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Arb.Appln.No.86 of 2022
&
O.A.No.842 of 2021
&
O.A.No.13 of 2022

M.SUNDAR.J.,

This common order will govern the captioned three applications.

2. O.A.No. 842 of 2021 (filed on 20.12.2021), O.A.No.13 of 2022 (filed on 07.01.2022) and Arb.Appln.No.86 of 2022 (filed on 25.02.2022) shall be referred to as 'first application', 'second application' and 'implead application and/or third application' respectively for the sake of convenience and clarity.

3. First application and second application are under Section 9 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of brevity] and therefore, short facts shorn of granular particulars will suffice. Nucleus of the captioned applications is a Tamil feature film titled 'Rudhran' [hereinafter 'said movie' for the sake of convenience and clarity] produced by Five Star Creations LLP [respondent in first application and hereinafter 'Five Star' for the sake of brevity] and dubbing rights qua said movie in languages, which have been described as 'Hindi & All North Indian languages' [hereinafter 'said languages' for the sake of

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convenience and clarity]. While Five Star is lone respondent in the first application, one 'Revanza Global Ventures Private Limited' [hereinafter 'Revanza' for the sake of convenience and clarity] is lone applicant in the first application. There is one more player in the scheme of things, namely 'Viacom18 Media Private Limited' [hereinafter 'Viacom18' for the sake of convenience and clarity]. Aforementioned said movie and dubbing rights qua said movie in said languages is nucleus of the matter on hand, Assignment Deed dated 15.04.2021 between Five Star i.e., producer of said movie and Revanza is fulcrum of the case and epicentre of the *lis*. This 15.04.2021 Assignment Deed shall be referred to as 'first Assignment Deed' for the sake convenience and clarity.

4. Under the first Assignment Deed, Revanza acquired dubbing rights in said languages qua said movie for a total consideration of Rs.12.25 Crores payable on receipt of tax invoices from Five Star. This First Assignment Deed permits Revanza to make further assignments. Pursuant to such rights, Revanza has entered into an agreement dated 14.07.2021 (this Court is informed that this agreement was signed on two dates, namely on 17.07.2021

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by one party and 28.07.2021 by the other party) and assigned all the rights under first Assignment Deed to Viacom18 for a consideration of Rs.16 Crores.

5. Be that as it may, it is to be noted that when the first assignment deed was entered into, Revanza had paid only a part of the consideration i.e., Rs.10 Crores in two tranches of Rs.8 Crores and 2 Crores. This means that there was a balance of Rs.2.25 Crores. This Court does not want to dilate more on this aspect of the matter as these are proceedings under Section 9 of A and C Act.

6. After assigning dubbing rights in favour of Viacom18 vide second assignment deed disputes erupted regarding balance to be paid by Revanza under first assignment deed, this led to first application being filed in this Court on 20.12.2021 and this Hon'ble Court had granted an interim order restraining Five Star from creating any third party rights qua dubbing rights in said movie in and by order dated 23.12.2021. This order has been extended from time to time and it is now operating.

7. The scene now shifts to the legal activity of Five Star. Five Star filed the second application, namely O.A.No.13 of 2022 on 07.01.2022 with a prayer to injunct Revanza from disposing of or dealing with rights assigned to it under first Assignment deed in any manner. No interim orders in this second

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application and it is pending. To be noted, before filing this second application, Five Star had terminated the first Assignment deed in and by a notice dated 28.10.2021 after putting Revanza on prior notice owing to alleged non-payment of the balance consideration vide first Assignment deed.

8. Under the aforementioned circumstances, Five Star has come up with the third application i.e., Arb.Appln.No.86 of 2022 by filing the same on 25.02.2022 with a simple prayer to implead Viacom18 as second respondent in the second application, namely O.A.No.13 of 2022. This application is pending. To be noted, notice was ordered in this application and Viacom18 has entered appearance through counsel. In this application, learned counsel for Revanza makes it clear that the implead application is not being opposed but learned counsel for Viacom18 stoutly opposes the implead application.

9. When the entire legal screen unfurled today, Mr.B.Arvind Srevatsa for Revanza, Mr.Vijayan Subramanian for Five Star and Mr.Manoj Menon along with Mr.K.Chindan of M/s.Menon Karthik Mukundan and Neelakantan (Law Firm) for Viacom18 were before this Court.

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10. There is no serious disputation or disagreement regarding the facts and trajectory the captioned applications have taken all of which have been captured in the preceding paragraphs supra. Disputation and legal tussle is only with regard to continuation of interim order in first application, impleading of Viacom18 by allowing third application and thereafter granting interim order in second application.

11. This Court heard out all the three learned counsel.

12. This Court wanted to know from Mr.B.Arvind Srevatsa, learned counsel for Revanza regarding manifest intention to arbitrate. Learned counsel submitted that the arbitration agreement between the parties is Clause 37 of first Assignment Deed, which reads as follows:

> *'37. 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 be appointed by the other two Arbitrators as Presiding Arbitrator. The Arbitration shall be at Chennai 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.'*

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13. The above serves as arbitration agreement between the parties i.e., between Revanza and Five Star being arbitration agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act. Learned counsel submits that arbitration agreement was triggered by a notice dated 17.03.2022, which was received by Five Star on 20.03.2021 but that trigger notice or acknowledgement is not placed before this court. It is only oral submissions that have been made by learned counsel for Revanza. However, learned counsel for Five Star does not dispute the receipt of this notice. The most interesting aspect is learned counsel for Five Star submits that they have not responded to this trigger notice and the purported reason is possible settlement. Likewise, Revanza also has not chosen to file a Section 11 petition in this Court, though thirty days from the date of service of trigger notice had elapsed on 20.04.2022 itself. The arbitration agreement in the considered view of this Court is not happily worded as it talks about sole Arbitrator as well as three Arbitrators. Either way, it has to be sub-section (3) or sub-section (5) of Section 11 of A and C Act. The fact remains that Revanza has not resorted to Section 11 until this date. Manifest intention to arbitrate principle which flows from ***Firm Ashok Traders*** principle [***Firm Ashok Traders and Another Vs.***

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Gurumukh Das Saluja and others reported in ***(2004) 3 SCC 155***] is a jurisdictional fact qua a Section 9 application and therefore it has to precede the application. This principle now stands codified vide sub-section (2) of Section 9. A period of 90 days is statutorily prescribed i.e., 90 days from the date on which an interim order is granted or within such further time as the Court may determine. As already alluded to supra, interim order was granted on 23.12.2021 and 90 days therefrom elapsed on 22.03.2022. Further time has not been determined by this Court though interim order has been extended from time to time.

14. In the considered view of this Court, settlement talks being underway is no answer to the manifest intention to arbitrate argument in the light of Section 30 of A and C Act. Nothing prevented the parties from resorting to arbitration and taking re-course to Section 30 of A and C Act. This Court respectfully reminds itself of the observation made by Hon'ble Supreme Court in ***Nortel*** case law [***Bharat Sanchar Nigam Limited and another Vs. Nortel Networks India Private Limited*** reported in ***(2021) 5 SCC 738***]. This Court also respectfully reminds itself of the significant observations by Hon'ble Supreme Court in ***Shree Vishnu Constructions*** case law [***Shree Vishnu***

https://www.mhc.tn.gov.in/judis

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Constructions Vs. The Engineer in Chief Military Engineering Service & Ors.], which read as follows:

> *'..... Therefore, if the arbitrators are not appointed at the earliest and the applications under Sections 11(5) and 11(6) of the Arbitration Act are kept pending for a number of years, it will defeat the object and purpose of the enactment of the Arbitration Act and it may lose the significance of an effective Alternative Dispute Resolution Mechanism. If the Commercial disputes are not resolved at the earliest, not only it would affect the commercial relations between the parties but it would also affect economy of the country. It may affect the ease of doing business in the country.'*
>
> *'..... The litigant may lose the faith in the justice delivery system, which may ultimately affect not only rule of law but commerce and business in the country. Therefore, the applications under Sections 11(5) and 11(6) of the Arbitration Act and other applications, either for substitution and/or change of the Arbitrator have to be decided and disposed of at the earliest.'*

15. In ***Nortel*** case law, Hon'ble Supreme Court recommended to the Parliament that a time frame should be fixed for Section 11 petitions. The reason is, the entire 'ADR' ['Alternate Dispute Resolution'] mechanism as far as arbitration is concerned is time line driven and the Statute prescribes specific

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time lines for every stage/step but no time line has been prescribed for filing Section 11. This means that one may have to fall back on Article 137 of the Limitation Act, 1963 and 3 years for even kick starting an arbitration will defeat the time line view taken by Hon'ble Supreme Court. In any event, without further dilating on this aspect, it will suffice to say that Revanza and Five Star have not demonstrated manifest intention to arbitrate. This by itself drops the curtains on captioned application. However, it is made clear that it is still not too late in the day for Revanza and Five Star to resort to arbitration by taking the statutory procedure route or by taking the contractual creature path.

16. This takes this Court to the third application. On the third application, learned counsel for Viacom18, as assignee, has got absolute rights which are irreversible and therefore, it does not want to participate in the arbitration proceedings. This Court understands this submission as an argument that Viacom18 is not a party within the meaning of Section 2(1)(h) of A and C Act.

17. Learned counsel for Five Star pressed into service oft-quoted ***Chloro Controls India Limited Vs.Severn Trent Water Purification Inc. and Others*** reported in ***(2013) 1 SCC 641*** but owing to the trajectory the captioned

https://www.mhc.tn.gov.in/judis

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applications have taken, this Court deems it appropriate to leave open this question of impleadment in the case on hand**.** Learned counsel contended that Viacom18 would qualify as any person claiming through or under party to arbitration agreement qua Revanza and therefore, it cannot be gainsaid that Viacom18 cannot be subjected to arbitration. This Court deems it appropriate to leave this question open in this order as this Court is convinced that first and second applications fail.

18. Before concluding, this Court also deems it appropriate to notice some other features of the matter which buttress the decision to say that first application fails and they are as follows:

a) As already alluded to supra, first application was filed in this Court on 20.12.2021 after the second assignment deed 14.07.2021 (signed on 17.07.2021 by one party and on 28.07.2021 by the other party) but this has not been mentioned in the application before the Section 9 Court.

b) No follow up on the part of Revanza qua trigger notice dated 17.03.2022 as already been discussed supra;

c) The next reason is, the entire first application was

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predicated on the ground that before termination of first Assignment Deed on 28.10.2021, Five Star had not put Revanza on notice but the correspondence that has now surfaced talks otherwise but this Court refrains itself from expressing any view or opinion as arbitration is still a possibility as between the parties. Though obvious if arbitration is sought for whether Viacom18 has to be roped in is also a question that is left open.

19. Further buttressing reasons common to first and second applications are as follows:

a) In a pre-arbitral proceedings Section 9 i.e., in a Section 9 application which is before commencement of arbitral proceedings, whenever the Court passes an order of interim measure or protection under sub-section (1), the protagonist of such application should commence the arbitral proceedings within 90 days from the date of such order. In this case, an interim measure/protection under sub-section (1) of section 9 was granted by the Hon'ble Predecessor Judge on 23.12.2021. As the expression is 'within' a period of 90 days, the 90^{th} day

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elapsed on 22.03.2022 and the arbitral proceedings should have been commenced on or before 22.03.2022. It is possible to say that the arbitral proceedings commenced on 20.03.2022, being the date on which the Five Star received 17.03.2022 notice from Revanza and it can be said that the arbitral proceedings commenced on that day within the meaning of Section 21 of A and C Act. Though Revanza may escape by proverbial cat's whisker on this technicality, it still fails on not being able to demonstrate manifest intention to arbitrate which is a jurisdictional fact and which should precede the pre-arbitral proceedings under Section 9 application. The reason is Revanza has not followed up the 17.03.2022 trigger notice with a petition under Section 11 of A and C Act and Five Star had not responded to this trigger notice. To be noted, as Five Star has failed to agree on the arbitrator said to have been suggested by Revanza within 30 days and Revanza has not resorted to Section 11, this Court does not want to dilate on this aspect of the matter as Revanza has not even chosen to produce the 17.03.2022

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notice before this Court. In this regard, it is also to be noted, if such a trend is left unchecked, it leads to entire arbitrable dispute being argued in a Section 9 application without resorting to arbitration. This means that the disputes are argued and decided in Courts and not in Arbitral Tribunals. This is a complete anathema qua sublime legal philosophy that arbitration is an effective adjudicatory alternate dispute resolution mechanism.

b) When an order for any interim measure of protection is granted by a Section 9 Court under sub section (1) thereat, it does not snap on arbitration proceedings not being commenced within 90 days from the date of such order. This is clear from the language in which sub section (2) of section 9 is couched as it provides for mechanism whereby the Court can determine further time for commencement of arbitral proceedings i.e., further time beyond 90 days from the date of order. In the case on hand, there is nothing to demonstrate that such further time

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has been granted by this Court. In this regard, this Court is of the view that mere extension of the interim order cannot be construed as extension of time for commencement of arbitration proceedings. Interim order may be extended beyond 90 days from the date of the order for ever so many reasons and therefore, it will be incorrect to construe it as a broad generic principle that extension of interim measure of protections beyond 90 days will tantamount to extension of period for commencement of arbitral proceedings also.

20. From the narrative thus far, it is clear that it is not just a case of absence of manifest intention to arbitrate but it is a case of absence of intention to arbitrate. In this view of the matter, it is deemed appropriate to make it clear that a Section 9 legal drill cannot be used as a medium to thrash out the entire tussle i.e., *lis* pertaining to arbitration. In other words, a pre-arbitration section 9 legal drill is a interim measure pending arbitral proceedings and therefore, section 9 legal drill cannot be converted into arbitral proceedings without even commencing arbitral proceedings itself as that would tantamount to frustrating the very scheme of the Act.

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21. The sequitur is, first and second applications i.e., O.A.No.842 of 2021 and O.A.No.13 of 2022 are dismissed. The third application, namely Arb.Application No.86 of 2022 is disposed of as closed as the question is left open owing to the proceedings made today in the first and second applications.

22. All three applications stand dismissed/disposed of in the aforesaid manner. There shall be no order as to costs.

23.08.2022

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M.SUNDAR, J

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Arb.Appln.No.86 of 2022
& O.A.No.842 of 2021
& O.A.No.13 of 2022

23.08.2022

https://www.mhc.tn.gov.in/judis