IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION (L) NO. 22714 OF 2024

Saravana Prasad ...Petitioner
Versus
Endemol India Private Limited & Anr. ...Respondents

WITH

COMMERCIAL ARBITRATION PETITION (L) NO. 22746 OF 2024

Innovative Film Academy Pvt. Ltd. ...Petitioner
Versus
Endemol India Private Limited & Anr. ...Respondents

Mr. Siddhesh Bhole *a/w. Mr. Yakshay Chheda (through VC) a/w. Mr. Apoorva Kulkarni i/b. SSB Legal and Advisory, for Petitioner in both Petitions.*

Mr. Sharan Jagtiani, Senior Advocate *a/w. Ms. Surabhi S. Agrawal, Mr. Rashmin Khandekar, Mr. Anand Mohan, Ms. Sneha Nanandkar, Ms. Ruddhi Bhalekar, Ms. Pallavi Thakur i/b. ANM Global, for Respondent No.1 in both Petitions.*

CORAM: SOMASEKHAR SUNDARESAN, J.

Reserved on : January 31, 2025

Pronounced on : July 3, 2025

JUDGEMENT :

Context and Factual Background:

1. These Petitions are filed under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 ("***Arbitration Act***") challenging an order dated July 10,

2024, passed by a Learned Arbitral Tribunal under Section 17 of the Arbitration Act, directing a deposit of Rs. ~10.40 crores in a fixed deposit in a nationalised bank and requiring expansive disclosures in the course of conduct of the arbitral proceedings.

2. Innovative Film Academy Private Limited ("***Innovative***") is a one-person company formed by Mr. Saravana Prasad ("***Prasad***"). Innovative is the Petitioner in Commercial Arbitration Petition (L) No. 22746 of 2024 while Prasad is the Petitioner in Commercial Arbitration Petition (L) No. 22714 of 2024. Innovative entered into a "Production Agreement" dated March 10, 2021 ("***Agreement***") whereby Endemol would create, produce, edit post-production and deliver episodes of the well-known cookery television show franchise "***Masterchef***" in Tamil, Telugu, Kannada and Malayalam. Payments were due on the basis of milestones across the span of work to be carried out.

3. It is common ground that Endemol delivered the episodes in Tamil and Telugu and was contractually entitled to payment on the four invoices it raised on Innovative from time to time, aggregating to Rs. ~15.93 crores. It is also common ground that a sum of Rs. ~4.45 crores has been paid by Innovative to Endemol. A sum of Rs. ~1.08 crores was adjusted against dues in another contract between the parties. The outstanding dues on the

invoices were stated to be Rs. ~10.40 crores. Disputes and differences relating to the claim to these dues are the trigger for the arbitral proceedings which led to the Impugned Order being passed as an interlocutory measure under Section 17 of the Arbitration Act.

4. The Learned Arbitral Tribunal has ordered the "*Respondents*" (in the arbitral proceedings i.e. Innovative and Prasad) to do the following:-

a) deposit the claimed sum of Rs. ~10.40 crores in a fixed deposit in a nationalised bank, to be maintained without disturbance pending the hearing and final disposal of the arbitration;
b) disclose all assets (movable and immovable) and all encumbrances, charges and attachments on such assets since March 2019;
c) disclose details of all companies and firms in which they are shareholders, directors or partners and the extent of their interest in such enterprises;
d) disclose all income-tax returns since March 2019 along with the profit and loss account and all ledger statements along with narrations; and
e) disclose details of all bank accounts held by them since March 2019.

5. In arriving at the aforesaid directions, the Learned Arbitral Tribunal has also denied multiple reliefs as formulated by Endemol but that need not

detain my attention since Endemol has not challenged the Impugned Order. Suffice it to say, disclosures had been sought by Endemol about the assets of all family members of Prasad, which has been denied, but the Learned Arbitral Tribunal has been persuaded to direct Prasad to make disclosures. The Learned Arbitral Tribunal has essentially taken a *prima facie* view of the facts and material on record; held that it cannot lean on principles of equity and that it must stick to the contractual terms; noted that Endemol's case hinges primarily on a letter dated July 11, 2022, confirming balances in the sum of Rs. ~10.40 crores as being due and payable ("***Confirmation Letter***"); and that evidence would need to be led to examine the full veracity of the dues owed in the course of the final hearing.

Analysis and Findings:

6. I have heard Mr. Sharan Jagtiani, Learned Senior Advocate and Mr. Rashmin Khandekar, Learned Advocate on different dates, on behalf of Endemol and Mr. Siddhesh Bhole, Learned Advocate on behalf of Innovative and Prasad. I have gone through their written submissions and the copious and voluminous case law tendered by them.

7. It is clear from the material on record that the Learned Arbitral Tribunal has essentially directed in the Impugned Order, what the Learned Arbitral Tribunal, in its wisdom, believed would meet the ends of justice as an

interlocutory measure. There has been extensive reliance on merits by both sides in the course of the hearing before me, seeking to draw inferences from such detailed submissions on merits, although the Learned Arbitral Tribunal has itself stated that it has not gone into the merits in any material depth.

8. Having examined the contentions and the material on record, what stands out is that the Learned Arbitral Tribunal has taken note of the Confirmation Letter as being the linchpin of Endemol's arguments, and indeed also noted that Innovative has not denied having issued the Confirmation Letter. In my opinion, whether the Confirmation Letter was something consciously issued or routinely issued in the course of audit confirmations sought by auditors of Endemol, the reasons for which there is no Confirmation Letter after 2022, and the implications of accounts reconciliation exercises that the parties had engaged in, are all matters that would be dealt with by the Learned Arbitral Tribunal in the course of the conduct of the arbitration.

9. The real issue that arises in these two Petitions is whether the Impugned Order represents a reasonable and plausible view or whether it adopts a view that is implausible and untenable. Having examined the Impugned Order and the material on record, it is apparent the Learned Arbitral Tribunal has conclude the following:-

a) Endemol's case significantly hinges on the Confirmation Letter;

b) The issuance of the Confirmation Letter is not denied by Innovative;

c) However, the Confirmation Letter alone would not be conclusive of the merits of the dispute;

d) There is a need to provide some security to Endemol for its dues;

e) However, Innovative parting with the entire sum would not be appropriate;

f) Therefore, a deposit has been directed but in a fixed deposit which is to be maintained in the name of the depositing parties, with a commitment to keep it secure without disturbance during the pendency of the arbitration;

g) Disclosures sought about the assets and liabilities of family members of Prasad is "not required at this stage"; and

h) Therefore, disclosures, only by Innovative and Prasad would suffice.

One Person Company – Fundamental Policy of Law Ignored:

10. At the threshold, it should be noticed that Innovative is an OPC, a concept introduced in the Companies Act, 2013 ("***Companies Act***"), to enable formation of a company with just one shareholder. Such a legal framework was explicitly introduced into the law, in a departure from the conventional concept that it takes at least two individuals to keep each other "company".

By such construct, the Companies Act enabled the creation by a sole individual, of a body corporate that is an artificial juridical person. Even perpetual existence has been envisaged – the OPC does not come to an end with the death of the sole shareholder since he would need to nominate another individual who would become the sole shareholder of the OPC, which continue as such. By such creation of legal fiction, the OPC is meant to create a framework whereby, individuals who need the protection of limited liability can ring-fence their personal liability and personal assets from the risks involved in the businesses run by them.

11. It would not be out of place to mention that the concept of OPC has its parallels in other advanced economies of the world including the European Union, the United States of America, United Kingdom and even in Asian economies such as China and Singapore.

12. The hallowed case of ***Saloman***[1] that laid the foundation of limited liability for companies was the case of a leather boot manufacturer who converted his sole proprietorship business into a company (of course with his family owning nominal shares). The issue that arose was whether the shareholder would be liable for the obligations of the company. The House of Lords overturned the view of the Court of Appeal, which had held that the

[1] *Saloman vs. Saloman – (1897) AC 22*

company was a sham and a device, propagated to escape the liability of the shareholder. Today, as a matter of Indian company law, the concept of the OPC is now a matter of special corporate law policy of India introduced into the Companies Act to enable individual entrepreneurs to ring-fence their assets from exposure to liability arising out of the conduct of business by the OPC formed by them.

13. Essentially, while the Impugned Order is generally incapable of being interfered with since it but an interim arrangement, and the Learned Arbitral Tribunal has taken a reasonable approach of ensuring that the money directed to be deposited is not alienated from the Petitioners, the Impugned Order represents a material error by treating Prasad and Innovative as one and the same in terms of liability owed to the Endemol. The Impugned Order makes no distinction between Innovative and Prasad. By directing both of them to make the deposit, and worse, by directing each of them to make a full disclosure of all personal assets, liabilities, tax returns, and ownership interests in any enterprise, this facet of the Impugned Order is in direct conflict with the fundamental policy of the India.

14. The Impugned Order contains no analysis as to why Prasad should be roped into this mix by directing him to make a deposit and to give disclosure of his personal assets and liabilities despite Innovative being a limited

liability OPC. The Impugned Order is vulnerable on two counts – *first*, it does not provide reasons as to why it would treat Innovative and Prasad as one and the same in terms of liability owed; and *second*, it is directly contrary to Innovative being a limited liability company, which implies that no final relief of liability is possible against Prasad for no reason other than being the sole shareholder of Innovative. Innovative being a limited liability company totally undermines the ability to direct Prasad to meet obligations by way of interim relief since there cannot arise final relief that fastens Innovative's liabilities on to Prasad. Therefore, in my opinion, the Impugned Order cannot be sustained in relation to the directions issued against Prasad – of making a deposit and providing disclosures.

15. There is also no analysis of any contemporaneous evidence that would make Prasad contractually liable without being a party to the Agreement. If such a factual matrix had been in existence and dealt with, one could have considered that despite being ring-fenced from Innovative's liability as its shareholder, Prasad may have some obligation to meet.

16. At this stage, I do not even need to go into comparing the contours of jurisdiction in an appeal from an order passed under Section 17 of the Arbitration Act with the contours of the jurisdiction in an appeal from an order under Section 34 of the Arbitration Act. However, even adopting the

narrow scope of interference available to a Section 37 Court when adjudicating the vulnerability of an order passed in the narrower scope of review under Section 34 of the Arbitration Act, the Impugned Order does not pass muster in its over-reach to Prasad.

17. Mr. Jagtiani would attempt to extrapolate from ***Cox & Kings***[2] to propound the theory that Prasad was the signatory to contracts executed by Innovative in his capacity as the sole director of the OPC; the correspondence by Innovative was by Prasad; and thereby an implied consent to bind Prasad was discernible. This submission is totally untenable and has to be stated to be rejected. To begin with, it is nobody's case that Prasad is a party to the Agreement, which admittedly a contract between Innovative and Endemol. Innovative was inherently an OPC, which, by law may have just one director and by law must have only one shareholder. The OPC is meant to be the business and social alter ego of the OPC, and that is by legal design. The legal framework explicitly protects such sole shareholder by limiting the liability as for any other company. If the director signing on behalf of the OPC is reason enough to wish away the statutory scheme of limited liability, it would render the very framework of the OPC redundant and *otiose*. If being an alter ego were enough to dilute the limited liability of the sole shareholder of the OPC, the very legal framework governing OPCs would stand obliterated.

[2] *Cox and Kings Ltd. vs. SAP India Private Limited and Another – (2024) 4 SCC 1*

18. Section 2(62) of the Companies Act defines an OPC as a company which has only one person as a member. Shareholders of a company whose liability is limited by the shares held, cannot be called upon to discharge the obligations contracted by the company. It is nobody's case that Innovative is a company with unlimited liability company. By law, it is positively required to suffix its name as a "private limited company". Therefore, no liability of Innovative can result in a liability of Prasad.

19. One could understand if there were other attendant facts dealt with in the Impugned Order that could reasonable point to Prasad having contracted liabilities in parallel without his capacity as sole shareholder of Innovative being the reason. But that is not the case. There is no discussion of even a *prima facie* possibility of such an element being involved, for it to be left for later adjudication in the course of the final hearing. Therefore, the Impugned Order is unsustainable insofar it effects an over-reach by imposing obligations on Prasad to make a deposit and to make wide-ranging disclosure of ownership of any and every asset and interest.

Direction to Deposit in FD:

20. As regards the very direction of making a deposit (leaving Prasad aside for the reasons set out above) in a fixed deposit, it is apparent that the Learned Arbitral Tribunal has not accepted the Confirmation Letter as gospel

truth. Likewise, the Learned Arbitral Tribunal has not ignored the fact that the issuance of the Confirmation Letter is not denied by Innovative. There is no contemporaneous correspondence or correspondence after the Confirmation Letter, that was presented by Innovative for consideration by the Learned Arbitral Tribunal in order to undermine the Confirmation Letter.

21. Balancing all these factors, the Learned Arbitral Tribunal has taken a reasonable and just approach of not directing a deposit in a manner that Innovative loses control over the money but has only directed that Innovative must create a fixed deposit and hold it secure, pending completion of arbitration. I find this intervention just, equitable and well balanced, and therefore unworthy of interference.

22. Mr. Bhole would contend that the Learned Arbitral Tribunal has placed excessive reliance on the Confirmation Letter and that Learned Arbitral Tribunal has cast a negative burden on Innovative to prove that the Confirmation Letter is incorrect. I am unable to accept this proposition. The Confirmation Letter was issued by Innovative. When balances are confirmed to auditors of counterparties, it is essentially an assurance that the amounts shown in the books of the counterparty as being due, is *prima facie* a true and fair record in the books of accounts.

23. It is true that such confirmations need not be conclusive evidence and if there are disputes that arise subsequently, such disputes cannot be wished away when dealing with balances in the books of accounts. However, whether there are other circumstances and facts that would undermine such a confirmation is a matter of evidence. That can be gone into in the course of the arbitration. At the stage of considering the Section 17 proceedings, the Learned Arbitral Tribunal has rightly adopted a *prima facie* view. Unless such view is blatantly perverse by being in *ex facie* conflict with the material on record, it would not be appropriate for this Court to interfere and substitute its own view of what is more appropriate, in the place of the view expressed by the Learned Arbitral Tribunal.

24. Mr. Bhole's contention is that there has to be a risk of dissipation seen from the material on record before a direction of deposit can be made. It is now trite law that an arbitral tribunal need not be strictly hide-bound by the principles laid down in Order 38, Rule 5 of the Code of Civil Procedure, 1908. Decisions of this Court[3] in this regard holding that the arbitral tribunal does not need to follow such requirements, have been approved by the Supreme Court[4]. Apprehension of a diminution in value would also be an adequate

[3] *Jagdish Ahuja vs. Cupino Ltd. – 2020 SCC OnLine Bom 849; Ajay Singh vs. Kal Airways – 2017 SCC OnLine Del 8934*
[4] *Essar House (P) Ltd. Vs. Arcellor Mittal Nippon Steel (India) Ltd. – 2022 SCC OnLine SC 1219*

ground and it is not necessary to be hide-bound by the provisions of CPC. In fact, Section 19 of the Arbitration Act provides that the arbitral tribunal shall not be bound by the provisions of CPC. Likewise, under Section 28, the arbitral tribunal shall take into account the terms of the contract and trade usages applicable to the transaction. Going by the *prima facie* view that the liability has been admitted, no fault can be found with the Impugned Order in this regard.

25. Mr. Bhole has also contended that the Impugned Order should speak for itself, and reasons cannot be subsequently added or canvassed in the course of the appeal to defend the Impugned Order. An analysis of that contention is unnecessary since on the face of the Impugned Order, despite its crispiness bordering on being cryptic, it is clear that the Learned Arbitral Tribunal has considered the liability arising out of the four invoices; the relevance of the Confirmation Letter, without making it a pivotal and absolute basis for directing a deposit; and has also taken care to balance the direction to deposit, by letting Innovative keep the money with itself in a fixed deposit. I am unable to find fault with the Impugned Order in relation to the direction to keep a fixed deposit – of course, not as an obligation imposed on Prasad but as an obligation imposed on Innovative.

Conclusions and Directions:

26. Therefore, for the reasons set out above, it would be appropriate to summarise my conclusions as under:

a) Since Prasad's liability is limited by the Companies Act, no direction against Prasad to make a deposit or make any disclosure is legally sustainable or tenable – such a direction is in direct conflict with the fundamental policy of Indian law governing OPCs, as enshrined in the Companies Act;

b) Even a final relief against Prasad looks, *prima facie*, unlikely – it is left open to the course of arbitration to see if there is any other basis at all for any claim to be made against Prasad, but at this stage there is not even a *prima facie* case for issuing any directions involving personal liability on Prasad. Therefore, directing him to make a deposit or to make disclosures of his personal assets and liabilities (which can only be in aid of a potential future personal liability) is untenable and liable to be set aside;

c) Therefore, the Impugned Order, insofar as it directs imposition of any personal obligations on Prasad, is hereby set aside;

d) The Impugned Order, insofar as it imposes obligations on Innovative – whether in the nature of maintaining a fixed deposit in

a bank, or disclosing assets, liabilities and ownership interests of Innovative – cannot be faulted with. In this regard, the Impugned Order renders a plausible view that cannot be substituted by this Court's view, based on this Court's own perception of what alternate plausible view could have been adopted.

27. The captioned appeals are partially allowed in the aforesaid terms. On a careful consideration of the issues involved, I am inclined not to impose costs at this stage. The Learned Arbitral Tribunal shall factor in the outcome in these proceedings when it eventually considers costs in the course of rendering its final award in the arbitration being conducted by it.

28. It is clarified that all observations made in this judgement are in aid of dealing with the *prima facie* findings of the Learned Arbitral Tribunal that is impugned, and are therefore also made on a *prima facie* basis. Nothing contained herein is meant to influence the adjudication of issues in the course of the arbitration.

29. All actions required to be taken pursuant to this order, shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN J.]

Shraddha