



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION (L) NO.23160 OF 2022
IN
COMM. EXECUTION APPLICATION (L) NO.19641 OF 2022**

Film Farm India Private Limited

...Applicant/
Orig. Claimant/
Judgment Creditor

In the matter between

Film Farm India Private Limited

...Judgment Creditor/
Orig. Claimant

vs.

ALT Digital Media Entertainment Limited

...Orig. Respondent/
Judgment Debtor

**WITH
INTERIM APPLICATION (L) NO.26739 OF 2022
IN
COMM. EXECUTION APPLICATION (L) NO.19641 OF 2022**

ALT Digital Media Entertainment Limited

...Applicant

In the matter between

Film Farm India Private Limited

...Judgment Creditor

vs.

ALT Digital Media Entertainment Limited

...Judgment Debtor

Mr. P.M. Havnur a/w Mr. Sanjay Kharat and Prajakta Jagtap
Advocate for the Judgment Creditor.

Ms. Rashmin Khandekar, Hemangi Abhyankar, Ruddhi Bhalekar
i/b. ANM Global, Advocate for the Judgment Debtor.

**CORAM : S. M. MODAK, J.
DATE : 10th OCTOBER 2023**

P. C. :-

1. Heard learned Advocate for the Applicant/Original claimant who states that they are Judgment Creditor. Also heard learned Advocate for the Respondent who are described as Judgment-Debtor.
2. Execution is filed for implementation of the order titled as an Award dated 5th March 2021 passed by the Western India Film Producers' Association. They have directed the Respondents to make a payment of Rs.1,57,00,000/- (One Crore Fifty Seven Lakhs only) to the complainant.
3. Pending execution, this Interim Application (L) No.23160 of 2022 is filed for injuncting the Respondents from creating third party interest in respect of Web Series "MENTALHOOD". Whereas, Interim Application (L) No.26739 of 2022 is filed by the present Respondent praying for rejecting Commercial Execution Application. There are further prayers for injuncting original applicant for executing performance of Award dated 5th March 2021. Pleadings are over in both these applications.
4. On the last date, I have heard learned Advocate Mr. P.M. Havnur for the Applicant/claimant. Today, I have heard learned Advocate for the Respondent. The main issue involved in both these applications is

“whether the Award dated 5th March 2021 declared by (WIFPA) can be said to be an Award under the provisions of Arbitration and Conciliation Act.”

5. According to the learned Advocate Mr. Havnur, this can certainly be treated as an Award which can be enforced by this Court. He made this submission on the following grounds:-

- (a) Articles of Association of WIFPA contains a clause 32(A) and 32(B) about resolving the dispute between the member and non-member by the Special Committee known as Disputes Settlement Committee appointed by the Executing Committee.
- (b) It further provides that if the aggrieved party is not satisfied with the decision of the Dispute Settlement Committee, it can be referred to joint arbitration consisting of Arbitrator to be appointed by each of the party.
- (c) Now those Articles 32(A) and 32(B) of the Articles of Association are amended and renumbered as Article 16(B) it is indicated *vide* letter dated 7th September 2022.
- (d) Now Article 16(B) only talks about the proceedings

before the Dispute Settlement Committee and if Article 16(B) is perused, we may find that the procedure to be followed before the Arbitrator is a requirement followed by the Committee and the decision has to be treated as a Verdict, Award as per Clause (k) of Article 16(B).

(e) He invited my attention to various references in the Award which mentions about participation by the present Respondent and putting forth his case. Now the Respondent cannot raise a grievance.

6. He relied upon the observations in case of **ZEE Entertainment Enterprises Limited Vs. Suneel Darshan and Ors.**¹, which has dealt with the un-amended Article of the Articles of Association.

7. Learned Advocate for the Respondent made the following submissions:--

(i) There is neither arbitration agreement in between the parties nor there is arbitration clause in between the production agreement firstly executed on 5th March 2019 and in subsequent amendment to the said agreement.

1 2013(7)ALL MR 516

- (ii) Present applicant is not the member of Western India Film and TV Producers' Association.
- (iii) It is true that said Association as per the letter dated 7th September 2022 has informed that the decision by Dispute Settlement Committee has to be treated as an Award and that will be binding on members as well as non-members. He has emphasized on the wordings "*non-members with whom, the members have entered into any such agreement*". According to the Respondent no such agreement is there.
- (iv) Participation before the Dispute Settlement Committee does not mean that the proceedings have to be considered as a proceeding before the Arbitrator.

8. To buttress his submissions, he relied upon following judgments:--

- (a) **Pride of Asia Films vs. Essel Vision²**;
- (b) **Shakeel Noorani vs. Sanjay Dutt³**;
- (c) Order dated 23rd February 2023 passed in Arbitration Application No.168 of 2022 in the case of **Nagreeka Indcon Products Pvt. Ltd. vs. Cargocare Logistics**

2. 2004(3) ARBLR 169 Bom.

3. 2014 (3) ABR 794

(India) Pvt. Ltd.

- (v) According to him, there is a difference between the conciliation and arbitration. At the most, the proceedings before the Dispute Settlement Committee can be treated as conciliation proceeding. He also emphasized that when Article 32(A) and (B) are replaced by Article 16(B), it implies remedy of referring the dispute to the arbitration as per earlier article was deleted. According to him, it re-enforces his stand that the proceedings before DSC are in the sort of conciliation.
- (vi) He invited my attention to clause 17 of the production agreement dated 5th March 2019 which shows that in case of dispute it will be subject to the jurisdiction of the Courts of Mumbai. He submitted that it also indicates the intention of the parties that disputes has to be resolved through the Court machinery.

Consideration

9. It is true that as per production agreement the Applicant and the Respondent have agreed to produce certain web series. Judgment Creditor is described as producer. There are certain terms mentioned therein. It is also true that when the dispute arose it is

referred to Dispute Settlement Committee at the instance of Judgment Creditor. The Committee called the explanation of Judgment Debtor. There was a claim of Rs.1,79,50,000/-. The minutes of the meeting of the Committee are also annexed to the affidavit-in-reply filed by the Respondent. It also indicates that the meetings were conducted to amicably resolve the complaint. Those meetings are dated :--

- (1) 21st September 2020;
- (2) 12th October 2020;
- (3) 29th October 2020;
- (4) 12th November 2020;
- (5) 4th December 2020.

10. So also the Judgment Debtor filed Interim Application taking an objection to the enforcement of the decision as it is not an award. So first the provisions of Arbitration and Conciliation Act, 1996 need to be seen.

Arbitration and Conciliation Act, 1996

11. As per the provisions of Section 2(1)(b) of the Arbitration and Conciliation Act, 1996, “arbitration agreement” is an agreement referred to in Section 7. As per section 7, it can be by way of arbitration agreement or by way of arbitration clause. Admittedly,

there is neither such agreement nor there is arbitration clause in the production agreement. Section 7(4) further says that there can be written arbitration agreement either by document or even by exchange of letters or by exchange of statements. Admittedly, there are no such correspondence. Whatever is there, is in the form of the minutes of meeting of the Dispute Settlement Committee. “Arbitral Tribunal” is described in Section 2(1)(d) of the said Act means the sole arbitrator or a panel of arbitrators.

12. On this background, whether the decision of Dispute Settlement Committee can be treated as an arbitral award or not needs to be decided. No doubt, as per Article 16(B)(a), the decision by the DSC was to be treated as a Verdict, Award or Order. Now, whether on the basis of the participation of the Committee, the Respondent is estopped from contending that it was not arbitration proceeding.

13. In case of *Zee Entertainment (supra)*, the Division Bench of this Court had an occasion to consider what are the attributes of the arbitration agreement. While dealing with Articles 32(A) and 32(B), it was observed that those are the proceedings which are to be conducted by the Dispute Settlement Committee and it is sort of conciliation proceeding and if it is filed then only the parties are at

liberty to appoint arbitrator and that too, at the instance of the aggrieved person. However, in no case the proceedings before the Dispute Settlement Committee can be considered to be arbitration proceeding.

14. Mr. Havnur relied upon those observations to buttress his stand that it was prior to amendment and now the decision of the DSC is upgraded and treated as an award.

15. Whereas in the judgments relied upon by the Respondent, there was occasion for this Court to deal with the contingency in case of *Pride of Asia Films* (*supra*). There are objections raised while execution and issue was decided under Section 47 of CPC in execution proceeding. It was observed that when there was no agreement in between the parties, it cannot be considered to be arbitration proceeding. On factual aspects, it is observed that Clause No.16 cannot be considered to be an arbitration clause and hence, the parties cannot invoke the provisions of the Arbitration Act. Whereas, in case of *Shakeel Noorani* (*supra*), as there was no arbitration agreement, the Chamber Summons was made absolute. There was no arbitration agreement as contemplated under section 7 of the Arbitration and Conciliation Act. IMPPA was considered to be a private Tribunal. It was not an Arbitral Tribunal and in no

manner, it creates a legally enforceable remedy. Consequently, the decision of IMPPA can never partake the character of an arbitral award under the Act. (Para 11)

16. Whereas, in case of *Nagreeka Indcon Products Pvt. Ltd.* (supra), this court had an occasion to invoke clause 25 from the agreement. The wordings are like that :-

“..... The dispute **can be** settled by arbitration.....”

It was observed that if there is an option to refer the dispute to the arbitration, it cannot be considered as an arbitration clause.

17. In this case, it is admitted fact that there is neither arbitration clause nor there is arbitration agreement. I do not think that merely because the Respondent has participated before the Dispute Settlement Committee, he is estopped from making grievance. Mere participation in a proceeding before DSC does not upgrade the proceeding as arbitration proceeding. The Committee can get jurisdiction only when there is an agreement. So this flaw which is there at its inception. Merely participation does not debar the party from making grievance. Ultimately, the provisions of amended Rule 16(B) will be applicable only when there is an Arbitration agreement prior to initiation of proceedings to refer it to arbitration. In fact, the

provisions of production agreement bestows jurisdiction on Courts. It shows the intention of the parties. So the decision can be only treated as decision of private tribunal. It cannot be enforced through Court of Law. So, I am inclined to allow the application of Orig. Respondent i.e. Applicant in Interim Application (L) No.26739 of 2022.

18. In view of that, no interim reliefs can be granted as prayed by the Applicant in Interim Application (L) No.23160 of 2022. In view of these observations, even execution application also does not survive.

19. In view of that, following order is passed:-

ORDER

- (i) Interim Application (L) No.26739 of 2022 is allowed in terms of prayer clause (a).
- (ii) Interim Application (L) No.23160 of 2022 is dismissed.

20. In view of the above, Execution Application no more survives and it is disposed of.

[S. M. MODAK, J.]