



ILS Law College Pune

REMEMBERING PROFESSOR S.P. SATHE-
17th International Moot Court Competition, 2023

Pastiche Parable Inc.

...Claimant

v.

Republic of Oceania

...Respondent

MOOT PROPOSITION



STATEMENT OF UNCONTESTED FACTS

1. On 9 February 1994, the Republic of Oceania (**Oceania**) and the United States of Cahokia (**Cahokia**) entered an Agreement for the Promotion and Protection of Investments (the “**BIT**”). During Oceania’s transition to economic liberalization, the BIT was one of its first steps towards opening its economy to investors across the world. A copy of the BIT has been annexed at **Annexure I**.
2. With strong agrarian roots, aggressive industrial growth, and sophisticated financial markets, Oceania is an economic behemoth in the making. Couched within this economy is its film industry, contributing no less than USD 2.5 billion through the box office. Revered by some, loathed by others, but acknowledged by all, Oceanian cinema is the largest in the world by output. Escapist drama, incisive social commentary, satirical genius, cringe comedy, and chest-thumping propaganda - Oceania is home to an eclectic array of cinematic imagination.
3. In 2001, the film industry was formally recognised as an ‘industry’ in Oceania. The next year, to further the liberalization of its markets, the Oceanian government approved 100% foreign direct investment (**FDI**) in film financing, production, distribution, exhibition, marketing and associated activities. This move was hailed by filmmakers and producers across the globe, but none more than that in Cahokia - whose film industry was the world’s largest by revenue. Among these filmmakers were the celebrated cerebrals L. Bender and Quelling T.
4. A band apart, Bender was an independent producer and Quelling a freelancing director before they formed the ‘The Pastiche Parable’ in 1992. Much of the duo’s early work was influenced by the brutal realism showcased in the works of Oceanian auteurs Satyashodh Ghatak and Sadat Hasan. Gradually, Bender and Quelling forged their own ethos, brewing the fresh genres of alternative realism and revisionist history for a new age of moviegoers. Their experiments with truth, fantasy, and everything in between were critically acclaimed and commercially successful. In 1994, the venture was formally incorporated into Pastiche Parable Inc., a film production company registered in Heyoka, Cahokia (**the Claimant**).



5. *Chadwell Punting*, now a cult classic, was produced and distributed by the Claimant in 1998. Apart from receiving positive reviews from critics, the film went on to gross over USD 225 million during its theatrical run against a USD 10 million-dollar budget.
6. In 2014, the Claimant produced and successfully released *Operation Kino* in theatres across the world. Despite its radical retelling of the arrival of pilgrims in Cahokia, the film grossed over USD 900 million and also picked up rave reviews from critics in the process. Of course, not all was bliss for the Pastiche Parable. Other professional reviewers and members of the audience criticised the duo for demonstrating needless violence and taking their artistic liberty too far - bordering on the lines of manipulating people's perception of objective history.
7. *Operation Kino* also raked up an impressive USD 25 million at the Oceanian box office. Bender and Quelling had been curiously watching the Oceanian film market for close to a decade, but now it had their attention. As the Oceanian demographic was turning younger and financially more secure, moviegoers had been responding positively to overseas films in large numbers. The time was ripe, they reckoned, for the Claimant to bring its cinema to Oceania.
8. After intense deliberations, it was resolved that the Claimant will set up a special purpose vehicle (**SPV**) along with IDGA Films, a producer with deep roots in the Oceanian film industry. The SPV, with its registered office in Karwad, will make films in Oceania. The Claimant would gain access to an established network of distribution and marketing channels in Oceania. In turn, the Claimant would put up to USD 15 million and, if required, arrange for the remaining financing. The Oceanian producer would also receive production credit and a 5% of the film's net profit from the Oceanian box office.
9. A joint venture agreement was inked on 4 June 2017 to memorialise the parties' aforesaid understanding (**JV Agreement**). On 17 July 2017, IDGA Films set up a private company under the name of Pastiche IDGA Private Limited (**PIPL**) under Oceanian law. On the same day, the parties executed a share purchase agreement under which the Claimant acquired 81% shareholding in PIPL for USD 15 million. Pursuant to the JV Agreement, this amount was invested back into PIPL for film production expenses.

10. By late 2018, the Claimant and IDGA Films had assembled the PIPL team and kickstarted the pre-production of their untitled project. Zoa Ikhtiyar, a national award winner and commercial wizard based in Oceania, was hired as the writer-director for the project. After months of research and brainstorming with the producers, Ikhtiyar completed the script for *Operation RBG* - the Claimant's much-awaited foray into Oceanian cinema.
11. In a nutshell, the Film presents an alternative result of Oceania's freedom struggle against the Kingdom of Draconia. An extract from Zoa's concept note is reproduced at **Annexure II**.
12. A period piece, supported by some of Oceania's best talent and advanced visual effects, the film was slated to be among the most expensive projects made in Oceania. The film's budget was pegged at around USD 25 million. The film would also take an estimated 24 months for the final release.
13. To bridge the budget gap, the Claimant approached the Raichand Group for financing through debt. The Raichand Group agreed to provide the Claimant with a credit line of USD 10 million, extendable by another USD 5 million (**Raichand Facility**). The Raichand Facility is to be repaid over a 4-year period with interest at 9% per annum. By way of security, the Claimant pledged its entire shareholding in PIPL to the Raichand Group. It was also agreed that in case of any default in repayment, the Raichand Group could invoke its pledge without any further notice.
14. Thereafter, film production went ahead at full steam. The Film was finally completed by 5 October 2019. On 4 December 2019, PIPL applied to the Board of Cinema Certification (**BCC**) for unrestricted viewing, i.e., a U-rated, certification. The BCC required PIPL to make 19 cuts or suitable edits to scenes that it considered violent. However, since the Claimant and Ikhtiyar were not willing to incorporate any cuts, the BCC was willing to certify the movie with an Adults-only, ie A-rated, certification. PIPL settled for the A-rated certification and commenced preparations for marketing the Film.
15. Elsewhere, during a rally at the Rhodes Gardens in Karward, the Leader of the Opposition made the following remarks:

“...Free speech in Oceania, as in most other democratic countries, is subject to reasonable restrictions in the interests of the sovereignty and integrity of Oceania, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement of any offence. Oceanian administrative mechanisms and tribunals - including the Board of Cinema Certification - are overburdened with work. On umpteenth occasions, the BCC and Ministry of Film and Television have received complaints alleging violation of film certification guidelines after a film has been certified. It is imperative, therefore, that [FATCA 1932] be amended to vest suitable revisionary powers on the Government of Oceania.”

16. The Opposition Leader’s remarks left a sour taste for filmmakers and actors across Oceania - not least because a majority of the Oceanian public was highly disgruntled with the incumbent government. More than a thousand members of their ilk, including Ikhtiyar, addressed an open letter condemning the leader’s remarks. Extracts of the letter are provided below:

“[t]he proposal made by the Honourable Leader of Opposition would effectively allow the [Government] complete oversight over film exhibition...potentially jeopardising free expression and also...render filmmakers vulnerable to threats, vandalism, and intimidation from members of the public. It is equally incumbent on corporations like the Rhodes Group and Soros Enterprises, who have been admittedly financing the opposition party’s campaign for the upcoming general elections, to dissuade its donees from impinging on free speech in their homeland”

17. The Film was set to release on 4 July 2020. However, for reasons not revealed to the public, one of the Film’s key supporting actors disassociated himself altogether from the film and refused to participate in any promotional activities. He also threatened to build bad press for the movie. Ultimately, the actor was let go under the condition that he would not cause any detriment to PIPL, the Film, or anything related to the Film. For PIPL, this meant having to re-shoot all 29 scenes involving this actor. It also meant delays and mounting expenses. Since the initial sum of USD 10 million had been exhausted, the Claimant availed the additional line of credit amounting to USD 5 million.

18. Meanwhile, Oceanian politics were undergoing a tectonic shift. A sense of anti-incumbency was deep-rooted among the Oceanian people. Change was inevitable. Finally,

on 5 August 2021, Oceania's general elections resulted in a historic landslide win for the opposition party. The opposition party promised growth, development, and a strict stance against corruption. Over the next three years, the new government delivered unprecedented results for Oceania's economic growth - both at the grassroots and at an industrial level. The government also led several initiatives to boost the integration of advanced technology in governance.

19. Meanwhile, the Film was finally completed on 10 February 2022. Marketing activities proceeded with full steam. The Film's trailer was released on 1 September 2022, picking up more than 90 million views over its very first day on GlueTube. Coupled with Operation Kino's performance just two years ago, social media trends projected a largely positive response for the Film's theatrical run in Oceania. Market analysts estimated the Film to take up between USD 45-50 million at the Oceanian box office.
20. Separately, because of defaults attributable to the Raichand Group, the Raichand Facility was acquired by the Rhodes Group on 9 September 2022. The Rhodes Group is among Oceania's leading business houses. In a relatively short period, its proprietor rose to be one of the richest persons in the world by net worth. Rhodes's journey and achievement instilled a sense of great pride and aspiration in millions in Oceania.
21. The Film's trailer caught the eye and ire of Phil S. Stein - a prominent lawyer in Karward, Oceania. An autodidact, Stein has also authored several books exploring Oceania's history, cultural heritage, and post-colonial studies. Based on the trailer, Stein felt that the Film portrayed the Goymarders of Oceania in a bad light. He demanded a private screening from PIPL. Having watched the Film privately on 30 September 2022, Stein took great umbrage to the misrepresentation and historically inaccurate portrayal of the Goymarder Sect in Oceania.
22. On 15 October 2022, Stein addressed a detailed representation to Oceania's Film and Television Ministry (**FTM**) calling upon the FTM to immediately suspend the Film's certification (**Stein's Representation**). Stein's Representation was widely reported in the news and social media. In his interview with the Karward Times, Stein wrote a scathing piece pressing for a complete ban against the Film. Many among the public agreed with Stein's criticism. Others claimed on social media that the Film is a rude insult to the efforts

taken by Oceania's freedom fighters, many of whom lost nothing less than their lives in the process. Since then, the Film's release appeared to be almost as detested as it was anticipated.

23. Meanwhile, the Claimant was wrapping up preparations for the Film's revised release on 27 October 2022 (**Release Date**). Anticipating a massive opening weekend, the Claimant concluded talks with Lateflix Oceania Private Limited (**LOPL**) for the latter's acquisition of rights to stream the Film exclusively on Lateflix - Oceania's leading OTT platform. Pursuant to an agreement inked on 28 March 2022, LOPL acquired the aforesaid streaming rights for a total value of USD 25 million in cash.

24. On 24 October 2022, the FTM issued a notification setting out particulars of Stein's Representation and, in light of the complaint made, the FTM exercised its powers under Section 6(2)(c) of FATCA 1932 to suspend the Film's certification for a period of two months or until further orders, whichever is earlier (**FTM Notification**). PIPL was called upon to show cause as to why the Film's certification should not be remanded to the BCC for reassessment for the reasons set out in Stein's Representation. The Notification also provided that PIPL and Stein will both be heard on 31 October 2022 before any further directions are issued.

25. The next day, PIPL filed a writ petition before the Karward High Court asking among other things for the FTM Notification to be quashed as being arbitrary and contrary to the Oceanian Constitution (**PIPL Writ**). PIPL also sought a stay on the FTM Notification during the pendency of the PIPL Writ. A day later, Phil S. Stein filed an intervention application seeking to be joined as a party to the PIPL Writ. He also sought a restraint of the Film's release on any platform in the meantime.

26. After hearing all parties on an urgent basis on 25 October 2022, the High Court passed an order rejecting the interim and ad-interim reliefs sought by both PIPL and Stein (**High Court Order**). A copy of the High Court's Order is annexed at **Annexure III**.

27. On 26 October 2022, PIPL filed a Special Leave Petition before the Supreme Court of Oceania to appeal against the High Court Order. However, the Supreme Court refused to interfere with the High Court Order and dismissed the SLP without commenting on the

merits underlying the PIPL Writ or the Intervention Application. The next day, a massive rally was arranged at the Rhodes Group Gardens in Karward to celebrate Stein's victory.

28. While the FTM heard PIPL and Stein on 31 October 2022, the FTM is yet to issue its final decision. Without such a decision, the Film's distributors do not agree to exhibit the Film.
29. Meanwhile, PIPL remained under an obligation to pay its quarterly instalment towards the Raichand Facility on 1 November 2022. Though PIPL had defaulted, the Claimant remained confident that the Raichand Facility could be restructured - particularly given that fees from the Lateflix Transaction will guarantee an instant resuscitation of PIPL's finances. However, on 2 November 2022, the Claimant and PIPL received a default notice from the Rhodes Group. Through the notice, the Rhodes Group invoked the pledge over the Claimant's shares in PIPL.
30. Disgruntled with what it saw as an obliteration of its investment, the Claimant invoked the investor-state arbitration mechanism against the Respondent under Article 11 of the Cahokia-Oceania BIT. The Pastiche Parable is an investor within the meaning of Article 1 of the BIT. The Parties' attempts to settle have failed.
31. On 3 January 2023, the Claimant issued its notice of arbitration on Article 3.1 of the Investment Arbitration Rules of the Singapore International Arbitration Centre 2017 (**SIAC Investment Rules**). The Notice of Arbitration was delivered to Oceania through its Foreign Affairs Ministry on 5 January 2023.
32. Incidentally, on 16 January 2023, Oceania and Cahokia issued a joint statement with a view to limiting the interpretation of Article 3 of the BIT. The joint interpretative statement is annexed at **Annexure IV**.
33. By 25 January 2023, a three-member arbitral tribunal was constituted in accordance with Article 5.2 of the SIAC Investment Rules.
34. Around the time, winds of the arbitration reached the Oceanian press. An extract from the Karward Times is set out below:

“...based on a peek under the iron arbitral curtain, it appears that Pastiche Parable’s skirmish with the Ocenanian Government has escalated into an investment arbitration. These proceedings, for the uninitiated, arise out of Oceania’s obligations under the 1994 bilateral investment treaty entered with the United States of Cabokia. Based on sources who wish to remain anonymous, the Cabokian filmmaker claims that Oceania’s suspension of the film certification granted to Operation RBG fell afoul of the country’s promise to accord fair and equitable treatment to investors from Cabokia. The pained producer also claims that its investment in Oceania has been expropriated unlawfully. At the time of going to press, a three-member tribunal had also been constituted.”

35. On 15 February 2023, Phil S. Stein addressed a letter to the SIAC Registrar asking for the Tribunal’s leave under Article 29.2 of the SIAC Investment Rules to make detailed written submissions setting out why Oceania’s actions were neither violative of its treaty obligations nor otherwise under international law (**Stein’s Letter**). He sought to submit that on the contrary, exhibiting the Film would be violative of Oceania’s international obligations. Stein’s letter was also marked and delivered to both Parties. The Claimant then filed an application asking the Tribunal to reject Stein’s Letter (Claimant’s Application). The Respondent has filed a statement opposing the Claimant’s Application.
36. The Tribunal is set to hear the Parties on 25 March 2023 on their respective contentions on the Respondent’s liability, if any, along with the fate of Stein’s Letter.

Note: *The Constitution, laws, and international obligations of Oceania are in pari materia with those of the Republic of India, with Film and Television Certification Act being identical to the Cinematograph Films Act, 1952.*

ANNEXURE I: THE BILATERAL INVESTMENT TREATY

AGREEMENT BETWEEN THE REPUBLIC OF OCEANIA AND THE UNITED STATES OF CAHOKIA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The **Republic of Oceania** and the **United States of Cahokia** (hereinafter referred to as the “**Contracting Parties**”),

Desiring to promote greater economic cooperation between them with respect to investment by nationals and enterprises of one Contracting Party in the territory of the other Contracting Party;

Recognising that the development of such potential will be to the mutual advantage of each Party, in particular in respect of the growth and competitiveness of their film industries and the enhancement of their film cultures;

Recognizing that agreement on the treatment to be accorded to such investment will stimulate the flow of private capital and the economic development of the Contracting Parties;

Recognizing the importance of providing effective means of asserting claims and enforcing rights with respect to investment under national law as well as through international arbitration;

Have agreed as follows:

Article 1
Definitions

For the purposes of this Agreement:

1. the term “**investment**” means any kind of asset held or invested either directly, or indirectly through an investor of a third state, by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the latter’s laws and, in particular, though not exclusively, includes:
 - a. movable and immovable property and any related property rights, such as mortgages, liens or pledges;



- b. shares, stock, bonds and debentures or any other form of participation in a company, business enterprise or joint venture;
- c. claims to money, and claims to performance under contract having a financial value;
- d. intellectual property rights, including rights with respect to copyrights, patents, trademarks as well as trade names, industrial designs, goodwill, trade secrets and knowhow; or
- e. rights, conferred by law or under contract, to undertake any economic and commercial activity, including any rights to search for, cultivate, extract or exploit natural resources.

Any change in the form of an investment does not affect its character as an investment.

2. the term **“investor”** means:
 - a. any natural person having the nationality of either Contracting Party in accordance with its laws.
 - b. any corporation, partnership, trust, joint venture, organization, association or enterprise incorporated or duly constituted in accordance with the applicable laws of that Contracting Party.
3. The term **“returns”** means all amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties, fees, returns in kind or other current income.
4. The term **“territory”** shall mean:
 - a. in respect of the Republic of Oceania, the territory of the Republic of Oceania over which it exercises sovereignty, sovereign rights and jurisdiction in accordance with international law.
 - b. in respect of the United States of Cahokia, the territory of the United States of Cahokia over which it exercises sovereignty, sovereign rights and jurisdiction in accordance with international law.

Article 2

Denial of Benefits

Each Contracting Party reserves the right to deny the advantages of this Agreement to:

1. a legal entity, if citizens or nationals of a third state own or control such entity and if that entity has no substantial business activities in the territory of the Contracting Party in which it is organized; or



2. an investment, if the denying Contracting Party establishes that such investment is an investment of an investor of a third state with or as to which the denying Contracting Party:
 - a. does not maintain a diplomatic relationship; or
 - b. adopts or maintains measures that:
 - i) prohibit transactions with Investors of that state; or
 - ii) would be violated or circumvented if the benefits of this Part were accorded to Investors of that state or to their Investments.

Article 3

Promotion and Protection of Investment and Returns

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory, and, subject to its right to exercise powers conferred by its laws and investment policies, shall admit such investments.
2. Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall, without prejudice to its laws, in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.
3. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.
4. This Agreement shall not prevent an investor of one Contracting Party from taking advantage of the provisions of any law or policy of the other Contracting Party which are more favourable than the provisions of this Agreement.

Article 4

Most-Favoured-Nation Treatment

1. Neither Contracting Party shall in its territory subject investments or returns of investors of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of investors of any other State.
2. Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, including in connection with intellectual property rights, and the raising of funds, the purchase and sale of foreign exchange, and transfers under Article 11 of this

Agreement, to treatment less favourable than that which it accords to investors of any other State.

3. Subject to its laws applicable from time to time, each Contracting Party shall permit investors of the other Contracting Party who have made investments in the first Contracting Party's area to employ within its area, key technical and managerial personnel of their choice, and permit physical persons who are investors of the other Contracting Party and personnel employed by companies of that other Contracting Party to enter and remain in its area for the purpose of engaging in activities related to investments. Such personnel employed from abroad shall be entitled to transfer abroad, subject to the provisions of Article 10 of this Agreement, unspent earnings and other remuneration in connection with investments.

Article 5

National Treatment

1. Each Contracting Party shall accord to investors of the other Contracting Party treatment no less favourable than that it accords, in like circumstances, to investors of a non-Contracting Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.
2. Each Contracting Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments of investors of a non-Contracting Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.
3. For greater certainty, the "treatment" referred to in paragraphs 1 and 2 of this Article does not encompass the dispute resolution mechanisms, such as those in Part C, in other international investment treaties and other trade agreements.

Article 6

Compensation for Losses

1. Investors of one Contracting Party whose investments in the area of the other Contracting Party suffer losses owing to war or other armed conflicts, revolution, a state of national emergency, revolt, insurrection, riot or other similar events in the area of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to investors of any other State. Resulting payments shall be made in a freely convertible currency.

2. Without prejudice to paragraph (1) of this Article, investors of one Contracting Party who in any of the situations referred to in that paragraph suffer losses in the area of the other Contracting Party resulting from:
 - a. requisitioning of their property by its forces or authorities, or
 - b. destruction of their property by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation, shall be accorded restitution or reasonable compensation. Resulting payments shall be made in a freely convertible currency.

Article 7

Expropriation and Compensation

1. The investments to which this Agreement relates shall not be subject to any measure which might limit permanently or temporarily their joined rights of ownership, possession, control or enjoyment, save where specifically provided by law and by judgments or orders issued by Courts or Tribunals having jurisdiction.
2. Investments of investors of one Contracting Party shall not be directly or indirectly nationalized, expropriated, requisitioned or subjected to any measures having similar effects in the territory of the other Contracting Party, except for public purposes, or national interest, against immediate full and effective compensation, and on condition that these measures are taken on a non-discriminatory basis and in conformity with all legal provisions and procedures.
3. The just compensation shall be equivalent to the real market value of the investment immediately prior to the moment in which the decision to nationalize or expropriate is announced or made public, and shall be calculated according to internationally acknowledged evaluation standards. Whenever there are difficulties in ascertaining the market value the compensation shall be calculated on the basis of a fair appraisal of the establishment's constitutive and distinctive elements as well as of the firm's activities, components and results. Compensation shall include interest calculated on a six-month LIBOR basis accruing from the date of nationalization or expropriation to the date of payment. In the event of failure to reach an agreement between the investor and the Contracting Party having liability, the amount of the compensation shall be calculated following the settlement of dispute procedure provided by Article 10 of this Agreement. Once the compensation has been determined it shall be paid promptly and authorization for its repatriation in the convertible currency issued.

4. Non-discriminatory measures of a Contracting Party that are designated and applied to protect legitimate public welfare objectives, such as public health, safety and the environment, do not constitute an indirect expropriation under this Article.

Article 8

Subrogation

1. If a Contracting Party or an agency of a Contracting Party makes a payment to an investor of that Contracting Party under a guarantee, a contract of insurance or other form of indemnity it has granted in respect of an investment, the other Contracting Party shall recognise the transfer of any right or title in respect of such investment. The subrogated right or claim shall not be greater than the original right or claim of the investor.
2. Where a Contracting Party has made a payment to its investor and has taken over rights and claims of the investor, that investor shall not, unless authorised to act on behalf of the Contracting Party making the payment, pursue those rights and claims against the other Contracting Party.
3. A Contracting Party shall not assert, as a defence, counterclaim, right of set-off or otherwise, in any proceeding involving a dispute relating to an investment, that the investor concerned has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of any alleged loss.

Article 9

Other Applicable Rules

If the provisions of the law of either Contracting Party or obligations under the rules of international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules, whether general or specific, entitling investors or investments by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such rules shall to the extent that they are more favourable prevail over this Agreement.

Article 10

Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any dispute between an investor of one Contracting Party and the other Contracting Party arising out of or in relation to this Agreement, or the existence, interpretation, application,

breach, termination, or invalidity thereof, shall, failing settlement through amicable negotiations, be settled by arbitration.

2. A disputing investor may submit a dispute referred to in paragraph 1 to arbitration in accordance with the Investment Arbitration Rules of the Singapore International Arbitration Centre (1st Edition, 1 January 2017).
3. The number of arbitrators shall be three. The place of arbitration shall be Singapore. The language to be used in the arbitral proceedings shall be Parseltongue, Valyrian or English.

Article 11

Settlement of Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement that is not resolved through consultations or other diplomatic channels shall be submitted on the request of either Contracting Party to arbitration for a binding decision or award by a tribunal in accordance with applicable rules of international law. In the absence of an agreement by the parties to the contrary, the SIAC Investment Rules, 2017 shall govern, except as modified by the Parties or this Agreement.
2. Unless the Contracting Parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each Contracting Party and the third, who shall be the presiding arbitrator, appointed by agreement of the Contracting Parties. If a tribunal has not been constituted within 42 days from the date of commencement of arbitration, the President of the SIAC Court of Arbitration, on the request of either Contracting Party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.
3. Expenses incurred by the arbitrators, and other costs of the proceedings, shall be paid for equally by the Contracting Parties. However, the tribunal may, at its discretion, direct that a higher proportion of the costs be paid by one of the Contracting Parties.
4. The tribunal shall have the authority to accept and consider amicus curiae submissions from a person or entity that is not a disputing party.
5. The respondent shall, after receiving the following documents, promptly transmit them to the non-disputing party and make them available to the public:
 - a) the notice of intent;
 - b) the notice of arbitration;
 - c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted by another non-disputing party;



- d) minutes or transcripts of hearings of the tribunal, where available; and (e) orders, awards, and decisions of the tribunal.
6. A joint decision of the Contracting Parties, each acting through its representative designated for purposes of this Article, declaring their interpretation of a provision of this Agreement shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that joint decision.

Article 12

Transfer of Investments and Returns

1. Subject to its laws and policies, each Contracting Party shall in respect of investments guarantee to investors of the other Contracting Party the right to transfer abroad their investments and returns.
2. Transfers of currency including payments in compensation for losses in accordance with Article 6 of this Agreement shall be permitted without undue delay in any freely convertible currency. Unless otherwise agreed by the investor transfers shall be made at the rate of exchange applicable on the date of transfer.
3. A Contracting Party may protect the rights of creditors, or ensure the satisfaction of judgements in adjudicatory proceedings, through the equitable, non-discriminatory and good faith application of its law.

Article 13

Essential Security Interests

Nothing in this Agreement shall be construed as preventing a Contracting Party from taking any action necessary for the protection of its essential security interests in time of war or armed conflict, or other emergency in international relations.

Article 14

Application

This Agreement shall apply to any investment made by an investor of one Contracting Party in the territory of the other Contracting Party on or after the date of its entry into force.



Article 15

Entry into Force, Duration and Termination

This Agreement shall enter into force thirty days after the date of exchange of instruments of ratification. It shall remain in force for a period of ten years and shall continue in force thereafter unless terminated in accordance with paragraph 2.

1. A Contracting Party may terminate this Agreement at the end of the initial ten-year period or at any time thereafter by giving one year's written notice to the other Contracting Party.
2. For ten years from the date of termination, all other Articles shall continue to apply to covered investments established or acquired prior to the date of termination, except insofar as those Articles extend to the establishment or acquisition of covered investments

IN WITNESS THEREOF, the undersigned duly authorized have signed this Agreement. DONE in triplicate at the Republic of Oceania this 9th day of February 1994, in Parseltongue, Valyrian and English languages, all texts being equally authoritative.

For the Government of the United States of
Cahokia

For the Government of the Republic of
Oceania

Minister of Finance

Minister of Finance

ANNEXURE II: ZOA'S CONCEPT NOTECONFIDENTIAL - PASTICHE
IDGA PRIVATE LIMITED

Zicky's private concept note

*Devaralakshmi, an Oceanian martial artist raised in Cahokia, and Cornelia Swaminathan, a firebrand from the (erstwhile) State of Karward, facilitate the ultimate coup leading to Oceania's freedom from Draconia.

*Together, they collaborate with the United States of Cahokia to help Chandranath Ghosh build the Oceanian National Army.

*Devaralakshmi ensures that Gordandas G., Peshawarlal N., and M. J. Allama set aside their differences to remain together.

*Meanwhile, Cornelia helps Dr. B. Jadhav draw up an Independence Manifesto - one

that balances demands from all major political and sectoral factions across Oceania;

*Both protagonists work with Sardar Jhaverji Patel to turn senior Oceanian sepoys;

*During the Quit Oceania movement, right in the middle of World War II, the Oceanian National Army and Oceanian sepoys launch a brutal attack on Draconian forces.

*Draconia is forced to exit Oceania.

*Oceania does not get partitioned.

*Devaralakshmi becomes the first prime leader of Oceania, while Corenelia assumes the role of president.



ANNEXURE III: HIGH COURT ORDER

IN THE HIGH COURT OF JUDICATURE AT KARWARD

KARWARD

ORDINARY ORIGINAL CIVIL JURISDICTION

IN

WRIT PETITION NO. 1220/2022

PIPL AND ORS.

....Petitioners

Versus

REPUBLIC OF OCEANIA

(THROUGH THE SECRETARY,

FILM AND TELEVISION MINISTRY) AND ORS.

..... Respondents

AND

INTERVENTION APPLICATION NO. 4527/2022

PHIL S. STEIN

.... Applicant/Intervener

IN

PIPL AND ORS.

....Petitioners

Versus

REPUBLIC OF OCEANIA

(THROUGH THE SECRETARY,

FILM AND TELEVISION MINISTRY) AND ORS.

... Respondents

For Petitioners: Senior Advocate Dhairya Basheera along with Advocate Kunda Bedekar instructed by Koinos Partners.

For Respondents: Senior Advocate Jayashree Deepak, Additional Solicitor General and Advocate Mandakini Kaling.

For Intervener: Senior Advocate Girish Bornad along with Advocate Timothy Hagen instructed by Plainview & Schultz.

CORAM: G. P. REGE AND H. B. SAKPAL, JJ.

PRONOUNCED ON: 25 October 2022

Oral Order: PER G. P. REGE, J.

1. The First Petitioner, Pastiche IDGA Private Limited (**PIPL**), is engaged in film production. PIPL is the producer of a film titled ‘Operation RBG’ (**Film**).
2. PIPL is a special purpose vehicle created pursuant to a joint venture (**JV**) between Pastiche Parable Inc. (**Cahokia**), i.e. the Second Petitioner and IDGA Films, i.e. the Third Petitioner. We are told that the sole (or special) purpose of the First Petitioner is to make and sell what culminated into the Film. The Fourth Respondent is Ms Zoa Ikhtiyar
3. The First Respondent is the Central Government of Oceania, essentially through its Film and Television Ministry. The Second Respondent is the Board of Cinema Certification. The Third to Sixth Respondents are companies that have contractually committed to exhibiting the Film in Oceania. It is agreed across all Parties that the latter three respondents are the largest film distributors in Oceania.
4. The consolidated facts, briefly put, are as follows.
 - a. The Film was certified by the BCC on 16 January 2020.

- b. It was set to release on 4 July 2020 across more than 3000 screens.
 - c. The film’s trailer was released on 1 September 2020 (**Release Date**).
 - d. Based, inter alia, on the trailer, the Intervener had reason to believe that the Film is likely derogatory to the Goymarder Sect (**Goymarders**).
 - e. On 20 October 2020, Stein asked for a private screening of the Film. He was provided this screening on 30 October 2020.
 - f. Two weeks later, on 15 July 2020, Stein wrote a detailed representation to the Film and Television Ministry alleging that the Film portrays the Goymarder Sect as being extremely violent, misogynistic, and overall complicit with the colonial invaders of Oceania. This, it is alleged, is an incomplete (and therefore historically inaccurate) representation of Goymarders. The Film’s is thus deeply hurtful to them.
 - g. On 24 October 2020, the Film and Television Ministry issued a notification (1) setting out particulars of Stein’s representation; and (2) calling for immediate suspension of the Film’s certification for a period of two months or until further orders, whichever is less (**Impugned Notification**). The Impugned Notification provided that PIPL and Stein will both be heard on 31 October 2020 (after the release weekend) before any further decision is taken on the matter.
 - h. The next day, Petitioners moved to file a writ petition asking this Court to (a) quash and set aside the Impugned Notification as being violative of law and free speech guaranteed under the Oceanian Constitution; and in the interim, (b) to grant a stay on the Impugned Notification until this petition is decided; (c) a direction to the Third to Sixth Respondents to exhibit the Film on and from the Release Date in accordance with their contractual obligations.
 - i. On the same day, Mr Stein filed an intervention application asking to be joined in the writ proceedings.
 - j. Today, the writ has been listed for admission and hearing of the Petitioners’ request for interim and ad-interim reliefs.
5. Heard all the Parties.
6. Mr Basheera argues, with commendable passion, that the First Respondents’ actions are grossly violative of the Petitioners’ fundamental right to free speech. The Impugned Notification, he says, is effectively a death blow to the Film’s release. He also suggests that

Stein's representation is subterfuge, intended to cloak the First Respondent's effort to prevent the theatrical exhibition of the Film.

7. The ASG submits that the Petitioners' allegations are untrue and misconstrued. She submits that the First Respondent has taken no view over the Film. Prior to the Impugned Notification, which itself was issued upon receipt of a citizen's complaint, the Respondents - or any other government official for that matter - has issued no directions or like communications that would prevent the Film's release. The Impugned Notification is duly issued in the exercise of the First Respondent's powers under Oceanian statutory law. The First Petitioner and Intervener will be heard before the final decision.
8. Mr Bora joins the ASG's position to submit that the grievances raised in Stein's representation are based, not on his whim, but on his viewing of the Film. It is further submitted that Stein, himself a lawyer and activist, has no vested interest in preventing the Film's exhibition. He is seeking to assert the right of Goymarders across Oceania, if not the world, to live their lives with dignity and respect. Under the garb of making a revisionist history drama, the filmmakers are selling a misleading story - filled with gore, violence, and means to overthrow a government by force - all at the cost of Goymarders.
9. Despite the lengthy papers filed, the question we must answer today and at this stage is rather short: have the Petitioners made out a case for an interim and ad-interim stay of the Impugned Notification? The answer, I am afraid, must be in the negative. This is broadly for three reasons. First, on a prima facie basis, it appears that Section 6(2)(c) of the Film and Television Certification Act 1932 (**FATCA 1932**) clothes the First Respondent with the power to issue the Impugned Notification. No party has taken issue with the form and procedural provenance of the Impugned Notification. Whether the provision itself is contrary to Oceania's Constitution is an expedition we cannot embark on at this stage. In any case, the Impugned Notification provides for a hearing to the Petitioner and Intervener. Before its conclusion, and at this stage, judicial interference is not warranted. The Petitioners' prayers for interim and ad-interim reliefs against the Impugned Notification are therefore rejected.



10. That said, this Court is not oblivious to the commercial pressures of a Film's release. The First Respondent is directed to complete hearings of all relevant parties within two days and, at the earliest, issue the final order pursuant to the Impugned Notification.

11. The Parties' rights and contentions remain open.

(G. P. REGE, J.)

(H. B. SAKPAL, J.)

ANNEXURE IV: JOINT INTERPRETATIVE STATEMENT

**JOINT INTERPRETATIVE STATEMENT BETWEEN THE GOVERNMENT OF
THE REPUBLIC OF OCEANIA AND THE GOVERNMENT OF THE UNITED
STATES OF CAHOKIA FOR THE PROMOTION AND PROTECTION OF
INVESTMENTS**

Preamble

Recognizing the uncertainties and ambiguities that may arise regarding the interpretation and application of the standards contained in the Bilateral Investment Treaty entered into between the Government of the Republic of Oceania and the Government of the United States of Cahokia, done at Dragonstone on the 9th day of February 1994 (the "Agreement");

Taking into account the power of the Contracting Parties to provide clarification on the object and purpose of the Agreement; and

Recalling the requirement under customary international law, that any interpretation of the Agreement take into account the Contracting Parties' subsequent statements and practice reflecting their shared understanding of the meaning of that Agreement,

The Contracting Parties, while recognizing that additional uncertainties and ambiguities may remain and need to be further clarified at a future date, issue the following statements (the "statements") to resolve certain questions regarding, and affirm their understanding of, the scope and meaning of several of the Agreement's provisions.

General Principles applicable for interpretation of the Agreement:

1. These interpretative statements shall be read together with the Agreement and shall form a part of the Agreement.
2. The term of this interpretative note shall be co-terminus with the Agreement.
3. This joint interpretative note shall be binding on a Tribunal established under the Agreement.

Statement on "fair and equitable treatment" - Article 3 (2)

1. The concept of "fair and equitable treatment" under Article 3(2) does not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens and does not create additional substantive rights. For greater certainty, a measure shall constitute a violation through customary international law minimum standard of treatment in the case of:
 - a. Denial of justice in any judicial or administrative proceedings; or
 - b. fundamental breach of due process; or
 - c. targeted discrimination on manifestly unjustified grounds, including gender, race or religious belief; or
 - d. manifestly abusive treatment, such as coercion, duress and harassment.

2. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

3. For further clarification, the "fair and equitable treatment" standard under Article 3(2) does not require compensation for measures designed or applied to further public policy objectives including but not limited to:
 - a. protection and maintenance of public order;
 - b. protection or improvement of natural resources and the environment;
 - c. protection or improvement of human, animal or plant life or health;
 - d. protection or improvement of human capital, conditions of work and human rights;
 - e. protection or improvement of economic conditions and the integrity of the financial system;
 - f. implementation of fiscal policy measures, including taxation

4. For the avoidance of doubt, "measures" referred to under subparagraph(3) herein include new laws and regulations, amendments to existing laws and regulations, as well as changes in interpretation and application of existing laws and regulations, provided such changes or amendments are in accordance with the law of the Contracting Party taking the measure.

5. A. The "fair and equitable treatment" requirement does not, alone, elevate alleged representations, contractual promises or other undertakings by the Contracting Party where the investment is made to the investor or investment to commitments binding or enforceable under the Agreement. The legal significance of those representations, contractual promises or other undertakings to the investor or investment is to be determined, (i) in the case of a written



contract between the investor or investment and Contracting Party that specifies the applicable law, under that law; and (ii) in all other cases, under the law of the Contracting Party in which the investment is made. For greater certainty, the "law of the Contracting Party" in which the investment is made means the law that a domestic court or tribunal of proper jurisdiction would apply in the same case.

B. Subparagraph (a) is without prejudice to the question of whether a Contracting Party has inappropriately interfered with representations, contractual promises or other undertakings in breach of the Agreement through, in particular, willful and egregious abuse of law amounting to a violation of Article 3(2) and Article 7.

In witness whereof, the undersigned, duly authorized by their respective Governments, have signed this Joint Interpretative Statement (JIS). Signed in Beauxbatons on this 16th day of January 2023, in three original copies in Parseltongue, Valyrian and English, all texts being equally valid.

For the Government of the United States of
Cahokia

Minister of Finance

For the Government of the Republic of
Oceania

Minister of Finance
