

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

ARBITRATION APPLICATION NO.139 OF 2018

ORDER

M/s.Arka Media Works, Hyderabad, a partnership firm, seeks appointment of a sole Arbitrator under Section 11(5) and (6) of the Arbitration and Conciliation Act, 1996 (*for brevity*, 'the Act of 1996'), to resolve its claim for a sum of Rs.17,60,00,000/- raised against M/s.K.Productions, Chennai, a proprietary concern, and S.N.Rajaraman, its Proprietor.

The applicant firm is the producer of the feature film Baahubali and entered into a Theatrical Rights Agreement on 28.01.2017 with the first respondent-proprietary concern granting it certain exploitation rights in Tamil, Telugu, Hindi and Malayalam languages on minimum guarantee basis within the territory of the State of Tamil Nadu for a period of five years. According to the applicant firm, the respondents herein, having made part payment of the consideration in terms of the aforesaid Theatrical Rights Agreement dated 28.01.2017, committed default in payment of the balance consideration leading to execution of a Loan Agreement by and between the parties on 29.04.2017. As per this Loan Agreement, the first respondent-proprietary concern, represented by the second respondent, acknowledged the default committed to the tune of Rs.15.50 crore and agreed that this amount should be treated as a loan. The first respondent-proprietary concern agreed to repay this amount within a period of fifteen days from the date of execution of the Loan Agreement and undertook liability to pay interest @ 36% per annum in case of default in payment of the loan amount. Disputes having arisen between the parties thereafter, the applicant firm invoked the arbitration agreement in Clause 9.7 of the Loan Agreement dated 29.04.2017 and

addressed arbitration notice dated 27.10.2018 to the respondents. However, the respondents did not choose to reply thereto. Hence, this application.

Notice having been ordered upon this application on 28.12.2018, the respondents were duly served on 21.01.2019. Ms.Gorantla Sri Ranga Pujitha, learned counsel for the applicant firm, also effected service of notice upon the respondents pursuant to the permission granted by this Court and filed acknowledgment cards in proof of service. Despite the same, the respondents did not choose to enter appearance before this Court.

Clause 9.7 of the Loan Agreement dated 29.04.2017 executed by and between the parties reads as under:

'9.7. Arbitration: Any claim, controversy or dispute arising out of or in connection with this Agreement shall be referred for arbitration to a sole arbitrator to be mutually appointed by the Parties. The arbitration proceedings shall be conducted in Hyderabad and the Language of the arbitration proceeding shall be in English.'

The aforestated Loan Agreement suffered proper stamp duty and the arbitration clause contained therein is therefore capable of being acted upon without further ado. Be it noted that though the respondents are residents of Chennai and the scope of the earlier Theatrical Rights Agreement dated 28.01.2017 pertained to the territories of the State of Tamil Nadu, the Loan Agreement dated 29.04.2017 was executed at Hyderabad and required payments to be made by the respondents at Hyderabad. That apart, the arbitration proceedings are to be conducted at Hyderabad in terms of the aforestated Clause No.9.7. Further, reference may also be made to INDUS MOBILE DISTRIBUTION PRIVATE

LIMITED V/s. DATAWIND INNOVATIONS PRIVATE LIMITED¹, wherein the Supreme Court observed that the moment the seat of arbitration is designated, it is akin to an exclusive jurisdiction clause and on facts, as the seat of arbitration was designated at Mumbai in that case, the jurisdiction exclusively vested in Mumbai Courts even in relation to an application under Section 11 of the Act of 1996. As the parties hereto, in their wisdom, designated Hyderabad as the seat of arbitration under Clause 9.7, referred to *supra*, the aforesaid observations of the Supreme Court would be squarely applicable and this Court would undoubtedly have jurisdiction to act upon this application.

On the above analysis, this Arbitration Application is ordered appointing Dr. Justice Motilal B Naik, retired Judge, erstwhile High Court of Andhra Pradesh, residing at Block No.10, Flat No. 1406, My Home Vihanga Apartments, near TNGO Colony, Gachibowli, Hyderabad-500107, as the sole Arbitrator for resolution of the disputes between the applicant firm and the respondents, arising out of the Loan Agreement dated 29.04.2017, in accordance with the provisions and mandate of the Act of 1996. The learned Arbitrator shall be entitled to fees as per the rates specified in the Fourth Schedule to the Act of 1996, inserted by Act 3 of 2016 with effect from 23.10.2015, which shall be borne by both parties in equal measure. No order as to costs.

SANJAY KUMAR, J

25th MARCH, 2019

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¹ (2017) 7 SCC 678