O.A.No.86 of 2022
and
Arb Appln.No.68 of 2022

M.SUNDAR, J

This order will govern the captioned two applications.

2. Captioned two applications were filed in this Court on 16.02.2022. Aforementioned two applications were first listed before this Court on 18.02.2022 and the proceedings made by this Court in that first listing reads as follows:

> *'In the captioned applications, 'O.A.No.86 of 2022' [hereinafter 'said OA' or 'injunction application' for the sake of convenience and clarity] has been presented with a prayer for interim injunction qua claiming or transferring any rights to distributors, over-the-top platforms or making any further investment in production of films titled 'Rebel', 'Chiyan 61' and 'Pathu Thala' and 'Arb.Appln.No.68 of 2022' [hereinafter 'said Arb.Appln' or 'security application' for the sake of convenience and clarity] is with a prayer for a direction to furnish security.*
>
> *2. Mr.Sricharan Rangarajan, learned counsel appearing on behalf of Ms.Anu Ganesan, counsel on record for applicant in both the captioned applications submits as follows:*
>
> *(i) Applicant is a cine artist;*
>
> *(ii) Applicant entered into an 'agreement dated 06.07.2018' [hereinafter 'said agreement' for the sake of convenience and*

clarity] with first respondent regarding a Tamil Cinematographic Film titled 'Mr.Local' [hereinafter 'said movie' for the sake of convenience and clarity];

(iii) The total remuneration payable to the applicant under said agreement (for playing lead role in said movie) is Rs.15 Crores (as captured in Clause 3 of said agreement captioned 'CONSIDERATION') to be paid at various stages/tranches qua making of said move, last of the payments is Rs.1 Crore and the same ought to have been paid before theatrical release of said movie;

(iv) Theatrical release of said movie did happen on 17.05.2019 but only 11 out of aforementioned 15 crores was paid and Rs.4 crores remained/remains unpaid;

(v) Thereafter the applicant has been repeatedly following up for payment of aforementioned balance consideration with the first respondent. Averments regarding such repeated follow up is captured in paragraph No.10 of the support affidavit. The payment was not forthcoming from first respondent in spite of repeated follow up but as a bolt from the blue the applicant was slapped with a notice under Section 226(3) of 'The Income-tax Act, 1961 (43 of 1961)' [hereinafter 'IT Act' for the sake of brevity] being notice dated 01.02.2022 as the first respondent had not paid the sums/tax deducted as TDS at source for the aforementioned 11 crores part payment;

(vi) Aforementioned notice under IT Act was assailed by the applicant by a writ petition being W.P.No.2592 of 2022 inter alia arraying first respondent in captioned applications as 6th

respondent in writ petition, notice was ordered in the said writ petition on 08.02.2022 and the same is pending. Though learned counsel mentioned that notice was ordered on 08.02.2022, on verification in the website it was found that notice was ordered only on 10.02.2022;

(vii) In the aforesaid circumstances, a huge sum of about Rs.91 Lakhs odd was actually deducted from the account of applicant and this is the trigger for the captioned applications;

(viii) Regarding manifest intention to arbitrate, (owing to aforementioned trigger) necessary averments have been made in paragraph No.13 of the support affidavit is learned counsel's say;

(ix) Aforementioned deduction is regarding 'Assessment Years' ['said AYs'] 2019-2020 and 2020-2021;

(x) In the light of the aforementioned trigger, the captioned applications were presented in this Court on 16.02.2022;

(xi) First respondent has incorporated a company and that company is the second respondent (page No.93 of typed set of papers to demonstrate that first respondent is a Director in second respondent-company);

(xii) Second respondent-company is now in the process of making three Tamil Movies titled as 'Rebel, Chiyaan 61 and Pathu Thala' [hereinafter 'said upcoming movies' for the sake of convenience and clarity];

(xiii) Advertisements pertaining to said upcoming movies are at page Nos.95, 96 and 97 of typed set of papers;

(xiv) Arbitration clause in said agreement is Clause 10 and the same reads as follows:

'10. MISCELLANEOUS:

a) Governing law:

(i) Any and all disputes and differences that may arise between the parties, pursuant to the terms of this Agreement, or its interpretation hereof, shall be referred to the arbitration of a Sole Arbitrator to be mutually appointed by the Parties hereto. The said Arbitration shall be conducted in accordance with the Arbitration and Conciliation Act, 1996. The award of the arbitration proceedings will be final and binding on both parties to the Agreement. The venue of the Arbitration shall be Chennai. The Arbitration proceedings shall be conducted in English.

(ii) This Agreement shall be subject to the Laws of India and appropriate Courts of Chennai.

b) Severability:

In the event that any provision hereof shall be held to be invalid or unenforceable due to any reason, the said provision shall be modified to the extent necessary, and in any event, such invalidity or unenforceability shall have no effect upon the remaining provisions or terms and conditions hereof.

c) Any variations or amendment to this Agreement shall be in writing and signed by both parties.'

(xv) The above serves as an Arbitration Agreement between the parties (applicant and first respondent) being Arbitration Agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act is learned counsel's further say;

3. Besides purported unpaid dues qua remuneration for said movie, theatrical release of which has already happened, the applicant is now suffering further loss of money owing to deduction by the Income Tax Department which in turn is attributable to first respondent not depositing TDS, though the deductor is in the capacity and character of trustee qua deducted sums.

4. In the light of the narrative thus far (supra), prima facie case made out for issue of notice.

5. Issue notice to respondents returnable by 28.02.2022. Private notice permitted. Private notice through electronic modes of communications (subject to proof being demonstrated) also permitted. Learned counsel on record is also permitted to serve on the standing counsel for third respondent. Likewise, learned counsel is also permitted to serve on counsel (if any) if 6th respondent in W.P.No.2592 of 2022 has entered appearance through counsel.

6. List on 28.02.2022.

18.02.2022'

3. Pursuant to/post aforementioned proceedings, all three respondents in both captioned applications were duly served and they entered appearance through a counsel. To be noted, in the hearing today, Mr.Sricharan Rangarajan, learned counsel appearing on behalf of Ms.Anu Ganesan, learned counsel on record for applicant, Mr.Satish Parasaran, learned senior counsel appearing on

behalf of Mr.Vijayan Subramanian, counsel on record for respondents 1 and 2 and Mr.D.Prabhu Mukunth Arun Kumar, learned counsel representing Ms.Hema Muralikrishnan, learned senior standing counsel for Income Tax on behalf of third respondent are before this Court.

4. To be noted after aforementioned 18.02.2022 listing, there were multiple listings before this Court but it is not imperative to reproduce the proceedings made in those listings owing to the trajectory the captioned applications have taken.

5. Aforementioned proceedings made in the listing on 18.02.2022 shall be read as an integral part and parcel of this order. Short forms, abbreviations and short references used in the proceedings dated 18.02.2022 will be used in this order also for the sake of convenience and clarity.

6. First respondent before this Court has filed an affidavit dated 19.04.2022 and captioned UNDERTAKING AFFIDAVIT before the Writ Court in WP.No.2592 of 2022 and a scanned reproduction of the same is as follows:

IN THE HON'BLE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)
W.P. No 2592 of 2022

Mr. Doss Sivakarthikeyan,
D-101, Purva Jade Apartments,
170, Arcot Road, Valasaravakkam,
Chennai – 600 087
PAN: BNQPS7337J ... Petitioner

- VS -

1. The Income Tax Officer,
Non Corporate Ward – 10(6)
Income Tax Department,
121, Nungambakkam High Road,
Chennai – 600 034

2. The Additional Commissioner of Income Tax,
Non Corporate Ward – 10
Income Tax Department,
121, Nungambakkam High Road,
Chennai – 600 034

3. The Principal Commissioner of Income Tax - 3,
Income Tax Department,
121, Nungambakkam High Road,
Chennai – 600 034

4. The Joint Commissioner of Income Tax,
TDS Cell Range - 1
Income Tax Department,
121, MG Road, Nungambakkam,
Chennai – 600 034

2

5. M/s. HDFC Bank,
Represented by its Manager,
No: 8, Arcot Road,
Valasaravakkam, Chennai – 600 087

6. Mr. K.E. Gnanavel Raja,
No: 23, Astalakshmi Nagar,
10^{th} Street, Alapakkam,
Chennai – 600 116 ... Respondents

UNDERTAKING AFFIDAVIT

I, KE. Gnanavelraja S/o. VK. Eswaran, aged about 44 years, residing at No. 13, Chenni Illam, Jagadeswaran street, T. Nagar, Chennai – 600 017, hereby undertakes and affirms as follows:

1. I am the Sixth Respondent herein and the Sole Proprietor of M/s. Aadnah Arts and I am well acquainted with the facts and circumstances of the case.

2. I state that the Auditor has advised that the deducted TDS amount of Rs. 65,50,000/- for the assessment year 2019-20 and Rs. 11,11,111/- for the Assessment year 2020-2021 has to be remitted as TDS in the portal of the Income Tax Department with credit to the Petitioner by mentioning his PAN.

3. I hereby undertake to pay the TDS amount of Rs. 65,50,000/- for the assessment year 2019-20 and Rs. 11,11,111/- for the Assessment year 2020-2021 on or before 31^{st} May 2022 in favour of the Applicant and provide the certificate for the deduction and remittance of TDS amount – Form 16A.

3

4. I further state that the Petitioner has paid an interest /penalty amount of Rs. 14,55,379/- to the Income Tax Department. I hereby agree to pay a sum of Rs. 14,55,379/- to the Petitioner on or before 31st May 2022, subject to the condition that if the Petitioner receives the above penalty amount of Rs. 14,55,379/- as refund from the Income Tax Department at any point of time in the future, then the Petitioner shall communicate it to the Sixth Respondent and repay the amount of Rs. 14,55,379/- it immediately to the Sixth Respondent accordingly.

Under these circumstances, the undertaking affidavit filed by the Sixth Respondent shall be taken on record and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

Solemnly affirmed at Chennai
on this the 19th day of April 2022
having signed his name in my presence

BEFORE ME

ADVOCATE, CHENNAI

7. In this Court a Memo dated 21.04.2022 has been filed by first respondent and a scanned reproduction of the same is as follows:

MEMO

1. The Applicant has filed Application No. 68 of 2022 and O.A. No. 86 of 2022 seeking various reliefs. It is submitted that the above said applications came up for hearing before the Hon'ble Judge on 18.04.2022. It is submitted that during the course of hearing, we undertook to file an undertaking affidavit by the First Respondent to pay the TDS payment to be paid by the First Respondent to the Applicant.

2. It is submitted that complying the same the First Respondent has signed an undertaking affidavit dated 19/04/2022 in W.P No 2592 of 2022 agreeing to pay the pending TDS Payment to the Applicant. It is submitted that the copy of the undertaking affidavit is served to the Applicant and Third Respondent. The Original Undertaking Affidavit will be filed before the Registry Today.

Under these circumstances, this memo may be taken on record and pass orders, as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

Dated at Chennai this the 21st April, 2022

S.V.L

Counsel for First Respondent

8. Aforementioned Undertaking Affidavit filed in the Writ Court which has been placed before this Court under cover of aforementioned Memo [both of which have been scanned and reproduced supra] are telltale qua the trajectory the matter on hand has taken.

9. Learned counsel on both sides who are before this Court submit that the claims of the applicant *inter alia* regarding the balance consideration besides other incidental/ancillary issues, all of which constitute arbitrable issues have to be adjudicated upon. The claims of the applicant are disputed/resisted/contested by respondents 1 and 2. This Court has not expressed any view or opinion and all questions are left open. To be noted, both sides do not dispute the existence of arbitration agreement between the parties i.e., arbitration agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act.

10. Learned counsel on both sides submitted in one voice that a former Hon'ble Judge of this Court may please be appointed as Sole Arbitrator for entering upon reference, adjudicating aforementioned arbitrable disputes and render an award. Learned counsel on both sides have also agreed on Hon'ble Mr.Justice N.Kirubakaran (Retd), a former Hon'ble Judge of this Court, with address for service at No.36, 2nd Cross Street, Rayala Nagar, Ramapuram, Chennai-600 089, Mobile: 94450 25454 (email: justice.n.kirubakaran@gmail.com) and request that this Hon'ble former Judge of this Court may please be appointed as a sole Arbitrator. There is no

difficulty in acceding to this request as there is no disputation or contestation about the existence of arbitration agreement. In other words Hon'ble Mr.Justice N.Kirubakaran(Retd.) is appointed as sole Arbitrator.

11. This takes this Court back to captioned applications i.e., injunction application and security application. It is open to the applicant to replicate in a suitable form the injunction and security applications and present the same before Hon'ble Arbitrator with a request to treat the same as applications under Section 17 of A and C Act. If such a course is adopted, Hon'ble Arbitrator shall consider the applications on their own merits and in accordance with law. Though obvious it is made clear that this Court has not expressed any view or opinion on the merits of the matter as all that will now be in the domain of Hon'ble sole Arbitrator. Though obvious, it is also made clear that it is open to both sides to present applications either under Section 17 and/or under any other provision of A and C Act, if the need arises and if the same happens, it is obviously open to the Hon'ble Arbitrator to consider the same on its own merits and in accordance with law.

12. Before writing the operative portion of this order, this Court deems it appropriate to mention that the course adopted in the disposal of the two applications on hand tantamounts to referring the captioned applications to

arbitration. Therefore, in the light of Section 69A of 'The Tamil Nadu Court-Fees and Suits Valuation Act, 1955 (Tamil Nadu Act XIV of 1955)' [hereinafter 'TN Court Fees Act' for convenience and clarity], Section 89 of 'The Code of Civil Procedure, 1908 (5 of 1908)' [hereinafter 'CPC' for the sake of brevity, convenience and clarity] and ***M.C.Subramaniam*** principle being ratio laid down by Hon'ble Supreme Court in ***High Court of Judicature at Madras, represented by its Registrar General Vs. M.C.Subramaniam and others*** reported in ***(2021) SCC OnLine SC 109,*** if the applicants in the captioned applications seek refund of Court Fee in captioned applications, the same shall be made by the Registry by following the prescribed procedure, by way of an instrument drawn in favour of the applicant after making standard and permissible deductions if any.

13. Hon'ble Mr.Justice N.Kirubakaran(Retd), a former Hon'ble Judge of this Court, with address for service at No.36, 2nd Cross Street, Rayala Nagar, Ramapuram, Chennai-600 089, Mobile: 94450 25454 (email: justice.n.kirubakaran@gmail.com) is appointed as sole Arbitrator. Hon'ble sole Arbitrator is requested to enter upon reference, adjudicate the arbitrable disputes that have arisen between the parties in the captioned matters and render an award by holding sittings in 'Madras High Court Arbitration and

Conciliation Centre under the aegis of this Court' (MHCAC) in accordance with Madras High Court Arbitration Proceedings Rules 2017 and fee of the Hon'ble Arbitrator shall be in accordance with the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.

14. Captioned applications are disposed of in the aforesaid manner. There shall be no order as to costs.

25.04.2022

Speaking order: Yes/No
Index: Yes/No
kmi
To
***Note**: The Registry is directed to communicate this order forthwith to*

1. Hon'ble Mr.Justice N.Kirubakaran(Retd.),
   Former Hon'ble Judge of this Court,
   No.36, 2nd Cross Street, Rayala Nagar,
   Ramapuram, Chennai-600 089.
   Mobile: 94450 25454 (email: justice.n.kirubakaran@gmail.com)

2. The Director,
   Tamil Nadu Mediation and Conciliation Centre -cum-
   Ex-Officio Member,
   Madras High Court Arbitration Centre,
   Madras High Court, Chennai 600 104.

M.SUNDAR.J.,

kmi

O.A.No.86 of 2022
and
Arb Appln.No.68 of 2022

25.04.2022