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Arb O.P(COM.DIV.) No. 34 of
2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25-11-2025

DATE OF DECISION : 28-11-2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

Arb O.P(COM.DIV.) No. 34 of 2021

M/s.Mediaone Global Entertainment Limited
Having its registered office at
Flat No.32, 1st Floor, Mataji Complex,
Wallace lane, Mount Road, Chennai 600 002
Tamil Nadu Represented by its Director

Petitioner

Vs

1. M/s.Vishnu Associates
Represented by its Managing Director
Mr.M.S.Sreekanth
A registered partnership firm having
registered office at Theatre Gurushree
P.B.No.27, Bangalore-Mysore Road
Mandya 571 401, Karnataka
2. Eros International Media Ltd.,
Rep.by its Directors
No.201, Kailash Plaza



Opp Laxmi Industrial Estate
Off Andheri Link Road, Andheri (W)
Mumbai 400 053, Maharashtra and
commercial office at
901/902, Supreme Chambers
Off Veera Desai Road, Mumbai 400 053

3. Dr.J.Muralimanohar
Director, Media One Global Entertainment
Ltd.,
No.59, Vijayaraghava Road, T.Nagar,
Chennai 600 017
(The Respondents 2 and 3 not necessary
party in this petition, hence we dispense
with the notice for respondents 2 and 3)

Respondent(s)

PRAYER

To set aside the Arbitral Award dated 30.09.2020 passed by the Learned Sole Arbitrator in the Arbitral proceedings between the petitioner and the respondent and consequently dismiss the claim of the respondent. SV.Rs.1,23,04,231/- CF.Rs.100000

For Petitioner : Mr.T.Saikrishnan

For Respondent : Mr.Avinash Wadhwani

ORDER

This original petition has been filed under Section 34 of the Arbitration



and Conciliation Act, 1996 (for brevity, hereinafter referred to as “the Act”)

against the award passed by the sole Arbitrator dated 30.09.2020 in favour of the first respondent/claimant, who will be hereinafter referred to as the respondent in this order.

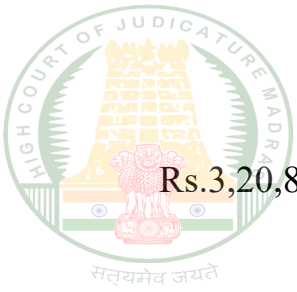
2. The respondent entered into a distribution agreement dated 09.05.2012 with Eros International Media Limited, for theatrical distribution of the Tamil and Telugu versions of the film “Maatran” in Karnataka. As per the agreement, the respondent is required to pay a sum of Rs.4 Crores to the said Eros International Media Limited and out of which, Rs.2 Crores was paid and the balance of Rs.2 Crores was payable three days prior to the release of the film. Due to widespread civil unrest on account of the cauvery water dispute, the Tamil films were prevented from being released in Karnataka. Since the film was not able to be released, the respondent invoked the force majeure clause and sought for the refund of the amount of Rs.2 Crores. The petitioner, through its Director, Dr.J.Murali Manohar intervened and persuaded the respondent to release the Telugu version and assured compensation for any shortfall through a



guarantee deed dated 11.10.2012. Relying on the said guarantee, the respondent released the Telugu version. Unfortunately, the film was a flop and as a result, the respondent suffered a net loss of Rs.1,24,29,432/-. When the amount was demanded, the petitioner failed to honour the guarantee. It is under these circumstances, the arbitration clause was invoked and the sole Arbitrator was appointed by this Court by an order dated 04.09.2015 made in O.P.No.450 of 2015.

3. The respondent filed the claim petition as against the petitioner, who was the second respondent, the said Eros International Media Limited, who was the first respondent and also Dr.J.Murali Manohar, who was the Director of the petitioner company. The respondent sought for an award against all of them jointly and severally for Rs.1,24,29,432/- together with interest @ 18% per annum from 31.12.2012 till the date of actual realization.

4. The said Eros International Media Limited filed a counter statement and also made a counter claim against the respondent demanding for a sum of



Rs.3,20,80,000/- along with interest @ 18% per annum.

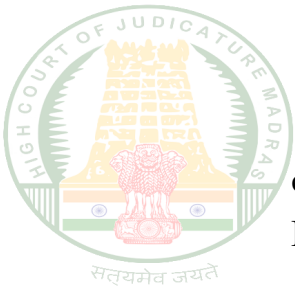
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5. The petitioner and the Director of the petitioner company also filed a reply statement and they denied their liabilities and also took a stand that the so called guarantee deed is not enforceable and it does not form part of the distribution agreement dated 09.05.2012, which was not signed by the petitioner. Apart from that, the guarantee was also not signed by the principal debtor. Even otherwise, the respondent had proceeded to release the Tamil version of the film also and therefore, the guarantee itself stood lapsed. Accordingly, the petitioner sought for the rejection of the claim.

6. The sole Arbitrator, on considering the pleadings, framed the following issues:-

“(1) Whether the Distribution Agreement dated 09.05.2012 contemplates a minimum guarantee of Rs.4 Crores payable by the Claimant to the 1st Respondent for the distribution and release of the film ‘Maatraan/Brothers’ and whether such amount is paid?

(2) Whether the Claimant has invoked force majeure



clause of the Agreement and sought refund of the amount of Rs.2 Crores which was paid under the Agreement?

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(3) Whether the Claimant has proved that there was recognition between the Claimant and the Respondents under which the Claimant was guaranteed a minimum profit of Rs.2 Crores in the event of releasing the subject matter films?

(4) Whether the Respondents 2 and 3 did execute the Guarantee Deed dated 11.10.2012 to encourage Claimant to continue to distribute and release the subject matter of the film after the re-negotiation?

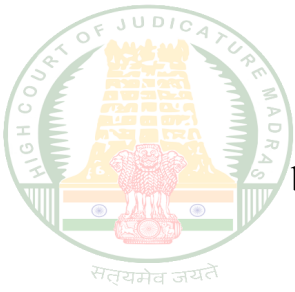
(5) Whether the Guarantee Deed dated 11.10.2012 stipulates that the Respondents 2 and 3 shall compensate the Claimant of the 1st Respondent if the Claimant is unable to recoup the sum of Rs.2 Crores?

(6) Whether the Guarantee Deed dated 11.10.2012 had elapsed by the release of subject matter of the film in Tamil language?

(7) Whether the Claimant is a registered Partnership firm to maintain the present claims against the Respondents?

(8) Whether the Claimant is entitled to maintain two independent cause of actions against two different parties under different Agreements before this Tribunal?

(9) Whether the Claimant had committed breach of contract under Clause 5.2 of the Distribution Agreement dated 09.05.2012 and whether the Claimant is liable to pay a sum of Rs.4 Crores to the 1st Respondent as minimum guarantee



before the release of the subject matter film?

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(10) Whether the Respondents are jointly and severally liable to pay the Claimant a sum of Rs.1,24,29,432/- with interest @ 18% p.a from 31.12.2012 till the date of realization?

(11) Whether the 1st Respondent is entitled to the counter claim sum of Rs.3,20,80,000/- from the claimant on account of breach of contractual obligations?

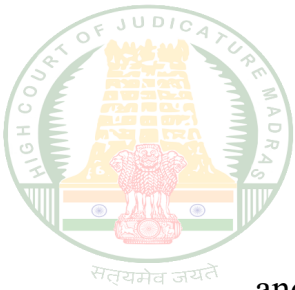
(12) Whether the Parties are entitled to any reliefs?"

7. The respondent examined CW1 and marked Exhibits C1 to C28. On the side of the petitioner and other respondents before the sole Arbitrator, Exhibits R1 to R7 were marked.

8. The sole Arbitrator, on considering the facts and circumstances of the case and on appreciation of evidence, passed the award dated 30.09.2020 in the following terms:-

“In the result an Award is passed:

i) directing the 2nd Respondent to pay to the claimant a sum of Rs.1,23,04,231/- within three months from the date of Award failing which, directed to pay the said sum with interest at 12% per annum from the date of award till the date of payment.



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ii) the 1st respondent is not entitled to any counter claim and the counter claim is rejected.

iii) Parties are to bear their own costs.”

9. Aggrieved by the above award, the present original petition has been filed before this Court.

10. The learned counsel for petitioner broadly raised the following grounds:-

(a) The petitioner was not a party to the distribution agreement dated 09.05.2012, which alone provided for an arbitration clause and therefore that agreement was not binding on the petitioner.

(b) The principal debtor, namely, Eros International Media Limited was not a signatory to the alleged guarantee deed dated 11.10.2012 and the principal debtor took a very specific stand by denying the execution of the guarantee deed by the petitioner. Thus, the guarantee deed, which must consist of three parties, namely, the surety, principal debtor and creditor, was actually signed only by the



petitioner and therefore the said guarantee deed, which was issued by means of a comfort letter, cannot be invoked against the petitioner.

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(c) The guarantee deed confines itself only to the release of the Telugu version of the film and whereas, the Tamil version of the film was also released and hence, the guarantee deed lapsed.

(d) The liability of the guarantor is only co-extensive to that of the principal debtor and since the mandate under Section 126 of the Contract Act was not complied with, the guarantee deed cannot be put against the petitioner and

(e) there was no material available for the sole Arbitrator to quantify the total loss sustained by the respondent and hence the quantification of the amount of loss by the sole Arbitrator suffers from perversity and patent illegality.

11. Per contra, the learned counsel for respondent submitted that the guarantee deed executed by the petitioner was an absolute and unconditional guarantee, which made reference to the distribution agreement dated



09.05.2012. It was further submitted that the release of the Tamil version of the film was pursuant to the email dated 14.10.2012, which makes it clear that all the centres where the film was to be released will be with the petitioner and therefore, the petitioner cannot wriggle out by stating that the guarantee deed confines itself only to the release of the Telugu version. There was sufficient material before the sole Arbitrator by means of Exhibits C19 & C20 to quantify the loss sustained by the respondent. The grounds raised by the petitioner do not make out a case to hold that the award suffers from perversity and patent illegality and that none of the contingencies available under Section 34 of the Act has been satisfied. Accordingly, the learned counsel sought for the dismissal of this petition.

12. This Court carefully considered the submissions made on either side and the materials available on record. This Court also carefully went through the award passed by the sole Arbitrator.

13. The present petition confines itself only to the liability imposed



against the petitioner under the guarantee deed dated 11.10.2012 and therefore,
it will suffice to take note of the findings of the sole Arbitrator with respect to
issue Nos.4, 5, 6, 8 & 10.

14. It is not in dispute that the respondent and Eros International Media Limited entered into a distribution agreement dated 09.05.2012. The said company had produced the film titled “Maatraan” and was the sole and exclusive owner of the copyright of the film, which was planned to be released in the Tamil and Telugu versions. The respondent approached the said Eros International Media Limited for assigning all the theatrical exhibition rights of the film in Tamil and Telugu languages in Karnataka State. Clause 5.2 of the agreement stipulates that the respondent has to pay to the said Eros International Media Limited a sum of Rs.4 Crores towards non-refundable minimum guarantee and out of that amount, the respondent had paid Rs.2 Crores. The balance of Rs.2 Crores was payable three days prior to the release of the film. The understanding between the parties is that whatever revenue is collected by exhibition/distribution of the film in the territory of Karnataka, the respondent



will be entitled to recover the minimum guarantee amount and thereafter, recover the publicity expenses not exceeding Rs.25 lakhs and the printing cost to the maximum of Rs.15 lakhs and another 10% on the above amount towards distribution margin. After deducting these amounts, the residue of the revenue, if any, will be shared by the parties in the ratio of 50 : 50.

15. There was unrest in Karnataka due to the cauvery water dispute and therefore the respondent was not in a position to release the film in Karnataka. In view of the same, the respondent, through an email dated 09.10.2012, informed his predicament and sought to invoke the force majeure clause provided under clause 1.4 of the agreement.

16. At this juncture, the petitioner got into the scene and negotiated and a guarantee deed dated 11.10.2012 was executed in favour of the respondent. In the guarantee deed, the petitioner makes a specific reference to the distribution agreement executed on 09.05.2012 by M/s Eros International Media Limited and thereafter gives a guarantee that the respondent had already paid a sum of



Rs.2 Crores towards the minimum guarantee amount and in the event the respondent is unable to recoup this amount, the petitioner will compensate to the extent of Rs.2 Crores on behalf of M/s Eros International Media Limited along with the proportionate distribution cost incurred by the respondent within ninety days.

17. The petitioner is not denying the execution of this guarantee deed and what is sought to be raised as a ground by the petitioner is that it is an independent contract between the petitioner and the respondent, since the principal debtor, namely, Eros International Media Limited was not a party to the agreement and therefore the distribution agreement dated 09.05.2012 cannot be read into this agreement and the arbitration clause cannot be invoked against the petitioner.

18. It is too late in the day for the petitioner to wriggle out of the guarantee deed executed on 11.10.2012, which the petitioner would want to call as a comfort letter. The sole Arbitrator placed reliance upon Exhibit C8, which



was a reply dated 12.02.2013 sent by the petitioner to the respondent, wherein the petitioner has admitted about the difficulty faced by the respondent to release the film in Karnataka and at that juncture, the petitioner undertook to mediate the dispute and permitted the respondent to release the Telugu version of the film and towards that, the guarantee deed dated 11.10.2012 was executed.

19. The sole Arbitrator has also taken into consideration Exhibit C22 and Exhibit C4, which establish the fact that the petitioner is the contract holder for the release of the Tamil and Telugu versions of the film “Maatraan” in the Karnataka territory.

20. The sole Arbitrator has also taken into consideration the fact that it is the petitioner who instructed the technology personnel to upload the Telugu and Tamil versions of “Maatraan” in the State of Karnataka. Considering all these aspects, the sole Arbitrator came to a conclusion that the petitioner and its Director did execute the guarantee deed dated 11.10.2012, which was acted upon by the respondent to continue to distribute and release the movie after



renegotiations and that the petitioner and its Director agreed to compensate the respondent, if in the event of the respondent not being able to recoup the sum of Rs.2 Crores after the release of the film. Insofar as the stand taken by the petitioner that the guarantee deed lapsed after the release of the Tamil version of the film, the sole Arbitrator came to a conclusion that it was the petitioner/contract holder who instructed the technology personnel to upload the Telugu and Tamil versions of the film “Maatraan” in the State of Karnataka and nothing was provided in the guarantee deed that it will lapse if the Tamil version is also released. Under such circumstances, this stand was also rejected by the sole Arbitrator.

21. None of the above findings of the sole Arbitrator suffers from any perversity or patent illegality. Such findings were rendered based on the possible view taken by the sole Arbitrator, on a careful reading of the guarantee deed dated 11.10.2012 along with the letter dated 12.02.2013 (Exhibit C8) and Exhibit C22 dated 18.10.2012.



22. Insofar as the ground raised by the learned counsel for petitioner that the petitioner is not a signatory to the distribution agreement and therefore, the same will not bind him, the sole Arbitrator, apart from referring to the guarantee deed dated 11.10.2012, has also taken note of the application filed by the petitioner in A.No.5919 of 2013 under Section 8 of the Act, in the suit filed by the respondent before this Court in C.S.No.413 of 2013. In the affidavit filed in support of this application, the petitioner has placed specific reliance upon the distribution agreement dated 09.05.2012 and took a stand that the suit is not maintainable and that the dispute can be resolved only through arbitration. This vital fact was taken into consideration by the sole Arbitrator while dealing with the issue No.8.

23. The respondent had initially filed the suit before this Court for recovery of the amount and the same was resisted by the petitioner and others by filing an application under Section 8 of the Act by showing the arbitration clause. When the respondent invoked the arbitration clause, the petitioner company comes up with a case that they are not party to the distribution



agreement dated 09.05.2012 and that the same cannot be invoked against them.

The petitioner cannot be permitted to approbate and reprobate in this manner, and the sole Arbitrator has come to the right conclusion that the guarantee deed executed by the petitioner was in continuation of the distribution agreement dated 09.05.2012, which is apparent both from the guarantee deed as well as the stand taken by the petitioner in the application filed before this Court under Section 8 of the Act. Therefore, the arbitration clause in the distribution agreement is very much binding on the petitioner.

24. The next ground taken by the learned counsel for petitioner to the effect that the mandate under Section 126 of the Contract Act has not been satisfied and therefore the petitioner is not liable, is unsustainable.

25. Section 126 of the Contract Act defines a “contract of guarantee” as one in which the promisor promises to perform the promise to a third person or to discharge the liability of a third person, in case of the latter’s default. It specifically provides that a guarantee need not be in writing and it may also be



oral. It may be only written or only oral or partly in writing and partly oral.

Useful reference can be made to the judgment of the Apex Court in the case of

Punjab National Bank v. Bikram Cotton Mills and another, reported in ***AIR 1970 SC 1973***.

26. A guarantee is a promise to answer for the payment of some debt or the performance of some duty, in case of failure of another party, who is in the first instance, liable to such payment or performance duty. Guarantee is an accessory contract by which the promisor undertakes to/answerable to the promisee for the debt, default etc., to another person, whose primary liability to the promise must exist.

27. The learned counsel for petitioner relied upon the judgment in the case of ***Ramachandra B.Loyalka v. Shapporji N.Bhownagree***, reported in ***1940 ILR 552*** and also the judgment in ***K.V.Periyamianna Marakkayar and Sons v. Banians & Co.***, reported in ***1926 LW 432*** to contend that Section 126 of the Contract Act refers to the contract of guarantee and speaks of three persons with



reference to that contract. Unless this requirement is satisfied, the liability cannot be fastened against the guarantor.

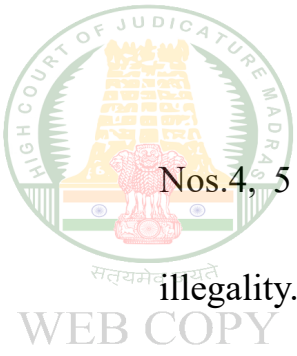
28. There is no dispute on the proposition of law that has been brought out in the above judgments. In the case on hand, the sole Arbitrator has found that the petitioner had in fact mediated between the respondent and the said Eros International Media Limited for the release of the film. The same is evident from Exhibit C8. This mediation could not have taken place without the knowledge of Eros International Media Limited and there was no requirement for the petitioner to come into the scene and take over the liability, which was originally cast upon the Eros International Media Limited. Thus, even as per the judgments relied upon by the learned counsel for petitioner, the agreement between Eros International Media Limited and the petitioner is implied. Section 145 provides that in every contract of guarantee, there is an implied promise by the principal debtor to indemnify the surety. The same has been properly appreciated by the sole Arbitrator and findings have been rendered.



29. In the case on hand, the petitioner makes a specific reference in the guarantee deed dated 11.10.2012 about the distribution agreement dated 09.05.2012 and talks about the obligation of Eros International Media Limited and undertakes to take over that obligation and in no uncertain terms undertakes to compensate the respondent to the extent of Rs.2 Crores, if the respondent is not able to recoup the said amount which was paid by him to Eros International Media Limited towards the minimum guarantee.

30. The sole Arbitrator has taken into consideration this aspect and has concluded that the petitioner did stand as a guarantor. This finding of the sole Arbitrator is a possible view, in the light of Exhibits C3 & C7 and this Court cannot sit on an appeal over such a view taken by the sole Arbitrator.

31. Insofar as the ground taken by the petitioner to the effect that the guarantee lapsed after the respondent released the Tamil version of the film, is also not sustainable, since the sole Arbitrator has taken into consideration Exhibit C22 and given a specific finding in this regard while dealing with issue



Nos.4, 5 & 6. Such a finding does not suffer from any perversity or patent illegality.

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32. The last ground pertains to the quantum that was determined by the sole Arbitrator. The learned counsel for petitioner brought to the notice of this Court the answers that were given by CW1 during cross examination and submitted that the documents produced by the respondent are self serving documents, which do not establish the so called loss sustained by the respondent.

33. The sole Arbitrator dealt with this issue in issue No.10. It is the case of the respondent that they could not recoup Rs.2 Crores and therefore they have to be compensated under the guarantee deed. The sole Arbitrator took into consideration the letter dated 25.01.2013 marked as Exhibit C7, which was addressed by the respondent to the Director of the petitioner company stating that the respondent was not able to recoup the amount after releasing the film. This letter was annexed with the statement of account. The statement of account

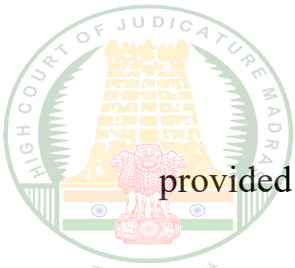


was also marked as Exhibit C12.

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34. Subsequently, Exhibits C19 & C20 came to be marked, which are the bills supporting the account statement and the letters regarding the account statement. This was taken into account by the sole Arbitrator and the sole Arbitrator has quantified the total amount payable as Rs.1,23,04,231/- along with interest @ 12% per annum from the date of award till the date of payment. The sole Arbitrator had taken into consideration the box office collection, distribution commissions and expenses filed by way of Exhibits C12, C19 & C20. It was also noticed that these figures were not seriously challenged in the cross examination or the petitioner was not able to bring any contra evidence. The amount that was quantified by the sole Arbitrator was based on appreciation of evidence. This Court cannot sit on appeal against such a finding rendered by the sole Arbitrator.

35. In the upshot, this Court does not find any perversity or patent illegality in the award passed by the sole Arbitrator and none of the grounds



provided under Section 34 of the Act has been satisfied by the petitioner. Hence,

the present petition lacks merit and the same is hereby dismissed with costs of

Rs.1,50,000/- payable by the petitioner to the respondent.

28-11-2025

Index:Yes/No

Speaking/Non-speaking order

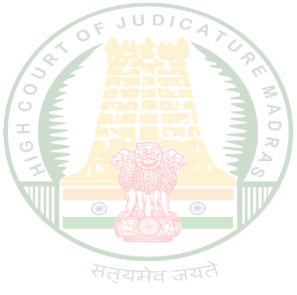
Internet:Yes

Neutral Citation:Yes/No

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**N.ANAND
VENKATESH J.**

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**Order in Arb
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