 138, *B L Sajdeh v DOE* 92 Taxmann 290, *Diamant Carbon Products v DOE* 1998 96 Taxmann 571 and *Sudharshan Exporters v Directorate of Enforcement* 81 SCL 101).
137. As has been pointed out BCCI is a not-for-profit society and its office bearers are not paid employees nor do they get any profits or dividends. They oversee a professional organisation to promote the sport of cricket. The office bearers take professional expert advice. The office bearers of the BCCI are Honorary President, Honorary Secretary and Honorary Treasurer. Our client was Chairman of IPL, which was a sub-committee of BCCI. IPL had no separate existence or identity. Our client was not an Office bearer. Only an office bearer can be treated to "person in charge" of the society. For these reasons, we request you to drop the proceedings against our client.

WADIA GHANDY & CO.

138. Request for personal hearing

We request you to treat this as an interim reply and request you to grant us a personal hearing.

Yours truly,
For **Wadia Ghandy & Co.**

A handwritten signature in black ink, appearing to be 'Ravi', written over a horizontal line.

Partner

Encl. : Appendix with Annexures.

APPENDIX

Annexure No.	Documents
1.	Reply to Show Cause Notice to BCCI
2.	Statement of Peter Griffith
3.	Statement of John Loffhagen
4.	Statement of Paul Manning
5.	Statement of Sundar Raman
6.	Statement of Sundar Raman
7.	Statement of N.P. Singh
8.	Documents pertaining to Sony WSG issue
9.	Documents pertaining to Sony WSG issue
10.	Statement of Kunal Das Gupta, complaint before Mumbai Police with documents, judgments of Supreme Court and High Court in the matter