IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE **N. SATHISH KUMAR**

O.P.No.932 of 2019

VS Ecommerce Ventures (P) Limited
represented by its Director,
Mr.V.S.Aathitiyan
40/8, Indira Gandhi Street,
Palayapallayam, Erode – 638 011 .. Petitioner

.Vs.

M/s. Kavithalayaa Productions (P) Limited
Represented By its Managing Director,
Mrs.PushpaKandaswamy
9,Lambeth Avenue, Bawa Road,
Abhiramapuram, Chennai – 600 018 .. Respondent

* * *

Prayer: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to a) set aside the impugned order dated 16.05.2019 passed by the Sole Arbitrator in the Arbitration proceedings, b) pass an order allowing the counter claim of Rs.3,40,000/- filed by the petitioner c) direct the respondent to pay the costs of this petition to the petitioner and d) pass such further or other order/s given the fact ans circumstances of the matter.

* * *

For Petitioner	:	Mr. S.S.Rajesh
For Respondent	:	Mr.Satish Parasuran Senior Counsel for Mr.S.V.Pravin Rathinam

O R D E R

This Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the Award dated 16.05.2019 passed by the learned Arbitrator, Arbitral Tribunal. The Tribunal has passed the following award:

a) The claim against clause 6(a) and (b) stands rejected;

b) The claim made under Clause 6 (c) of the agreement stands allowed;

c) The Claimant is entitled to a sum of Rs.74,888/- against the claim made under clause 3 of the "Non exclusive Revenue Agreement"dated 12.08.2013;

d) The Claimant is entitled to interest on Rs.74,888/- at 10% from 13.08.2016 i.e., from the date of expiry of the said agreement dated 12.08.2013 till the date of filing claim statement;

e) Both parties have to bear their own cost and dismissed the counter claim also.

2. Mr.S.S.Rajesh, learned counsel for the petitioner though raised several grounds in the petition and the main contention of the learned counsel is that the award is against Indian Law. Further, there is no sufficient reasons for awarding the amount in favour of the respondent. It is his further contention that the learned Arbitrator has also not considered that the claim itself barred by limitation and the reasoning stated by the learned Arbitrator is against law.

3. The learned Senior Counsel appearing for the respondent submitted that the learned Arbitrator has passed the award based on the admission made by the respondent wherein he has categorically admitted the nature of amount payable by him. That was taken into consideration by the learned Arbitrator, while dismissing other claim and counter claim. The learned Arbitrator has relied upon documents and arrived at a reasonable conclusion.

4. With regard to the contention that the limitation has not been considered by the learned Arbitrator, it is the contention of the respondent concerned that the parties have exchanged mails, in which the petitioner has requested negotiation

and the matter prolonged for more than a year for negotiation. Even in the e-mail dated 26.08.2016, the respondent has sought for negotiations. Hence, it is his contention that the period during negotiations has to be excluded for limitation. At any event, it is his contention that the learned Arbitrator has taken note of the date on which the dispute actually raised by the petitioner and held that the claim is not barred by limitation. Therefore, this Court cannot sit as a appellate Court to re-appreciate the entire evidence. Hence, dismissed the application.

5. Brief facts leading to the filing of this application is as follows:

The petitioner is the company which carries on business of online exploitation of the film. The petitioner approached the respondent and sought to utilize its expertise and knowledge in the film industry to implement the project, and an Advisory Agreement dated 12.08.2013 and a Non-Exclusive Revenue sharing licence agreement dated 12.08.2013 were entered between the parties. As per the agreement dated 12.08.2013, the petitioner herein shall pay to the respondent at 30% share of Net Revenue generated from the exploitation, exhibition and distribution of the films provided in the schedule. The claimant handed over 49 films to the respondent by way of CD/DVD. The petitioner herein while continuously receiving the benefits of the claimant's action and making profits and was postponing the performance of its obligation. The same was mentioned by the respondent by way of mail dated 13.09.2015. The petitioner has raised certain objection by his mail dated 14.09.2015. Hence, the matter is referred to the learned Arbitrator for claiming various claims.

A. Directing the respondent to pay a sum of Rs.30,04,668/- in pursuance of claims 1, 3 & 4 above and thus render justice;

B. Directing the Respondent company to transfer 12.50% equity shares of the promoters in the respondent company existing /held as on 12.08.2013 to this Claimant within a time as may be fixed by this Tribunal and thus render justice;

C. Award pendente lite and post lite interest @12% p.a on Prayer A above from the date of claim till the date of realization;

D. Directing the Respondent to pay the costs of the Arbitration;

E. Pass such further or other orders as it may deem fit and proper and thus render justice.

6. It is the contention of the petitioner/respondent herein that the claim is barred by limitation. The petitioner/respondent had utilized its expertise, efforts and knowledge provided by the claimant. The claimant has not provided any expertize as agreed. All contracts/links were built by the respondent on its own by investing years of hard work. It is also pointed out that one Mohan was introduced to the respondent by the claimant. The respondent believing the credibility of the claimant and the said Mohan, the petitioner herein paid a sum of Rs.90,000/-. One Mr.Ramasastry Ambarish introduced by one Mr.Kandasamy was also not interested in investing in the respondent's business and because of which the claim for the deal never went, could not be maintainable. The respondent had to invest more than one Crore due to the wrong guidance and monetary losses from the claimant. The claimant never requested for transfer of 12.50% of equity share as per the Advisory agreement. Besides, the respondent claimed counter claim also. The learned Arbitrator framed the necessary issues and passed an award for a sum of Rs.74,888/- based on the email dated 16.08.2017. On the basis of the admission made in the e-mail sent by the petitioner/respondent, the counter claim made by the petitioner/respondent is also dismissed. The third claim made in the agreement is allowed.

7. Challenging the above, as discussed, the main focus of argument is claim petition is barred by limitation. The learned Arbitrator has considered the submission made by both parties with regard to the limitation and found that the dispute was raised on the basis of agreement in the e-mail dated 14.09.2015 and the above claim is well within the period of limitation.

8. It is the contention of the learned counsel for the petitioner that as per Clause 6(c) of the Advisory Agreement, the Equity shares to be transferred within one month, therefore, the limitation starts from that period. Whereas claim has been filed in the year 2019, which is barred by limitation. Therefore, the above aspect is not considered by the learned Arbitrator. It is to be noted that the Advisory Agreement dated 07.08.2013 and the non-exclusive Revenue Sharing License Agreement dated 12.08.2013, the period of limitation is one month (i.e.,) till 12.09.2013. Three year period of limitation expires only on 12.09.2016. In the meanwhile, notice of invocation of arbitration was also issued. The first mail sent by the petitioner is on 26.08.2016 and thereafter the petitioner sent settlement proposal. Immediately, the respondent sought for negotiation. Thereafter, notice

of invocation has been sent. It is to be noted that one month time is stipulated in the agreement to pay the amount. The Arbitrator has considered the negotiations between the parties held that before expiry of three years period, the parties engaged in negotiations through various e-mails sent between them.

9. The learned counsel for the respondent has relied upon the judgment reported in MANU/SC/1198/2019 and the relevant portion is as follows:

Having perused through the relevant precedents, we agree that on a certain set of facts and circumstances, the period during which the parties were bona fide negotiating towards an amicable settlement may be excluded for the purpose of computing the period of limitation for reference to arbitration under the 1996 Act. However, in such cases the entire negotiation history between the parties must be specifically pleaded and placed on the record. The Court upon carefule consideration of such history must find out what was the 'breaking point' at which any reasonable party would have abandoned efforts at arriving at a settlement and contemplated referral of the dispute of arbitration. This 'breaking point' would then be treated as the date on which the cause of action arises, for the purpose of *limitation. The threashold for determining when such a point arises will be lower in the case of commercial disputes, where the party's primary interest is in securing the payment due to them, than in family disputes where it may be said that the parties have a greater stake in settling the dispute amicably, and therefore delaying formal adjudication of the claim.*

10. In view of the above, the contention putforth by the petitioner that the claim is barred by limitation under (C9) cannot be countenanced. The Arbitrator considered all the relevant Clauses of the contract and negatived the claim in certain aspects. However, taking note of the admission made by the respondent in one of the e-mail wherein the respondent has admitted that the data is completely accurate and he is liable to pay a sum of Rs.74,000/-.

11. It is the contention of the learned counsel for the petitioner before this Court that the mail dated 16.08.2017, could not have been an admission, it is only sent without any prejudice. It is to be noted that what was stated in the mail is the condition for further continuation of the contract between the parties and also admitted the nature of work done by him. Therefore, merely because of the word prejudice mentioned in the notice it cannot be said that admission was not made in

categorical terms and would not bind the parties. Therefore, the contentions of the learned counsel for the petitioner cannot be countenanced.

12. The learned counsel for the respondent relied on the judgement reported in MANU/SC/1198/2019 (Geo Miller & Co. Pvt Ltd Vs. Chairman, Rajasthan Vidyut Utpadan Nigam Ltd) and contended that the interest awarded by the learned Arbitrator is also not correct. It is to be noted that having admitted the liability and having utilized the services by the petitioner, the interest portion awarded by the learned Arbitrator cannot be questioned.

13. The learned Arbitrator taken into consideration all the aspects. Therefore, this Court cannot sit as a Appellate Court to re-appreciate the entire evidence both oral and document. Merely, some other view is also possible that may not be a ground to interfere with the well reasoned award passed by the learned Arbitrator under Section 34 of the Arbitration and Conciliation Act, 1996. This Court finds no perversity or violation or infirmity in the award passed by the learned Arbitrator.

Accordingly, this Original Petition is dismissed. No costs.

28.06.2021

Index : Yes / No
Internet: Yes
Speaking/Non-speaking order
dh

To
M/s. Kavithalayaa Productions (P) Limited
Represented By its Managing Director,
Mrs.PushpaKandaswamy
9,Lambeth Avenue, Bawa Road,
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N. SATHISH KUMAR, J.
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