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

ARBITRATION APPLICATION (L) NO.113 OF 2019

Goldmines Telefilms Pvt. Ltd	...	Applicant.
Versus		
Singaravadivelan Ramlingam	...	Respondents

Mr. Rajiv Narula a/w Mr. Anup Dasgupta, i/by Jhangiani Narula & Associates, for the the Petitioner.

CORAM : G. S. KULKARNI, J.

DATE : 8th APRIL, 2019

P.C. :

1. Heard learned counsel for the applicant.
2. On 18th March, 2019, this Court, passed the following order :-

“1] Heard learned counsel for the applicant.

2] Issue notice to respondent, returnable on 01.04.2019. In addition to Court notice, learned counsel for the applicant is permitted to serve respondent by private notice and file affidavit of service before the returnable date.

3] Stand over to 01.04.2019. To be listed on the supplementary board.”

3. None appeared for the respondent on the adjourned date of

hearing. On 1st April, 2019, this Court, passed the following order:-

“1. To enable learned counsel for the petitioner to re-serve the respondent and to file affidavit of service on record, stand over to 8 April 2019.

2. Notice to indicate that on the adjourned date, the matter will be taken up for hearing. A copy of this order also be forwarded with the notice.

4. On the above background, this petition is listed today. Learned counsel for the Applicant has placed on record affidavit of service on 5th April, 2019, indicating that the service of present proceedings is effected on the respondent.

5. This application is filed under Section 11 of the Arbitration and Conciliation and Act, 1996 (for short, “ACA”), whereby the applicant seeks appointment of arbitral tribunal to adjudicate the disputes and differences which are stated to have arisen between the parties under Deed of Transfer of ownership of Copy Rights dated 21st July, 2018. Clause No.31 of the agreement contains arbitration clause which reads thus :-

“31. In case of any dispute or differences between the parties, the parties shall refer the matter to the arbitration of a sole arbitrator, if the parties agree upon the sole arbitrator or to a panel of three arbitrators, one to be appointed by each party and the third Arbitrator is appointed by the other two Arbitrators as Presiding arbitrator. The arbitration shall

be at Mumbai and shall be governed by the provisions of arbitration and Conciliation Act, 1996, or any statutory modification or enactment thereof for the time being in force.

6. Perusal of the record indicates that the applicant, by its letter dated 6th December, 2018, informed the respondent that as per the terms of the agreement in question, an amount of Rs.30 lacs was paid by the applicant, immediately on signing of the agreement. It is further informed that the applicant was under obligation to pay Rs.12 lacs before release of the film and subject to handing over the censor certificate of the film. It is also stated that the film was not released, however, on the request of the respondent by letter dated 30th October, 2018, the applicant made further payment to the respondent, which is received and acknowledged by the respondent. It was recorded that as per clause 24 of the agreement, if for any reason, film was not being released in Tamil language by 31st October, 2018, the respondent would be required to pay interest at the rate of 18% per annum. It is also recorded that the information was received from the respondent that the release of the film is delayed and the same would be released in February, 2019. The applicant accordingly

invoked the arbitration agreement that the disputes and differences had arisen between the parties, which be referred to an arbitral tribunal.

7. Thereafter a further letter dated 12th January 2019 came to be addressed by the applicant to the respondents reiterating the request for reference of the disputes to arbitration. The respondent vide its letter dated 6th February 2019, as addressed to the applicant recorded that the film was set to be released in February, 2019 and it could not be released due to unavoidable reasons and offered to refund of Rs.45,00,000/- alongwith interest.

8. Thereafter as nothing was heard from respondent. Hence, the applicant has approached this Court by present application under Section 11 of the ACA.

9. Having heard learned counsel for the applicant and having perused the record, it is clearly seen that an arbitration agreement exist between the parties as also the applicant has invoked the arbitration agreement as noted above. The respondent did not concur in appointment of an arbitral tribunal. The respondents though duly served have remained absent, the averments as made

in the application are, therefore, required to be taken as uncontroverted.

10. In above circumstances the application is required to be allowed. Hence, the following order:-

Order.

i] Mr Vikram Deshmukh, Advocate, is appointed as the prospective Arbitrator to adjudicate the disputes and differences between the parties, arising under the Deed of Transfer of ownership of copyrights dated 21st July 2018.

ii] The prospective sole arbitrator, fifteen days before entering the arbitration reference, shall forward a statement of disclosure as per the provisions of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this application with a copy to be forwarded to both the parties;

iii] The learned prospective arbitrator shall endeavour to publish an award as expeditiously as possible and within the time limit as prescribed under Section 29-A of the Act;

iv) At the first instance, the parties shall appear before the prospective arbitrator within 10 days from today at a date and time as may be fixed by the prospective arbitrator.

v) All contentions of the parties on merits of the matter are expressly kept open.

(vi) The Arbitration petition is disposed of in the above terms.
No costs.

11. Office to forward a copy of this order to the learned Arbitrator on the following address:

c/o Darius Khambata, Senior Advocate.

Mulla House, 3rd floor, fort, Mumbai.

Phone No.9820675957

(G. S. KULKARNI, J.)