



O.A.No.754 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2021

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CORAM :

The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

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M/s.Studio Green Films Private Limited,
Rep. by its Director,
Mr.KE.Gnanavelraja
Having its Office at
No.13/6, Block No.140, 2nd Floor,
Thanikachalam Road,
T.Nagar, Chennai – 600 017.

... Applicant

Vs

M/s.Krikes Cine Creations,
Rep. by its Proprietor
Mr.Sridharan
Having registered office at
No.35/2, Second Main Road,
Kalaimagal Nagar,
Ekkattuthangal, Chennai -600 032.

... Respondent

PRAYER : This Application is filed under Section 9 of the Arbitration and Conciliation Act, 1996 praying to grant an order of interim injunction restraining the Respondent by themselves or by their Partners or successors of business, servants, agents, representatives, assignees and all other persons from releasing the film "JAIL" through direct theatrical release or in



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any OTT platforms or through any satellite TV, pending disposal of the
Arbitration.

For Petitioner : Mr.Satish Parasaran, S.C.
for M/s.Vijayan Subramanian

For Respondent : Mr.PL.Narayanan

ORDER

In this Application under Section 9 of the Arbitration and Conciliation Act, 1996(the Arbitration Act), the Applicant seeks to prevent the Respondent from directly or indirectly releasing the movie "JAIL" either through direct theatrical release or through OTT platforms or through satellite TV pending arbitral proceedings.

2. The Applicant states that an agreement styled as "JAIL" - Film Assignment Deed dated 24.10.2021(the Agreement) was entered into between the Applicant and the Respondent. According to the Applicant, the Respondent assigned all the Assigned Rights, as defined in the Agreement, to the Applicant. The Applicant asserts that the Assigned Rights include the copyright in the movie and all other intellectual property rights. Indeed, the Applicant asserts that such rights include the right of theatrical exhibition, satellite broadcasting rights, direct to home rights, cable television rights,



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and the like. The Applicant also asserts that Clause 2.2 of the Agreement

confers on the Applicant the sole, exclusive and absolute right to market, assign or distribute the Assigned Rights over the movie throughout the world perpetually.

3. Pursuant to the Agreement, the Applicant states that it approached distributors and other players in the industry in order to market, distribute and broadcast the movie. An announcement was made through its official Twitter account named “Studio Green” with regard to the proposed release of the movie.

4. In the circumstances, the Applicant submits that it was shocked to come across a communication on the Respondent's official Twitter account that the movie “JAIL” was scheduled for release on 09.12.2021. Therefore, the Applicant sent an email of 22.11.2021 to the Respondent and called attention to the assignment of all Assigned Rights under the Agreement. Upon gathering that the Respondent is in the process of releasing the movie in contravention of the Agreement, the present application is filed.



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5. Oral arguments were advanced on behalf of the Applicant by

Mr.Satish Parasaran, senior counsel, assisted by Mr.Vijayan Subramanian, learned counsel; and on behalf of the Respondent by Mr.PL.Narayanan, learned counsel.

6. Learned senior counsel for the Applicant referred extensively to the Agreement. In particular, he referred to recitals V and VI, Clauses 2.1 to 2.3, 2.5, 4.1, 4.6, 5.8, 5.10.11 and 8.5 of the Agreement. On such basis, he submitted that the Applicant is the sole and exclusive holder of all the Assigned Rights, including copyright, over the movie. He also submitted that the Respondent is prohibited from licensing, assigning or granting any right, title or interest in the Assigned Rights to any third party. With specific reference to clause 8.5 of the Agreement, he submitted that the Respondent is not permitted to terminate the Agreement unless the Applicant fails to market and distribute the movie within 150 days from the date of execution of the Agreement. Since the Agreement was executed on 24.10.2021, it was submitted that the 150 day period expires only in end-February 2022 and, therefore, the purported termination by letter dated 23.11.2021 is invalid.



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7. In substantiation of the fulfillment of obligations by the

Applicant under the Agreement, the Applicant referred to email communications and tweets. In particular, an email of 29.10.2021 to Sony Liv and an email of 29.10.2021 to Mango Mass Media Private Limited were relied on. A tweet reflecting that the teaser for the movie was marching towards 2 million views was also relied upon.

8. The Applicant submitted that the Respondent is liable to be restrained from releasing the movie through any mode pending arbitral proceedings so as to preserve the rights of parties in terms of the Agreement. On this issue, the Applicant contends that the revenue sharing arrangement under the Agreement is such that it cannot receive its share of the revenue unless the movie generates more than Rs.8.5 crores. If the Respondent is permitted to release the movie, it is likely that the movie would generate limited revenue. Consequently, the balance of convenience is in favour of granting interim relief and irreparable injury would be caused to the Applicant if such relief is denied.



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9. Learned counsel for the Respondent contended to the contrary.

At the outset, the Respondent contended that the Agreement is unconscionable and, therefore, void under the Indian Contract Act, 1872 (the Contract Act). On a demurrer the Respondent contended that the Agreement may use the terms assignment of copyright and other rights, which are collectively referred to as Assigned Rights; however, in substance, the Agreement is not an agreement for assignment of copyright or other Assigned Rights. By referring to several clauses of the Agreement and, in particular, clause 2.2, 4.6, 5.11 and 6.1 read with Schedule-B of the Agreement, the Respondent contended that the Agreement envisages collaboration between the Applicant and the Respondent. Indeed, it is submitted that the revenues from the exploitation of the Assigned Rights of the movie would be received in the bank account of the Respondent and not the Applicant. Upon receipt of such revenues, the Respondent is entitled to recoup its investment of Rs.8.5 crores from and out of such revenues before sharing revenues in excess of Rs.8.5 crores in the ratio of 70% to the Respondent and 30% to the Applicant.



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10. Thus, the Respondent contended that the Agreement is, in substance, a licence or contract of agency or agreement for payment of commission to a person who carries out marketing and distribution of the movie. As regards the termination of the Agreement, the Respondent submits that such termination was because the Applicant prioritised its own production of the movie “Thael” and opted to release said movie through theatres while opting to release the movie “JAIL” only on OTT platforms. In support of these contentions, the Respondent referred to and relied upon the following judgments:

(i) *Sree Gokulam Chits and Finance Company (P) Limited v. Johnny Sagariga Cinema Square and others* 2011 3 CTC 747, wherein this Court concluded that the deed of assignment of copyright therein was not in substance a document assigning the copyright and that, therefore, an action for infringement would not lie;

(ii) *Deshmukh and Co. (Publishers) Pvt. Ltd. v. Avinash Vishnu Khandekar and others* MANU/MH/0430/2005, wherein the Bombay High Court refused to interfere with the judgment of the trial court to the effect that the contested document is not a deed of assignment of copyright but is in the nature of a licence; and



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(iii) *Best Sellers Retail (India) Pvt. Ltd. v. Aditya Birla Nuvo*

WEB COPY *Limited and others*, (2012) 6 SCC 792, wherein, at paragraphs 35 to 37, the Hon'ble Supreme Court held that an interim injunction should not be granted in relation to an action for damages since it cannot be concluded that the Applicant would suffer irreparable injury if interim relief is refused.

11. By way of a brief rejoinder, the Applicant submitted that definitive conclusions on the nature of the Agreement cannot be drawn in proceedings under Section 9 of the Arbitration Act. Secondly, the Applicant contended that the contention of the Respondent that the Agreement is either a license or a contract of agency militates against express provisions of the Agreement. With regard to irreparable injury, the Applicant contended that the revenue loss which the Applicant may incur if the Respondent is permitted to release the movie cannot be quantified because the Agreement envisages that the Applicant would market, distribute and release the movie.

12. In light of these rival contentions, the limited question that arises for consideration is whether the Applicant is entitled to interim relief



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and, if so, the nature of such relief. At the outset, it should be noted that it is

neither desirable nor necessary to record definitive conclusions on the rights, liabilities and obligations of the parties in this proceeding since it is for the arbitral tribunal to record such conclusions in course of final disposal. The Agreement should be examined by keeping the aforesaid limitation in mind. On a *prima facie* reading, there is little doubt that the Agreement envisages the transfer of Assigned Rights as defined therein. At the same time, certain aspects of the Agreement are conspicuous. No payment was made by the Applicant to the Respondent prior to or at the time of execution of the Agreement as consideration for the assignment of Assigned Rights. While it is completely legitimate for a party to agree to receive consideration subsequent to the execution of an agreement, either in monetary terms or in the form of receiving the benefit of the fulfilment of obligations by the counter party, this aspect is material particularly for interlocutory purposes.

13. It is also pertinent to notice that the Agreement records that the Respondent incurred an expenditure of Rs.7 crores towards the production of the movie. As pointed out by the Respondent, the Agreement



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is atypical of an agreement for assignment of copyright inasmuch as several clauses provide for the continued collaboration of the Applicant and Respondent. Indeed, it is evident from Clause 2.4 that all revenues generated from the exploitation of the Assigned Rights of the movie are required to be received in the bank account of the Respondent. Schedule-B sets out the manner in which such revenues should be distributed. Such Schedule expressly recognises the right of the Respondent to appropriate such revenues to first recoup the expenditure incurred by the Respondent on the movie. Thereafter, revenue sharing in the ratio of 70% to the Respondent and 30% to the Applicant is prescribed. From the above, it appears *prima facie* that the consideration for the Respondent is in the efforts to be taken by the Applicant after execution of the Agreement to market, distribute and otherwise exploit the Assigned Rights so as to garner higher revenue than the Respondent may have generated without the involvement of the Applicant. The Agreement, by implication, appears to grant the Applicant about 150 days to market and distribute the movie before a right of termination is triggered in favour of the Respondent. As regards marketing efforts by the Applicant, the documents on record *prima facie* evidence some marketing efforts by the Applicant, but no binding commitments by



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third parties in such regard are on record.

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14. Although it would be a near Sisyphean task for the Respondent, in light of Clause 11.6 of the Agreement, to establish that it is a contract of agency; as indicated earlier, definitive conclusions as to whether the Agreement is an agreement for assignment of intellectual property rights or a licence or a contract of agency should await arbitral proceedings. For interlocutory purposes, it is sufficient to record that the Agreement *prima facie* partakes of some elements of a contract for marketing and distribution by providing for a 30 % share in the surplus revenue to the Applicant.

15. The Respondent has stated that the theatrical release of the movie is scheduled for 09.12.2021. At this juncture, the Applicant has not filed its statement of claim and, therefore, no conclusions can be drawn as to whether its claims can be compensated monetarily. Keeping in mind the fact that the Respondent has expended at least Rs.7,00,00,000/- on the movie, as mutually agreed and recorded in the Agreement, and that the parties are eventually required to share the revenues in the ratio of 70% to the Respondent and 30% to the Applicant, this is not a fit case to restrain the



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Respondent from releasing the movie in theatres pending arbitral proceedings. Instead, in order to balance the equities pending arbitral proceedings, conditions precedent should apply in such regard by way of restrictions on the manner of appropriation of revenue generated from the theatrical release of the movie. For such purpose, the Respondent should establish an escrow account in a scheduled bank pursuant to an escrow agreement. By such escrow agreement, a bank should be made the escrow agent. A copy of such escrow agreement shall be provided to the Applicant as soon as the such account is established, and before the movie is released. All revenues generated from the theatrical release of the movie should be remitted only into the said escrow account by the Respondent. The escrow agreement may enable the Respondent to receive up to Rs.7,00,00,000/- from the revenues remitted into such account so as to recoup its investment. No disbursements beyond the said sum of Rs.7,00,00,000/- should be made by the escrow agent without the express consent of the arbitral tribunal or this Court, if the arbitral tribunal is not in place. Until the above conditions precedent are satisfied, the movie cannot be released in theatres.

16. As regards the release of the movie on OTT platforms and through satellite TV, the Respondent does not appear to have made concrete



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progress. In such factual context, keeping in mind the nature of the

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Agreement, the Respondent is restrained from taking any steps in such regard without obtaining orders from the arbitral tribunal or this Court if the arbitral tribunal is not in place.

17. The Applicant is directed to initiate steps for the constitution of the Arbitral Tribunal within 30 days from the date of receipt of a copy of this order. O.A.No.754 of 2021 is disposed of in the above terms without any order as to costs.

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Index :Yes

Internet :Yes

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