

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.04.2018

CORAM

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

O.P. No.932 of 2017
and O.A.Nos.1144 of 2016, O.A.No.988 of 2017
and A.No.6132 of 2017

1. K. Punniyamoorthy
2. K. Premkumar .. Petitioners

-VS-

Escape Artists Motion Pictures
Represented by its Sole Proprietor
Madan Pandey
Having Office at No.69A,
Habibullah Road, Sathyamoorthy Nagar,
T.Nagar, Chennai – 600 017. .. Respondent

Prayer: Petition filed under Section 11(6)(a) & (c) of the Arbitration & Conciliation Act, 1996 read with Rule 2 of the appointment of the arbitrators of Madras High Court Scheme, 1996 praying to appoint an arbitrator to resolve the disputes between the petitioner and respondent in terms of the Distribution Agreement dated 18.03.2016 and to pay cost.

For Petitioners : Mr.K.Moorthy

For Respondent : Mr.Abdul Hameed
for M/s. AAV partners

ORDER

The parties have entered into a Memorandum of Understanding dated 31.3.2018. The petitioners and respondent and the

respective counsel were present before this Court today and they have also verified with the compromise entered into.

2. The terms of Memorandum of compromise entered into between the parties are extracted hereunder:

NOW THIS MEMORANDUM OF UNDERSTANDING WITNESSETH AS FOLLOWS:

1. *The party of the SECOND PART having absolute rights of ownership of the Tamil talkie picture in colour and in scope titled "ENNAI NOKI PAAYUM THOTTA" featuring Dhanush and others and music by A.R.Rahaman, directed by GauthamVasudev Menon herein referred to as the PICTURE had entered into an Distribution Agreement dated 18.03.2016 with certain terms and conditions with the party of the FIRST PART thereby granting the commercial and theatrical exhibition rights of the said Tamil PICTURE in the area of entire INDIA as known in the film trade, for a perpetual period commencing from its first and general release of the said picture.*
2. *The Rights Holder while assigning the rights of the picture confirmed that the film will be released for Diwali (November 2016).*
3. *That in consideration of the above, the distributor i.e., the party of the FIRST PART has paid a total consideration amount of Rs.13,72,00,000/- (Rupees Thirteen Crores and Seventy Two Lakhs only).*
4. *The party of the SECOND PART acknowledge the receipt of the entire payment under the above said Agreement by the Distributor towards acquiring the rights of the Tamil*

Theatrical release for commercial exhibition and exploitation in the theatres to Distributors for the entire INDIA.

5. *That due to certain violation/breach by the SECOND PART in the terms and conditions of the above said Agreement entered between the parties, the parties of the FIRST PART initiated legal action against the party of the SECOND PART on the file of the Hon'ble High Court of Madras and obtained several orders which are enumerated herein below:*

- (i) *In O.A.No.1144 of 2016, the Hon'ble High Court has passed an order of interim injunction dated 21.12.2016 thereby restraining the party of the SECOND PART from negotiating, granting, assigning, licensing, selling or in any manner alienating or encumbering the Tamil Theatrical Distribution Rights of the movie "ENNAI NOKI PAAYUM THOTTA" for the entire India in favour of any third party or parties pending disposal of the arbitration proceedings.*

- (ii) *In O.A.No.988 of 2017 and Application No.6132 of 2017 the Hon'ble High Court has passed an order of interim injunction dated 09.10.2017 thereby restraining the party of the SECOND PART, its men, agent, servant, from in any manner encumbering the schedule mentioned property by way of alienation, lease, mortgage, conveyance, etc., pending disposal of the arbitration proceedings. The Hon'ble High Court has also passed an order dated 12.12.2017 thereby directing the party of the SECOND PART to furnish security to a sum of Rs.13,72,00,000/- (Rupees Thirteen Crores Seventy Two Lakhs only) which is payable to the party of the FIRST PART.*

- (iii) *In O.P.No.932 of 2017, the parties of the FIRST PART prayed for an appointment of an arbitrator to resolve the*

disputes between the parties herein u/s. 11(6) of the Arbitration and Conciliation Act, 1996 in terms of the Distribution Agreement dated 18.03.2016 and the Hon'ble High Court has admitted the above petition filed by parties of the FIRST PART herein on 21.11.2017 and ordered notice to the party of the SECOND PART herein.

6. That after due deliberations, the parties to this Understanding herein has agreed to resolve the above disputes mutually and hereby comes to an understanding as agreed in this Memorandum of Understanding.

PRINCIPLE UNDERSTANDING

- (i) That the parties of the SECOND PART hereby agree to make a part payment to the parties of the FIRST PART a sum of Rs.8,50,00,000/- (Rupees Eight Crore and Fifty lakhs only) 10 days before the release of the movie "ENNAI NOKI PAAYUM THOTTA" which is schedule to release in the month of December, 2018.
- (ii) That on failure to release the said movie "ENNAI NOKI PAAYUM THOTTA" on the above said English Calendar Month by the parties of the SECOND PART, the above said sum of Rs.8,50,00,000/- payable by the parties of the SECOND PART to the parties of the FIRST PART will carry an interest @ of 2% per month with quarterly rest from January 2019 till the date of completion of the payment.
- (iii) That the above payment of Rs.8,50,00,000/- payable by the party of the SECOND PART to the party of the FIRST PART under this Memorandum of Understanding amounts to part payment of the principle amount, profit and other service charges and interest of Rs.5,00,00,000/- and damages put

together totally a sum of Rs.18,72,00,000/- (Rupees Eighteen Crores Seventy Two Lakhs only) payable under the Distribution Agreement dated 18.03.2016.

- (iv) That the party of the SECOND PART is also having Distribution Rights of the Tamil Movie "DHURUVA NATCHATHIRAM" holding 50% share in the production and release of the said movie. That for the remaining part of the balance payment of Rs.10,22,00,000/- to be paid by the party of the SECOND PART to the party of the FIRST PART under this Memorandum of Understanding, the party of the SECOND PART hereby transfers and assigns without any condition to the party of the FIRST PART, his 50% share in the movie "DHURUVA NATCHATHIRAM" vide Deed of Partnership dated 21.11.2016 in KONDADUVOM ENTERTAINMENT both in the capacity as Producer and Distributor.
- (v) That the parties of the FIRST PART hereby agree that immediately on payment of the above said sum of Rs.8,50,00,000/- (plus interest @ 2% per month with quarterly rest on failure to release the said movie in the month of December 2018) by the SECOND PART, will give a no objection certificate for the release of the movie "ENNAI NOKI PAAYUM THOTTA" to M/s.Qube Cinema Technologies Private Limited or with any other person/Company/etc., or on its own immediately on payment of the said sum made by the parties of the SECOND PART.
- (vi) That the parties of the SECOND PART hereby agrees that they will not make any arrangements to release the said movie "ENNAI NOKI PAAYUM THOTTA" along with M/s.Qube Cinema Technologies Private Limited or with any other person/Company/etc., or on its own, without making

payment of Rs.8,50,00,000/- (plus interest @ 2% per month with quarterly rest on failure to release the said movie in the month of December 2018) to the parties of the FIRST PART as agreed upon in this Memorandum of Understanding.

(vii) That in the above understanding, the payment to be made by the parties of the SECOND PART is based on first release of the movie (DHURUVA NATCHATHIRAM/ENNAI NOKI PAYUM THOTTA)

(viii) This MOU is in addition to the Distribution Agreement dated 18.03.2016 and the rights and recourses available under the said Distribution Agreement would not affect in any manner until the parties of the SECOND PART settles all the accounts with the parties of the FIRST PART with regard to Distribution Agreement dated 18.03.2016.

(ix) That on payments of all the monies that are payable by the parties of the SECOND PART to the parties of the FIRST PART, the parties of the FIRST PART shall return or hand over all cheques original agreements etc. if any to the parties of the SECOND PART.

(x) By executing this agreement, both parties modifies and amend the Arbitration Clause i.e. Clause No.14 of the Distribution Agreement dated 18.03.2016 as hereunder in Clause No.11.

7. Save and except as expressly provided in this Memorandum of Understanding, no exercise, or failure to exercise, or delay in exercising any right, power, or remedy vested in any party under or pursuant to this Understanding shall constitute a waiver by that Party of that or any other right, power or remedy.

8. This Memorandum constitutes the entire Memorandum of Understanding between the parties in relation to its subject

matter and supersedes all prior agreements and understandings with respect to such subject matter and no variation of this Memorandum shall be effective unless reduced to writing and signed by the parties.

9. The parties herein admit and undertake that they have read this Memorandum of Understanding and they fully understand the meaning of each and every clause and have signed this memorandum with the full knowledge of the conditions and obligations herein imposed which they willingly incur and assume.
10. This Memorandum of Understanding shall in all respects be governed by and construed in accordance with laws of India. The parties irrevocably agree to submit any such dispute to the exclusive jurisdiction of High Court in Chennai.

11. DISPUTE RESOLUTION:

That in the event of any dispute or claim that may arise between the parties hereto under this Memorandum of Understanding the same shall be referred to an Arbitrator solely appointed by the parties of the FIRST PART herein under the Arbitration and Conciliation Act 1996 and the Amendments thereto. The arbitration shall be under Fast Track Procedure based on documents only. There shall be no oral or in person hearing unless the arbitrator deems it fit. The venue shall be at Chennai. The language of arbitration proceedings shall be in English. The entire cost of arbitration shall be borne by the parties of the SECOND PART herein.

Understanding shall form part and parcel of this order. No costs.
Consequently, connected miscellaneous petitions are closed.

03.04.2018

srn/rsi

Note: Issue order copy on 05.04.2018



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