

**Justice K. RAVICHANDRABAABU**  
Former Judge, Madras High Court

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13/6, Second Crescent Park Road,  
Gandhi Nagar, Adyar, Chennai - 600020.  
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TO:

By RPAD

1. **Mr. Vijayan Subramanian, Advocate,**  
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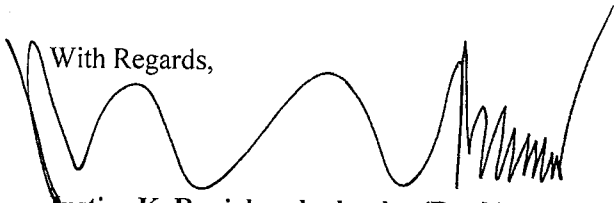
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Chennai – 600 032  
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Respected Sir,

Please find enclosed herewith the Final Award dated 03.06.2023 passed in the matter of M/s. Trident Arts, represented by its Sole Proprietor Mr. R. Ravichandran V. Mr. Vishal Krishna and communicate to the respective parties immediately.

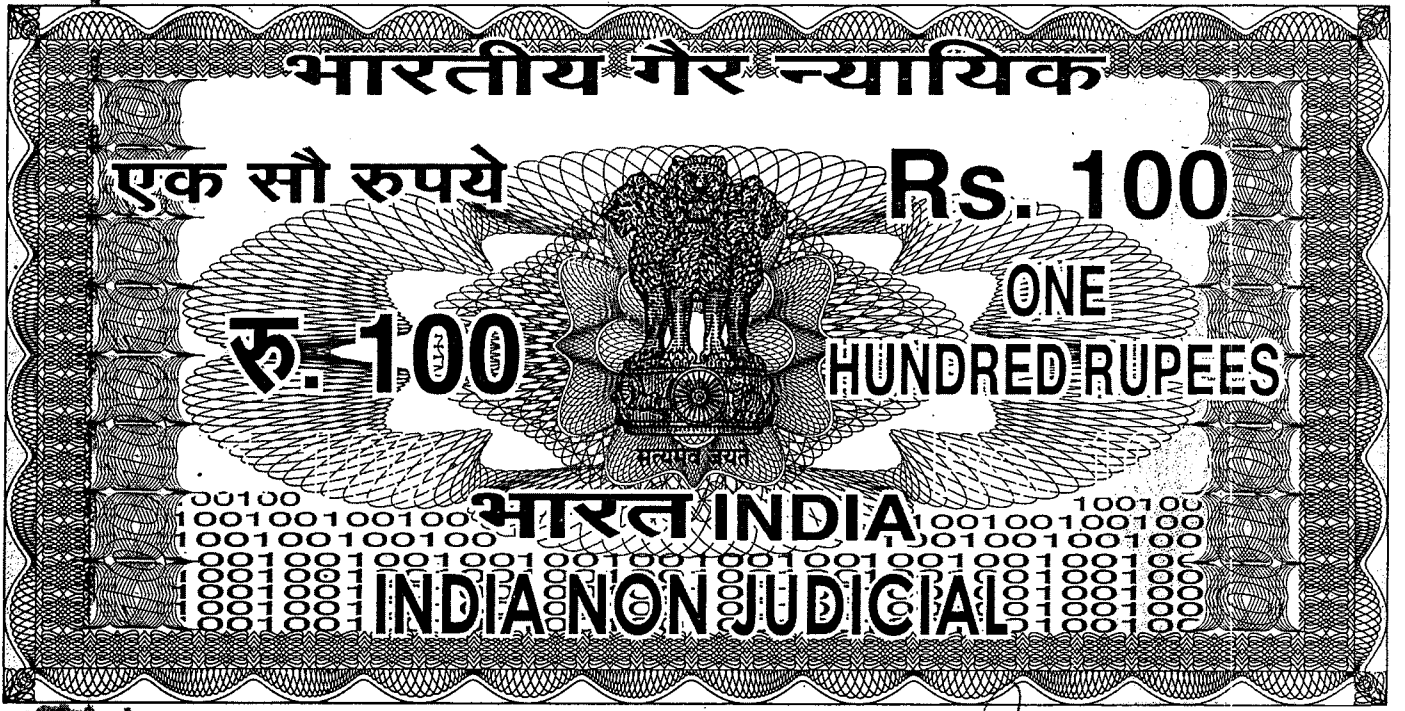
Kindly acknowledge the receipt of this Award dated 03.06.2023.

With Regards,

  
Justice K. Ravichandrabaabu (Retd.)

Sole Arbitrator

03/06/2023



சென்னை 6 தமில்நாடு TAMILNADU 3 JUN 2023 CW 863436

JUSTICE K. RAVICHANDRABABU

K. SANKARAN  
STAMP VENDOR  
LICENCE No: 1281/34  
No. 2, MADLEY ROAD,  
T. NAGAR, CHENNAI-17

MR. JUSTICE K. RAVICHANDRABABU  
Former Judge, Madras High Court  
SOLE ARBITRATOR

Under the Arbitration and Conciliation Act, 1996  
In O.S.A. No.304 &305 of 2020

Between

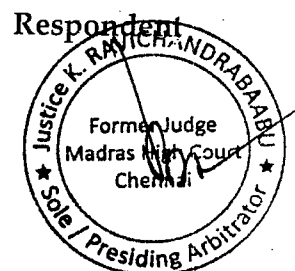
M/s. Trident Arts, Represented by its  
Sole Proprietor Mr.R.Ravichandran,  
Having Office at No.1C & 1D,  
Hari Mansion, JP Avenue,  
Dr.Radhakrishnan Road, Mylapore,  
Chennai - 600 004.

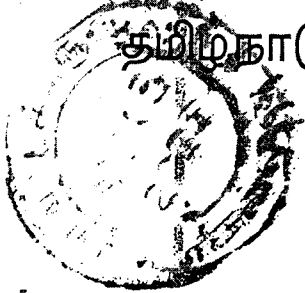
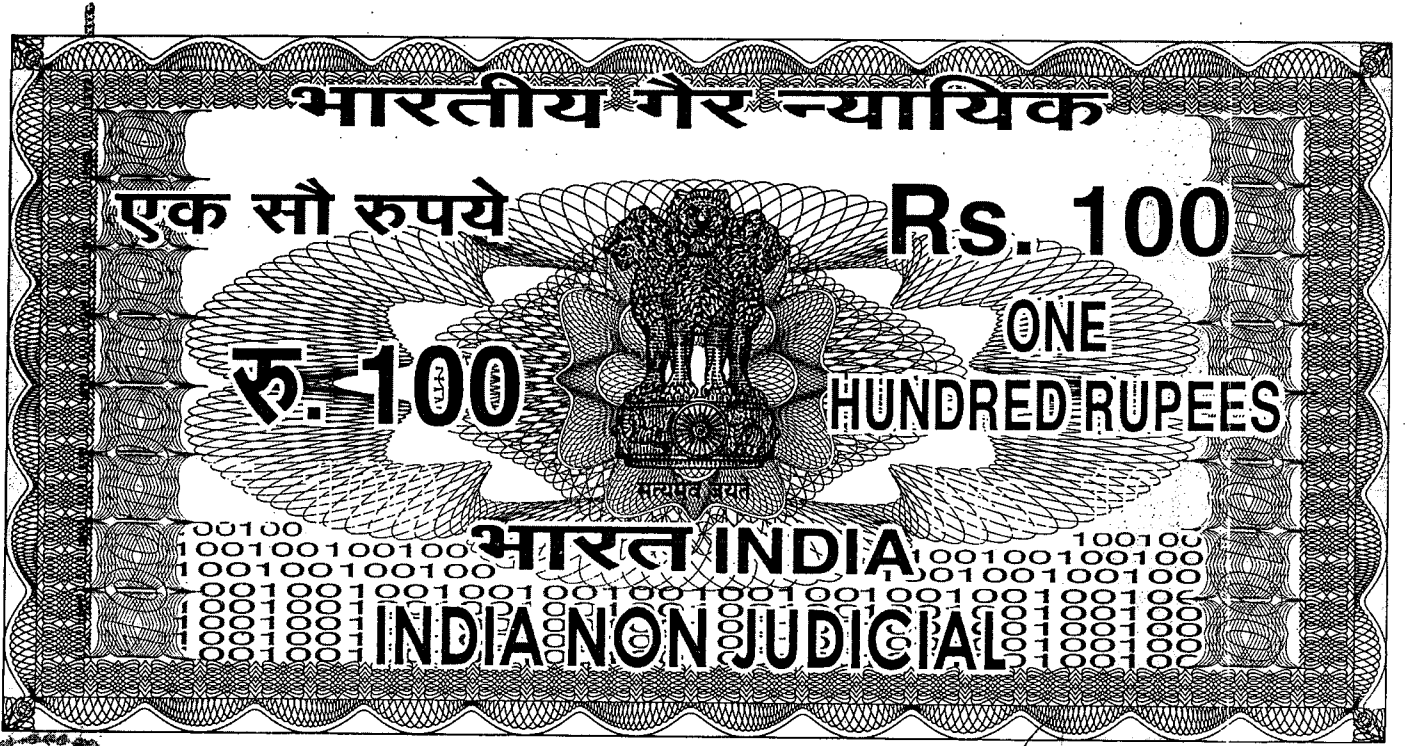
..... Claimant

Vs

Mr.Vishal Krishna

..... Respondent





தமிழ்நாடு தமில்நாடு TAMILNADU

3 JUN 2023

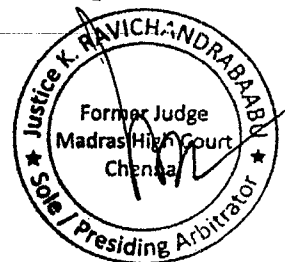
CW 863438

Justice K. RAVICHANDRABABU

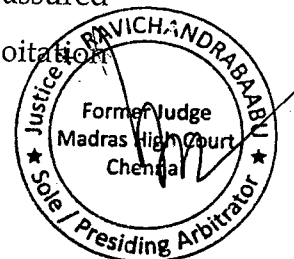
K. S. SIVAKUMAR  
STAMP VENDOR  
LICENCE No: 1481/94.  
NO. 2, MADLEY ROAD,  
T. NAGAR, CHENNAI-12.

#### AWARD

1. This Arbitral Tribunal was constituted as per an order passed by the Hon'ble Madras High Court, dated 04.02.2021, in OSA No. 304 and 305 of 2020. After issuing notice to the parties, the proceedings were commenced and conducted on various occasions. The parties have completed the pleadings, let in evidence and argued the matter.
2. The Claimant filed their claim statement. The case of the Claimant is as follows:
  - (i) The Claimant is a renowned film production and distribution company based in Chennai and has been in the said filed since 2016.
  - (ii) The Claimant decided to start its next film originally titled 'Production No.4' later named as 'Action' for which the Respondent approached and requested the Claimant to produce the film and having the Respondent himself as the lead role in the said film.

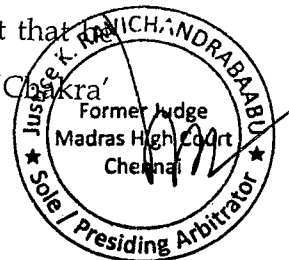


- (iii) The Claimant based on the assurance given by the Respondent about his market value agreed to produce the movie named 'Action'. The pre-production work of the film 'Action' commenced in the month of 08.08.2018 and the pooja ceremony was performed on 18.07.2018 and subsequently the shooting of the film started during 19.03.2019 in different locations. The film 'Action' was also issued the censor certificate on 06.11.2019 and thereafter the audio launch of the said film happened on 08.11.2019.
- (iv) In the meanwhile, the Claimant agreed to do the next film of the Respondent titled as 'Production No.5' later named as 'Chakra', wherein, the Claimant entered into a Director Engagement Agreement dated 29.08.2021. Clause (III) of the above said agreement mentioned that the Claimant have engaged and appointed Director Mr.M.Anandan to direct the film in Tamil Language tentatively titled 'Production No. 5' and the hero of the said film is Vishal. The Claimant introduced the director Anandan to the Respondent for his 'Production No.5' later named as 'Chakra', however, the Respondent colluded with the Director Anandan and the Respondent himself produced the film 'Chakra'. The said Director Engagement Agreement dated 29.08.2018 was not terminated by the Director and while the agreement was still in force the said film was produced by the Respondent herein. Subsequently, the Claimant filed a copyright infringement suit against the Director Anandan and the Respondent who is the producer of the film 'Chakra'.
- (v) The Respondent was paid a sum of Rs. 9,00,00,000/- (Rupees Nine Crores only) as remuneration. The cost of the film 'Action' was originally fixed for Rs.40 Crores excluding print and publicity and the budget of the film raised to Rs.44 Crores by the end of the second schedule itself.
- (vi) The Claimant approached the Respondent and made his grievance that the budget was increased by Rs.4 Crores, however, the Respondent assured that the film 'Action' will be a box office hit theatrically and further assured the Claimant that the film 'Action' will collect from theatrical exploitation



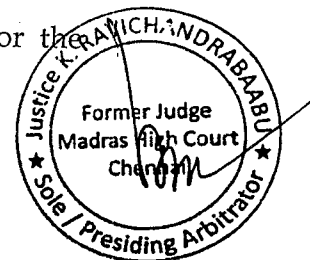
a minimum of Rs.20 Crores from the states of TamilNadu, Andhra Pradesh, Telengana.

- (vii) Further the Respondent undertook that the business of theatrical exploitation will be a guaranteed return of Rs. 20 Crores from the states of TamilNadu, Andhra Pradesh, Telengana. In that regard, Claimant and Respondent entered into a Memorandum of Understanding (MOU) dated 07.06.2019.
- (viii) The Claimant spent a sum of Rs. 50 Crores towards the completion of the film including print and publicity and the film 'Action' was released on 15.11.2019 and the details of the theatrical collection was informed to the Respondent vide email dated 13.12.2019.
- (ix) The total realization of the film 'Action' from theatrical exploitation was Rs.10,70,42,532/- and there was a shortage of Rs.9,29,57,468/-. The Coimbatore area theatrical exploitation was wrongly mentioned as Rs.2 Crores in the Claimants e-mail dated 13.12.2019 wherein the actual consideration received by the Claimant was Rs.1 Crore only and the same was confirmed in Memorandum of Understanding dated 22.10.2019 for Coimbatore area.
- (x) As per clause 6 of the MOU dated 07.06.2019, the Claimant gave statement of collection to the Respondent through e-mail dated 13.12.2019, however, the Respondent did not reply to the e-mail.
- (xi) Clause 2 of the MOU dated 07.06.2019, Respondent agreed that in case the Claimant could not collect the assured amount of Rs.20 Crores, the shortage amount shall be paid by the Respondent to the Claimant within 30 days from the general release of the said film.
- (xii) There was a shortage of Rs.9,29,57,468/- and the Respondent has to pay the Claimant the said amount as per the MOU dated 07.06.2019.
- (xiii) During January and February 2020 upon the request by the Claimant to pay the shortage amount, the Respondent agreed to pay the same. However, during March first week, the Respondent informed the Claimant that he will act in a film as a hero to be directed by M.Anandan titled as 'Chakra'



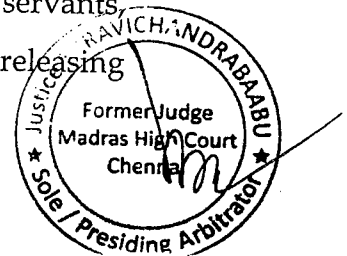
to be produced by the Claimant in order to pay the shortage of Rs.9,29,57,468/-. Subsequently when the Claimant contacted the Respondent, the latter evaded the Claimant's calls and meetings and so did Director M.Anandan.

- (xiv) In view of the Covid-19 lockdown from 24.03.2020 to August 2020 the shooting was banned.
- (xv) To the shock and surprise of the Claimant, Respondent started the production of the film 'Chakra' and released the trailer of the said film on 27.06.2020.
- (xvi) Immediately, the Claimant tried to contact the Director M.Anandan with whom the Claimant entered into a Director Engagement Agreement dated 29.08.2018 for the very same story and script and copyright of the story and script of the film was with the Claimant, however, the director refused to attend Claimant's phone calls and meetings as well.
- (xvii) Thereafter, having left with no other option, Claimant sent a letter dated 13.08.2020 vide email to the Respondent, wherein the Claimant requested the Respondent to pay the shortage amount of Rs.9,29,57,468/- as per clause 2 of the MOU dated 07.06.2019.
- (xviii) Respondent replied to the e-mail on 14.08.2020 to the Claimant stating that the Claimant has breached the Contract and distributed the film, wherein Respondent stated that the distribution was not given to Mr.Sundar C for Coimbatore area which amount to the said breach. Respondent vide another e-mail dated 14.08.2020 stated that the Claimant has to pay Rs.25,00,000/- for Trichy and Tanjore area as refund.
- (xix) The allegation of the Respondent that the Claimant have breached the Contract by releasing and distributing the film with other distributors is totally wrong. As per clause 6 of the MOU, there is no breach of Contract on the part of the Claimant.
- (xx) With regard to the Coimbatore area theatrical distribution, the Claimant entered into a MOU dated 22.10.2019 with Director Sundar C for the



distribution of the said film 'Action'. Hence, the allegation raised by the Respondent vide e-mail dated 14.08.2020 is false.

- (xxi) Claimant entered into a Minimum Guarantee Agreement dated 18.10.2019 with one M/s Karthikeya Exporters represented by its proprietor Mr.Adepu Srinivas for the theatrical rights, satellite rights and Digital Rights of the Telugu version of the film 'Action'. Claimant agreeing on the same, sold the above said rights to a sum of Rs. 7,50,00,000/-, Rs. 6,00,00,000/- towards theatrical rights and Rs. 1,50,00,000/- towards satellite rights and Digital rights of the telugu version of the film 'Action'.
- (xxii) M/s. Karthikeya Exporters represented by its proprietor approached the Claimant and requested to amend the agreement, whereby, to split the consideration of the above theatrical, satellite and digital rights. Upon agreement by the Claimant, the First Amendment Agreement dated 06.11.2019 was entered and the consideration of Rs. 7,50,00,000/- was amended to Rs. 4,00,00,000/- towards the theatrical and Rs. 3,50,00,000/- towards satellite rights and Digital Rights of the Telugu version of the film 'Action'. The said First Amendment Agreement dated 06.11.2019 was also served to the Respondent and was filed before the Hon'ble Single Judge and the first bench of the Hon'ble Madras High Court.
- (xxiii) Respondent without paying a sum of Rs.9,29,57,468/- as per clause 2 of the MOU dated 07.06.2019, trying to release the film 'Chakra' for Rs. 44 crores by way of OTT release is in complete violation of MOU dated 07.06.2019, especially when the complete copyright of the film 'Chakra' is with the Claimant.
- (xxiv) Claimant filed 2 applications against the Respondent based on the MOU dated 07.06.2019 under Section 9 of the Arbitration and Conciliation Act 1996 numbered as OA No. 434 of 2020 and A.No. 2110 of 2020 seeking the following relief:
- (a) Grant an order of interim injunction restraining the 2<sup>nd</sup> Respondent herein by themselves or by Partners or successors of business, servants, agents, representatives, assignees and all other persons from releasing



the film 'Chakra' in any OTT platforms including Amazon Prime, Netflix, Zee5, Sun NXT etc. or through direct theatrical release or through any satellite TV, pending disposal of the Arbitration.

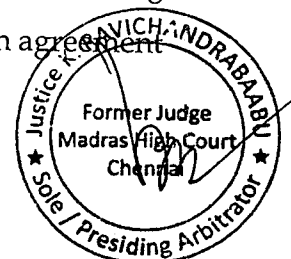
(b) Direct the 2<sup>nd</sup> Respondent herein to furnish security for a sum of Rs. 8,29,57,468/- (wrongly mentioned a Rs. 8,29,57,468/- instead of Rs. 9,29,57,468/-)

(xxv) Originally an order of status quo was granted on 24.09.2020 against the Respondent from releasing the film 'Chakra'. Thereafter the Hon'ble Single Judge disposed the application in OA No. 434 of 2020 and A.No. 2110 of 2020 directing the Respondent to furnish security to the tune of Rs. 4 Crores and only on furnishing the security the movie 'Chakra' shall be released. Within 2 weeks of the release of the film, the balance sum of Rs. 4,29,57,648/- being security as claimed by the Claimant shall be furnished. Claimant was also directed to initiate arbitration proceedings on or before 23.12.2020 and failing such initiation, the security provided shall automatically be released.

(xxvi) Aggrieved by the above order passed in OA No. 434 of 2020 and A. No. 2110 of 2020, Respondent filed an appeal in OSA No. 304 and 305 of 2020, wherein, the Hon'ble Bench vide order dated 04.02.2021 disposed the said appeals by setting aside the Single Judge Order dated 15.10.2020 and appointed the present Arbitrator to take up the reference in terms of the Arbitration Agreement contained in MOU dated 07.06.2019 and further directed the Respondent to deposit a sum of Rs. 1 Crore by way of a fixed deposit with any nationalized bank and submit the receipt to the Registrar General of the Hon'ble High Court within a fortnight from date.

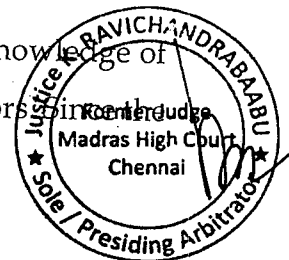
3. The Respondent filed his counter statement. His case is as follows:

(i) The claim on the face of it is not maintainable since the subject Agreement dated 07.06.2021 is an invalid agreement and unenforceable in law being directly hit under section 30 of the Indian Contract act, being an agreement in the nature of a 'Wagering Contract'.



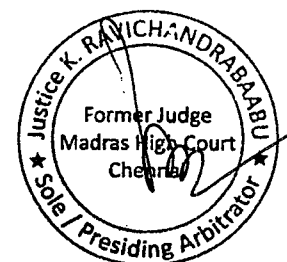


- (ii) It is admitted that the Respondent was engaged by the Claimant as the lead actor only in the film titled 'Action' under an agreement dated 29.07.2018 and as such he is in no way liable for any profits or loss of revenue and it is the producer alone who is liable to face the same.
- (iii) Therefore, the baseless claim of R.9,29,57,468/- based on another agreement dated 07.06.2019 was obtained from the Respondent during the final schedule of the shooting as insisted by the Claimant which is ex-facie invalid and void in the eyes of law, especially when the Claimant did not produce proper accounts.
- (iv) It is only the Claimant who approached the Respondent knowing fully the market value of the Respondent and not vice versa, to act as the hero for the movie titled 'Action' and upon approaching, the Respondent also agreed to work on the said film for a remuneration of Rs. 9,00,00,000/-.
- (v) With respect to the allegations regarding the film titled 'Chakra', there is absolutely no connection between the said film and the present claim admittedly pertaining to the film 'Action' and puts the Claimant to strict proof of the same.
- (vi) While the film 'Action' itself was in the pre-production stage, it is improbable for the Respondent to have agreed to act in the Claimant's next film.
- (vii) As far as the production no. 5 is concerned, there was no agreement entered by the Claimant and the Respondent that the latter would act as the hero.
- (viii) The Claimant in view of the Director Engagement Agreement entered with Mr. Anandan, for writing a story, had failed to pay further amounts for getting the story, screen play and dialogues written and developed so as to produce a film as stated by Mr. Anandan in his pleadings before the Hon'ble High Court in CS No. 53/2021, wherein the Claimant had ventured to claim copyright over an alleged story that was never written at all.
- (ix) It is a fact that the film 'Chakra' was shot simultaneously to knowledge of the Claimant while the shooting of the film 'Action' was on floors

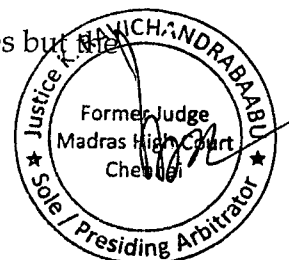


said matter is sub-judice before the competent court of law and unnecessary to sit on the same.

- (x) The Claimant has been fully aware that the Respondent has been producing the movie titled 'Chakra' written and directed by Anandan after getting the title registered with the Producer's council.
- (xi) The Claimant has also not mentioned anything regarding the issue involved in the movie 'Chakra' anywhere in OA No. 434 of 2020 and Application No. 2110/2020.
- (xii) The Respondent was not aware of the allegations that the budget of the film raised to Rs. 44 Crores till the Claimant complained about the same to the Respondent.
- (xiii) The Claimant told the Respondent that the film could not be completed at the estimated cost of Rs. 40 crores and there was a shortage of Rs. 4 crores in finishing the production for which the Respondent said that the Claimant need not bother and the film would collect at least Rs. 20 Crores in theatrical exploitation in TamilNadu, Andhra Pradesh and Telengana states for which the Claimant challenged him that if the collection is below Rs. 20 crores what would happen and further said that in such a case the Respondent has to pay the shortage of Rs. 4 Crores and in case the collection is in excess of Rs. 20 Crores, the Claimant will pay such amounts to the Respondent towards additional remuneration and it was in this circumstance the agreement was prepared by the Claimant himself.
- (xiv) The Claimant had not produced any accounts supporting his stand that he had already spent Rs. 40 crores and there was a shortage of Rs. 4 crores.
- (xv) The subject agreement clauses contained therein are self-contradictory to each other and does not convey any meaningful agreement as such based on account of uncertainty as per section 29 of the Contract act.
- (xvi) The clauses contained in the said agreement is undoubtedly a wagering Contract incapable of being enforced in law being void ab-initio since all the ingredients constituting a wagering Contract are present.

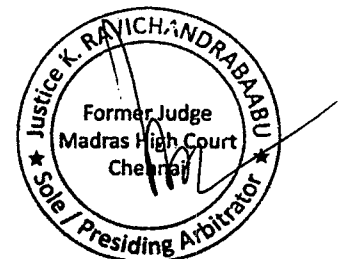


- (xvii) To put in short, the subject agreement has been executed for no consideration depending upon an uncertain event of success or failure of the film collecting Rs. 20 crores.
- (xviii) Even assuming that the subject agreement is a valid agreement, still there is no truth in the claim of Rs. 9,29,57,468/- as there is no evidence for sustaining the claim.
- (xix) The Claimant failed to submit the accounts regarding the theatrical exploitation except for sending an e-mail without proper accounts or accompanying statement of accounts along with any supporting documents such as DCRs etc.
- (xx) The Claimant had earlier fraudulently made a claim of Rs.8,29,57,468/- (not Rs. 9,29,57,468/-) by misinterpreting the term 'Shortage Amount' mentioned in the subject agreement purposely at the time of the release of the film 'Chakra' with a view to cheat the Respondent and to coerce him to the Claimants terms by filing Section 9 Applications restraining the release and also seeking attachment orders but the Hon'ble First Bench of the High Court, Madras in OSA No. 304 and 305 of 2020 had referred the matter to Arbitration and hence the Claimant filed the present claim.
- (xxi) Clause 1 of the subject matter of the agreement clarifies that the shortage referred to in the agreement can at the most only mean the excess amount of Rs. 4 crores and cannot be the shortage out of the sum of Rs. 20,00,00,000/- being the expected revenue challenged by the Respondent.
- (xxii) Clause 6 is contradictory to clause 2 of the subject agreement wherein in the former clause, the Claimant shall give account after 30 days of the release of the film and in the latter clause it is stated that the Respondent had to pay the shortage within 30 days. In other words even without the Claimant having to prove that the collection fell short of Rs. 20,00,00,000/- by furnishing accounts, the question of shortage cannot rise at all.
- (xxiii) As per clause 4 of the subject agreement, the business ought to have been entrusted to the Respondent for the assured return of Rs. 20 Crores but the



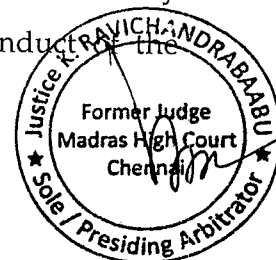
Claimant himself dealt with the business and thereby grossly violated the terms of the agreement.

- (xxiv) Clause 5 is wrongly stated as 'entire business of theatrical exploitation shall be done by the First Part' which is very much against the real agreement among the parties.
- (xxv) The theatrical realization was Rs. 10,70,42,532/- and the alleged shortage according to the Claimant was Rs. 9,29,57,468/-, but in the letter dated 14.08.2020 and in the affidavit filed in Section 9 Applications, it is stated as Rs. 8,29,57,468/- and the reason given is that the regarding the Coimbatore area, it had been wrongly stated as Rs. 2 crores in the e-mail dated 13.12.2019 and the actual amount received for Coimbatore area is only Rs. 1 Crores.
- (xxvi) Claimant had specifically stated earlier that the Coimbatore area had been given to Avni Movies on MG basis for Rs. 2 crores but now states that the said area had been given to Sundar C, Director for Rs. 1 Crore. The fact remains that Rs. 1 Crore payable as remuneration to the director has been adjusted fraudulently.
- (xxvii) Similarly in the Trichy-Tangore area is it falsely shown as Rs. 1,71,00,000/- as against Rs. 1,75,00,000/- in the agreement dated 14.11.2019. Also, very big fraud had been attempted in stating that only Rs. 4 crores was realized in the Andhra/Telangana area and the Claimant changed his stand later. The Claimant also did not produce any DCRs and accounts with respect to the Madurai and Chingelput areas.
- (xxviii) The Claimant had shown and deducted Rs. 58,60,964/- towards Digital Expenses without any basis.
- (xxix) There is no mention about any interest in the subject agreement and as such the claim of interest at 18% p.a or at any other rate does not arise and as such the entire claim itself is highly illegal and unjustified in the facts and circumstances of the case.



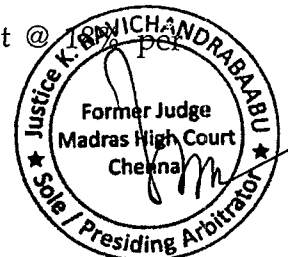
4. The Claimant filed a reply to the Counter Statement of the Respondent, wherein it is stated as follows:

- (i) Claimant denies the allegation that MOU Agreement is hit under Section 30 of the Indian Contract Act and further states that the Respondent has not extracted the entire section 30 of the Indian Contract Act and submits that the basic meaning of the term Wager is betting and a wagering agreement is one by which two persons professing to hold opposite views touching the issue of a future event.
- (ii) However, in the present case, MOU dated 07.06.2019 does not deal with betting or gambling and further the MOU was executed with the same views by both the parties and hence clarifies that MOU is not a wagering agreement.
- (iii) It is incorrect for the Respondent to say that the Claimant did not submit proper accounts. The Claimant as per clause 6 of the MOU gave the statement of collection to the Respondent through e-mail dated 13.12.2019 which has also not been denied by the Respondent.
- (iv) Clause 5 of the MOU clarifies that the entire theatrical exploitation of the film shall be done by the Claimant alone and all the agreements with the distributors shall be executed by the Claimant alone. All these agreements were submitted before the Hon'ble High Court in the Section 9 applications.
- (v) The Respondent is liable to pay Rs.9,29,57,468/- along with interest and denying the same would be incorrect on the part of the Respondent.
- (vi) Respondent in the MOU have assured the Claimant that the film 'Action' will be a box office hit and that the movie will fetch a minimum of Rs. 20 crores from the entire states of Tamil Nadu, Andhra Pradesh and Telengana.
- (vii) The issue pertaining to the copyright infringement suit in CS No. 53 of 2021 filed by the Claimant against the Respondent for the film 'Chakra' was only brought to knowledge of the Tribunal to establish the conduct of the

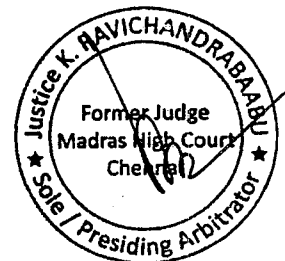


Respondent and does not otherwise have any connection to the present dispute.

- (viii) Claimant denies that the agreement is bad on account of uncertainty as per Section 29 of the Indian Contract Act.
- (ix) It was the Respondent who initiated to execute the MOU and hence it was at his instance the MOU was executed.
- (x) The film 'Action' was released on 15.11.2019 and the details of the theatrical collection was informed via e-mail to the Respondent on 13.12.2019 within 30 days as per the agreement. the total realization was Rs. 10,70,42,532/- and there is a shortage of Rs. 9,29,57,468/-, which is to be paid by the Respondent.
- (xi) It is incorrect to state that the Claimant had fraudulently made a false claim of Rs. 8,29,57,468/-. The actual claim was Rs. 9,29,57,468/- and the Claimant clarified about the mistake in an additional affidavit before the Ld.Single Judge under the Section 9 application. The Coimbatore area theatrical exploitation was wrongly mentioned as 2 crores instead of 1 Crore and the same was confirmed via a MOU dated 22.10.2019.
- (xii) The Claimant entered into a Minimum Guarantee Agreement dated 18.10.2019 with one M/s. Karthikeya Exhibitors for a total sum of Rs. 7,50,00,000/- (Rs. 6,00,00,000/- towards Theatrical and Rs. 1,50,00,000/- towards Satellite Rights and Digital Rights) of the telugu version of the film Action. However, the same was later amended vide a First Amendment Agreement dated 06.11.2019 wherein the said consideration was amended as Rs. 4,00,00,000/- towards theatrical and Rs. 3,50,00,000/- towards satellite rights and Digital Rights. The Claimant has also filed the above said agreements before the Ld.Single Judge and has served a copy of the same to the Respondent, hence the Claimant has come with clean hands only.
- (xiii) In such circumstances, the Respondent shall be directed to pay the Claimant a sum of Rs. 9,29,57,468/- together with interest @ 12% per annum from 15.12.2019 till the date of realization.

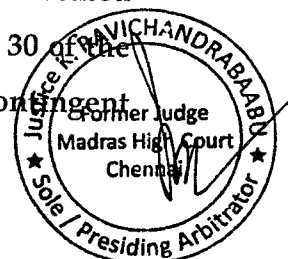


5. The Respondent filed his Sur-Rejoinder, wherein it is stated as follows:
- (i) A mere perusal of the MOU agreement would show that the same is nothing but a wager Contract and consequently invalid under law and all the requirements of section 30 are met in the terms and conditions of the MOU.
  - (ii) The term 'Wager' in common parlance means 'Betting' or 'Gambling' and in Tamil known as 'Pandhayam'.
  - (iii) The statement that "the MOU was executed with "same views (not opposite views") by both parties makes it clear that MOU is not a wagering agreement does not arise any merit since clearly both the parties had different views with respect to the theatrical collections of the film. Respondent on hand held the view that the movie would collect not less than Rs. 20 Crores while the Claimant on the other hand held the view that the movie would not collect Rs. 20 Crores.
  - (iv) Hence, both the parties had different view regarding the successful or unsuccessful running of the film 'Action' and on such uncertain event by way of betting without any consideration is nothing but a wagering Contract on the face of it and consequently hit by section 30 of the Indian Contract Act.
  - (v) It has been held in several judicial pronouncements that the parties to the Contract should not have any other interest in the event other than winning or losing and there should not be any consideration contemplated in the agreement expecting the very stake itself and also neither party shall have any control over the happening of the future uncertain event in one way or the other and all the essential elements are very much present.
  - (vi) Mere production of the agreements entered with the distributors to the Respondent is not at all sufficient in law and if the Claimant wants to rely on the said agreements he has to prove the same in the manner known to law.



- (vii) The often repeated allegation that the total realization from theatrical exploitation is Rs. 10,70,42,532/- and there is a shortage of Rs. 9,29,57,468/- are nothing but self-serving statements unsupported by any documents or accounts.
  - (viii) The Respondent only challenged the Claimant by betting that the movie would collect theatrically Rs. 20 Crores and failing which the Respondent would meet the shortage amount and if it exceeds Rs. 20 Crores the Claimant has to pay the same to the Respondent as additional remuneration.
  - (ix) The allegations pertaining to 'CS 53 of 2021 is relating to another film 'Chakra' and has no cognizance to the present dispute and the intention of the Claimant is only to prejudice the mind of this Tribunal.
  - (x) The allegation that an e-mail dated 13.12.2019 was sent specifying the details of the theatrical collection made, it is submitted that no such specific amounts or details of accounts had been sent, neither during the time of filing the section 9 application.
  - (xi) The Claimant has taken contradictory stands with regards to the agreement with M/s Karthikeya Exhibitors and subsequently introduced another alleged amendment agreement and the same was not accepted by the High Court under the Section 9 Application, wherein the Hon'ble Court observed that "prima facie there are serious disputes with regard to the accounts and the alleged supplemental agreement dated 06.11.2019 was produced even without signatures".
  - (xii) Hence, the claim will have no legs to stand both in law and on admitted facts and the claim petition deserves to be dismissed with exemplary costs.
6. Based on the above pleadings of the respective parties and the draft issues filed by them, this Tribunal framed the following issues for consideration:

- (i) Whether the subject matter agreement dated 07.06.2019, executed between the parties, is a wagering Contract and hit by Section 30 of the Indian Contract Act, 1872, as claimed by the Respondent, or a contingent





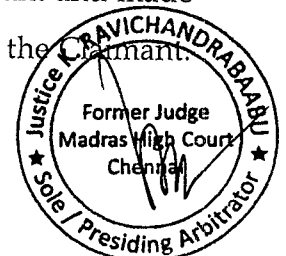
Contract, as provided under Section 31 of the said Act, as contended by the Claimant?

(ii) Whether the Claimant is entitled to the claim amount made in its claim petition, if the answer to the first issue goes in favour of the Claimant?

(iii) Whether the Claimant is entitled to interest as claimed, in the event of deciding the second issue in favor of the Claimant?

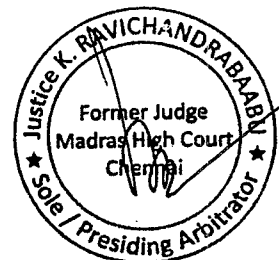
(iv) To what other relief the Claimant is entitled to, if the answer to the first issue goes against the Respondent?

7. On the side of the Claimant, Mr.R.Ravindran, the sole Proprietor of the Claimant filed proof affidavit and examined himself as CW-1. Through him, Ex C-1 to Ex C-21 are marked. He was cross examined by the Ld.Counsel for the Respondent.
8. One Mr. Adepu Srinivasan was examined as CW-2, by filing a proof affidavit. He was cross examined by the Ld.Counsel for the Respondent.
9. The Respondent filed proof affidavit and examined himself as RW-1. Through him, no document is marked on behalf of the Respondent.
10. A joint memo dt. 27.08.2022 was filed by both parties mutually agreeing to extend the period for passing the award by 6 months from the date it expires as per the Arbitration and Conciliation Act, 1996.
11. During the final sitting held on 15.04.2023, while concluding the arguments, both sides agreed that time for passing the award, after the extension granted by the parties as stated supra and also by taking into consideration of a common order passed by the Hon'ble Supreme Court in Suo moto writ petition No. 3 of 2020 dated 10.01.2022, the last date for passing this award will fall only in 4<sup>th</sup> week of September 2023.
12. Mr. Sathish Parasaran, Ld. Senior Counsel appeared for the Claimant and made his oral submission. A written submission is also filed on behalf of the Claimant.

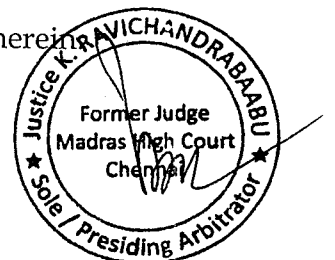


The sum and substance of the contentions raised on behalf of the Claimant are as follows:

- (i) The entire case revolves around Ex C-2, a memorandum of understanding dated 07.06.2019, entered between both parties, in respect of a film titled 'Action'.
- (ii) The shooting of the said film was commenced on 19.03.2019 and during the course of the production of the said film, Ex C-2 was entered into between the parties.
- (iii) Worldwide theatrical release of the film was made on 15.11.2019.
- (iv) The original estimated cost for the production of the film was only Rs.40 Crores. However, the Claimant had to spend another Rs.4 Crores over and above the said estimated cost.
- (v) Ex C-2 is nothing but allocation of risk to the respective parties. As per Ex C-2, the Respondent assured the Claimant that the theatrical release would definitely fetch around Rs.20 Crores and gave a promise to the Claimant that if the film did not fetch the assured sum of Rs. 20 Crores from theatrical release, the Respondent would make up the said loss.
- (vi) It was also an understanding between the parties, if the film fetches more than Rs. 20 Crores, the excess amount will be given to the Respondent as additional remuneration.
- (vii) The Claimant has made the theatrical release with the consent of the Respondent. The film however, did not fetch the assured amount of Rs. 20 Crores. Rather, the total realization from the theatrical exploitation of the film was only Rs.10,70,42,532/-. Thus, there is a shortage of Rs. 9,29,57,468/- out of the assured amount of Rs.20 crores, which is liable to be paid by the Respondent to the claimant as per Ex C-2.
- (viii) Ex C-2 will not fall under Section 30 of the Indian Contract Act, 1872, as the same is not an agreement by way of wager. On the other hand, Ex C-2 is only a contingent Contract and thus would fall under Section 31 of the above said act.



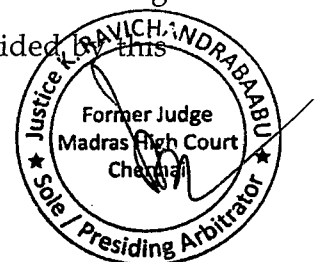
- (ix) The essential features that are required to constitute a Contract as a wager are totally absent in this case by considering Ex C-2. In this connection, decision of the High Court of Madras reported in (2009) 1 CTC 227 is much relied upon.
- (x) To call Ex C-2 as a wagering Contract, there must be one winner and one looser. On the other hand, perusal of Ex C-2 would show that the events are as such to make two winners and two losers. Further, the Respondent cannot claim to have no actual interest in the occurrence or non-occurrence of the event as contemplated under Ex C-2 and therefore, when both parties are having actual interest in the occurrence of the event, Ex C-2 cannot be termed as wagering Contract, at any stretch of imagination.
- (xi) The conduct of the parties subsequent to the agreement if changes from the terms of the Contract, that itself will not vitiate the Contract and on the other hand, if such conduct was based on understanding or consent other party, it should be treated as one of the terms of such Contract. In this connection, the decision of the Hon'ble Supreme court reported in (1975) 1 SCC 199 is relied on.
- (xii) There is no vagueness or uncertainty of event in the Contract under Ex C-2. Even if there is uncertainty that itself does not vitiate the Contract.
- (xiii) The accounts are shown by the Claimant to the Respondent through e-mail dated 13.12.2019 marked as Ex C-3 and the same is not disputed or challenged. The Respondent has not chosen to send any reply to the said e-mail.
- (xiv) Ex C-5 reply by the Respondent is only an afterthought and did not come out with factual aspects of the matter.
- (xv) The non-challenging/questioning of the accounts submitted by the Claimant would amount to waiver. In fact, the Respondent as RW-1 admitted in his cross examination that the production of the film met loss.
- (xvi) The Claimant did not breach the MOU, Ex C-2 in any manner and on the other hand, strictly complied with all the requirements made therein.



- (xvii) The stand taken by the Respondent herein, in respect of Ex C-2 as unenforceable, is directly contradictory to the stand taken by him when the Claimant sought to restrain the release of another movie 'Chakra' produced by the Respondent.
- (xviii) In an application filed under Section 9 of the A& C Act in OA No. 434 of 2020 and Application No. 2110 of 2020, the Respondent has clearly admitted not only the understanding of the parties and also the enforceability of the MOU under Ex C-2 herein specifically by claiming that the Claimant can invoke the MOU to recoup the losses after proving through proper evidence in an arbitration. In this connection, Ex C-7 is relied on. The Respondent in, the cross examination also admitted such position.
- (xix) In view of the above stated facts and circumstances, the entire claim made by the Claimant is liable to be allowed by rejecting the objections raised by the Respondent, with costs.

13. The learned counsel for the Respondent Mr. A.Chidambaram, argued the matter. Apart from his oral submissions, he filed a written submission as well. The sum and substance of the contentions raised by the Respondent are as follows:

- (i) At the outset the above Claim filed by the Claimant is false, vexatious and frivolous and also not at all maintainable either in law or on facts. This Tribunal, while rejecting the Application No.1 of 2021 filed by the Respondent seeking for deciding the issue of maintainability of the Arbitral Proceedings as the preliminary issue on the ground that the subject Agreement is in the nature of a wagering Agreement and thus not maintainable being Void , was pleased to reject the said application by order dated 23.10.2021 holding that all the contentions in this regard can be effectively gone into at the time of final hearing after both the parties letting in evidence. Hence the maintainability issue may be first decided by this Hon'ble Tribunal.



(ii) The claim solely based on a Wagering Agreement under the MOU dated 07.06.2019 is *void abinito* and squarely covered and directly hit under Section 30 of the Indian Contract Act and consequently unenforceable and not at all maintainable both in law and on facts. Though the term "wager" has not been defined in the Contract Act, the essential requirements to constitute an agreement as wager are very much present in the case.

(iii) Even as per the rulings relied on by the Claimant himself viz. Rajshree Sugars & Chemicals Limited Vs. Axis Bank Limited, the requisites of a wagering Agreement enlisted are present in the case on hand as stated below:-

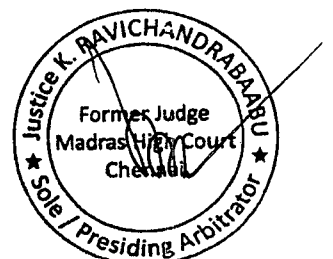
(iv) Condition No.1.

There must be 2 persons or 2 sets of or 2 groups of persons holding opposite views touching a future uncertain event, it may even concern a past or present fact or event - In the case on hand undoubtedly there are 2 persons holding opposite views touching a future uncertain event since admittedly according to the Claimant the subject film "ACTION" would not collect sufficiently so as to recoup the alleged shortage of Rs.4,00,00,000/- (Rupees Four Crores Only) said to have been incurred by him in completing the film exceeding the alleged original budget of Rs.40,00,00,000/- (Rupees Forty Crores Only) and while it is the view of the Respondent that the film would collect more than Rs.20,00,00,000/- (Rupees Twenty Crores Only) in the Box-Office by way of Theatrical collections in Tamil Nadu and Andhra Pradesh/Telangana States. The Claimant as P.W.1 during his cross examination has admitted the above position.

(v) Condition No.2.

Uncertain event - The most essential feature of wagering Agreement is that the event might be uncertain and depended on which the stake is involved. Here the uncertain event is the collection of Rs.20 Crores.

(vi) Condition No.3.



One party is to win and the other to lose upon the determination of the event. Each party must stand either to win or lose under the terms of the Contract - Here in the instant case either the Claimant or the Respondent is to win or lose upon the determination of the above uncertain event as per the terms and conditions stipulated therein.

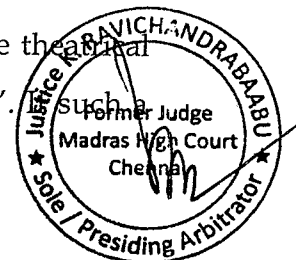
(vii) Condition No.4.

The parties should not have actual interest in the occurrence or non-occurrence of the event, but must have an interest only on the stake - It is to be noted here that both the parties have no actual interest whatsoever in the occurrence or non-occurrence of the event excepting their interest only on the stake involved whether the subject film would run well and collect Rs.20,00,00,000/- (Rupees Twenty Crores Only) as contemplated or not though they are Producer or Actor respectively.

(viii) Condition No.5.

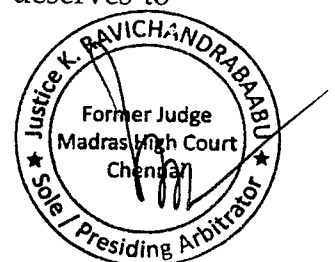
There should be no consideration for entering into the Contract which is also another pre-condition for a Contract being a wager one - In the present case admittedly no consideration had been paid either by the Claimant to the Respondent or by the Respondent to the Claimant and it is also specifically mentioned in Clause No.4 of the subject MOU under question dated 07.06.2019 itself. Hence this condition that there should not be any consideration for entering into the Contract is also very much present.

(ix) Therefore, in the light of the aforesaid facts and circumstances all the aforesaid requisites for constituting a wagering Agreement are present. it is not at all open to Claimant to distort and tailor the facts de hors the plain language employed in the Agreement to contend otherwise that it is not a wagering Contract and a contingent Contract. The explanation given by the Claimant in the Written Submission that it is the intention or view of both parties that the film is going to be a box office hit and that the theatrical release of the film will collect a minimum of Rs. 20,00,00,000/.

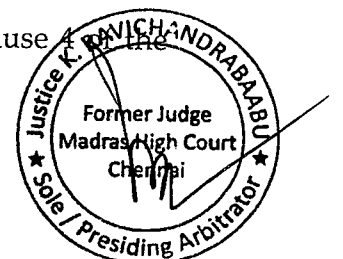


contention is accepted then there is no need for entering into the subject agreement.

- (x) It is respectfully submitted that such an interpretation and contentions raised by the Claimant in this regard is unsustainable since the uncertain event is as to whether the subject film would collect Rs.20,00,00,000/- or more or not. It is evident that there are opposite views among the parties regarding the successful running of the subject film.
- (xi) It is not correct for the Claimant to state that the Claimant the main event of the achievement of Rs.20,00,00,000/- would only benefit both the parties and the same cannot be accepted for the simple reason since admittedly in case of excess collections of Rs.20,00,00,000/- the same will have to be paid by the Claimant to the Respondent towards additional remuneration. The Contract cannot be read in such an isolated manner so as to benefit the Claimant alone but it has to be comprehensively read as a whole to ascertain the purport and intention of the parties.
- (xii) It is also to be pointed that both the parties have no actual interest in the occurrence or non-occurrence of the event as to whether the subject film would collect Rs.20,00,00,000/- or more and it is on the face of it a wagering agreement since one party would stand to gain and the other party to lose on the occurrence of the uncertain event and while so this condition is also misinterpreted and the same is not correct. As above stated there is also no consideration whatsoever in entering into the said agreement among the parties. Hence it would be crystal clear that the said agreement is nothing but a wagering Agreement on the very plain reading of the terms of the agreement itself without any additions or alterations and coupled with the evidence on record. Hence the question that it is a contingent Contract as contended by the Claimant is unsustainable and as the Agreement is hit under Section 30 of the Indian Contract Act any claims based on such a wagering agreement cannot be entertained and consequently deserves to be dismissed on this score alone.



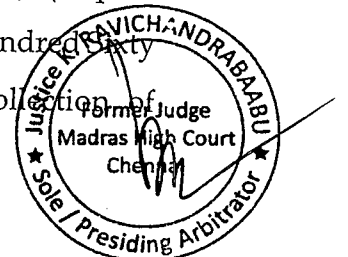
- (xiii) The contention of the Claimant that the subject agreement is a contingent Contract cannot be accepted for the simple reason that it is admittedly not that the Respondent alone who had agreed to recoup the shortage in the event of the subject film not collecting Rs.20,00,00,000/- but equally the Claimant had also agreed to pay the over flow collections in such to the Respondent, if the subject film collecting more than Rs.20,00,00,000/-. Since both the parties are under challenge on opposite views and stand in the position of either to win or lose only, depending on the happening of the uncertain event having no other interest excepting the stake involved, it is undoubtedly a wagering agreement.
- (xiv) As per Sec. 31 of the Contract Act a contingent Contract is a Contract to do or not to do something, if some event, collateral to such Contract does or does not happen. Here is also some uncertain event contemplated but the subtle difference is that the uncertain event on the happening of which the Contract is conditional must be collateral to the contact and must not form part of the consideration. In the present case on hand, both parties are admittedly to abide by the result of uncertain event on which wager is made and winning or losing money without any consideration or interest excepting the stake involved. Hence the feeble attempt of the Claimant to bring the subject agreement under Sec.31 of the Contract Act as a contingent Contract must fail.
- (xv) It is also further submitted that the Agreement is not only hit under Section 30 of the Indian Contract Act being void *abinito* on account of wager but also hit under the principles of the Public Policy and also on other moral grounds since the Respondent is only an Actor engaged for acting in the film as a Hero on a consolidated remuneration of Rs.9,00,00,000/- (Rupees Nine Crores Only) and being the Producer of the subject film the Claimant alone is liable to meet the loss or gain, as the case may be and at stretch of imagination the Respondent cannot be held liable for any alleged loss in the production of the film. As above pointed out, as per Clause





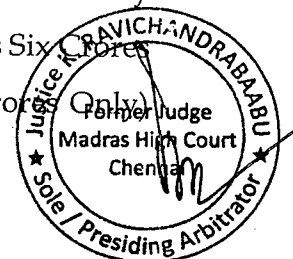
Agreement, it is to be noted that there is no consideration for the agreement and consequently void under Section 25 of the Contract Act.

- (xvi) It is submitted that the subject agreement had been admittedly prepared only by the Claimant and there are so many contradictory clauses contained therein which are mutually destructive in nature and as such there is no consensus ad idem among the parties in entering into such an agreement. While the preamble and clause 4 make it clear that this Respondent was to do the theatrical release of the film in the area referred to therein, clause 5 stipulates that the Claimant will do so.
- (xvii) Thus, it is evident that there is no consensus ad idem among the parties. It is also to be noted that in the preamble it is clearly stated that for the assured and guaranteed return of Rs.20,00,00,000/- the Respondent had undertaken the business. In view of the above act of the Claimant, he cannot be allowed to take advantage of the said contradictory clause.
- (xviii) Yet another vital contradiction is to be noted between Clause 2 and clause 6, by plain reading of the same. Thus they are meaningless and incapable of being enforced for want of clarity and certainty and hence the subject agreement is invalid on the ground of consensus ad idem and uncertainty also under Section 29 of the Contract Act. Hence it is to be pointed out that the subject agreement is not only hit under Section 30 of the Indian Contract Act but also under Sections as above stated.
- (xix) It is submitted that the preamble portion of the subject agreement reads that the alleged estimated budget of Rs.40,00,00,000/- (Rupees Forty Crores Only) had exceeded and the total cost of the film would be Rs.44,00,00,000/- (Rupees Forty Four Crores Only) excluding print, publicity and cost of the interest and as such it could be seen that the subject agreement had been entered into only with the object of recouping the alleged shortage of Rs.4,00,00,000/- (Rupees Four Crores Only) only and while so the claim made now by the Claimant at Rs.9,29,57,468/- (Rupees Nine Crores Twenty Nine Lakhs Fifty Seven Thousand Four Hundred Eight Only) being the difference between the estimated collection of the



Rs.20,00,00,000/- (Rupees Twenty Crores Only) and the alleged actual collections is ex-facie highly illegal and unjustified.

- (xx) It is also to be noted that nowhere in the agreement it is stated that as to what is the shortage amount referred to in the agreement and in such circumstances, it would only be conducive to ascertain the shortage amount from the recitals of the agreement and on evidence adduced in the case. It is submitted that one cannot lose sight of Clause 1 of the agreement wherein it is specifically stated that "The Respondent assured to the Claimant that excess of cost of production of Rs.4,00,00,000/- can be recovered by the Claimant from the theatrical exploitation of the said film since the movie will sure be a box-office hit and the Claimant shall recover minimum of Rs.20,00,00,000/- ." It can also be inferred from the words 'as stated above the shortage amount in Clause 2 of the agreement that the shortage that could be claimed can at the most be only Rs.4,00,00,000/- as stated in Clause 1.
- (xxi) Without Prejudice to the above said legal contentions, it is stated that the Claimant had miserably failed in placing any acceptable materials so as to vouch safe the tall and untenable claim of Rs.9,29,57,468/- as claimed in the petition. No accounts much less true and proper accounts were rendered by the Claimant either before or during the trial of the case and it is claimed that they had issued only an e-mail dated 13.12.2019 without any particulars whatsoever and even thereafter he had given only the tabulations of his own accounts without being supported by the daily collection reports (DCRs), vouchers etc. The tabulation and the collections shown are unauthenticated and without proper daily collection reports (DCRs), the said accounts being untrustworthy cannot be verified or believed to be correct.
- (xxii) It is submitted that only for the purpose of sustaining the false claim made in the petition the Claimant had gone to the extent of telling a new story that as if the theatrical consideration of Rs.6,00,00,000/- (Rupees Six Crores Only) had been amended as Rs.4,00,00,000/- (Rupees Four Crores Only).



and the same cannot be accepted being unwarranted and not proved in the manner known to law.

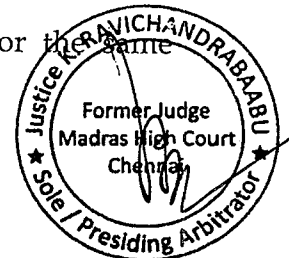
(xxiii) It is also further submitted that the Claimant had not examined his Accountant who alone is competent being conversant with the accounts to speak about the accounts furnished before this Hon'ble Tribunal.

(xxiv) Therefore, in the light of the aforesaid facts and circumstances, it is respectfully submitted that the claim petition which is ex-facie void, not maintainable and hit under Section 30 of the Indian Contract Act and thus, unenforceable being a wagering agreement besides hit under the other fundamental and basic principles of Contract Viz. want of consideration public policy, consensus ad idem and uncertainty etc. and also since the Claimant had miserably failed in adducing any acceptable evidence both oral and documentary. Hence, this Tribunal may be pleased to dismiss the claim as baseless with exemplary costs.

14. Heard Mr. Sathish Parasaran, Ld. Senior counsel for the Claimant and Mr. A. Chidambaram, Ld. Counsel for the Respondent. I have given my careful consideration to the pleadings of the parties, evidence let in by them and the case laws relied on in support thereof.

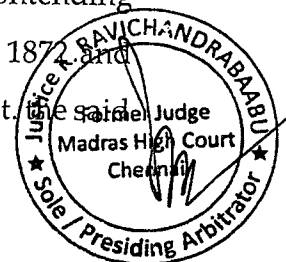
15. Based on the pleadings filed by the respective parties and the draft issues placed before this Tribunal, four issues were framed by this Tribunal for considering the dispute between the parties and to make an award finally. The said 4 issues framed are already extracted supra. Before dealing with each issue, it is better to understand certain relevant basic facts and circumstances forcing the parties to resort to this Arbitral proceedings. They are as follows:

- (i) The Claimant is the producer of a movie titled 'Action'. The Respondent is the lead actor in the said film.
- (ii) For acting in the said film, Rs. 9 crores was fixed as remuneration to the Respondent and a separate agreement was entered into for the same between the parties.



- (iii) The total production cost of the film was originally estimated to Rs.40 Crores and the said estimate has exceeded by a further sum of Rs.4 Crores.
- (iv) The pre-production of the said film commenced in the month of August 2018 and the shooting commenced in the month of March 2019.
- (v) After completion of the post production work and obtaining the censor certificate, the worldwide theatrical release of the said film was made on 15.11.2019. However, after the commencement of the shooting in the month of March 2019 and before completing the post production work in the month of October 2019, the parties herein, entered into a memorandum of understanding dated 07.06.2019, marked as Ex C-2. The said MOU dated 07.06.2019 is the sole basis for the Claimant to file this claim petition.
- (vi) Before advertizing into the recitals and terms and conditions stated under Ex C-2, some more facts are to be noted which are as follows:
- (vii) According to the Claimant the total realization from the theatrical exploitation of the said film was only Rs.10,70,42,532/-. In other words, the contention of the Claimant is that the production of the said film sustained huge loss to the Claimant.
- (viii) The Respondent though disputed and denied the claim made by the Claimant, has however, not disputed the fact that the said film ran into loss.
- (ix) Under the above circumstances, the Claimant, solely by relying upon Ex C-2 has filed the present claim petition seeking for an award directing the Respondent to pay the Claimant a sum of Rs.9,29,57,468/- together with interest @ 18% p.a from 15.12.2019 till the realization of the same.
- (x) The said claim is denied by the Respondent through his pleadings as extracted supra.

16. Before completing the pleadings, the Respondent herein filed an application No.1 of 2021 under section 16 of the A&C Act. For taking up and deciding the preliminary issue regarding maintainability of the claim petition by contending that Ex C-2 is hit and barred under Section 30 of the Contract Act, 1872 and consequently void and unenforceable in law, being a wager agreement.

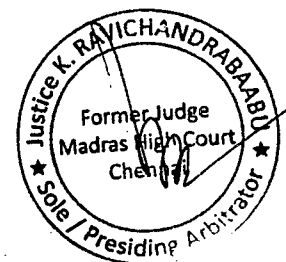


application was contested by the Claimant and this Tribunal after hearing both sides rejected the said application by its order dated 23.10.2021 by holding that the preliminary objection raised by the Respondent cannot be decided independently as the said objection is not arising out of pure question of law and on the other hand it is a mixed question of law and facts which can be gone into and decided only after completion of the pleadings and considering the evidence let in by the parties. Thus, this Tribunal, without expressing any view on the nature of the subject matter agreement at that stage, rejected the application, however, by granting liberty to parties to raise all the contentions raised therein at the time of hearing the main claim petition. Accordingly, after completing the pleadings and trial, the learned counsel for the Respondent has requested this Tribunal to decide the preliminary objection raised on the maintainability of the claim petition first before going into other questions. If the issue No.1 is taken up and decided, the preliminary objection raised by the respondent will also be addressed to.

17. Issue no.1 reads as follows:

*Whether the subject matter agreement dated 07.06.2019, executed between the parties, is a wagering Contract and hit by Section 30 of the Indian Contract Act, 1872, as claimed by the Respondent, or a contingent Contract, as provided under Section 31 of the said Act, as contended by the Claimant?*

18. This Tribunal already pointed out that the dispute between the parties is solely based on the Ex. C-2 namely Memorandum of Understanding dated 07.06.2019. There is no dispute between the parties about the execution of Ex C-2 as both parties have agreed about the execution of Ex C-2. However, each party is relying upon certain clauses in the agreement in favor of their pleadings as well as to project the intention of the parties while executing Ex C-2. The scanned copy of Ex C-2 is reproduced hereunder:



भारतीय गैर न्यायिक

एक सौ रुपये

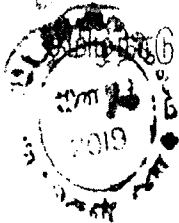
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ONE  
HUNDRED RUPEES

भारत INDIA  
INDIA NON JUDICIAL



तमिलनाडु TAMILNADU

Trident Arts

17/20, Anna Salai,  
Chennai - 600017

BT 243734

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made and entered into at Chennai on this 7<sup>th</sup> Day of June, 2019,

Between

M/s. TRIDENT ARTS, having their office at No.1D, Hari Mansion, JP Avenue, Dr.Radhakrishnan Road, Mylapore, Chennai - 600 004, represented by its Proprietor Mr.R.Ravindran, PanNo: ADPPR5320G, GSTN:33ADPPR0532G2ZM(hereinafter referred to as the "Producer" which expression shall, unless it be repugnant to the meaning or context thereof, include its successors and assigns) of the FIRST PART;

AND

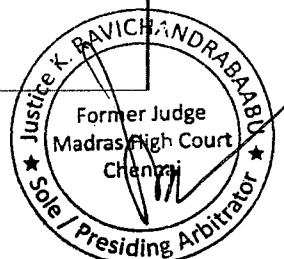
Mr. Vishal Krishna, Indian citizen, residing at No.73, Kumarn Colony, 1<sup>st</sup> Street, Vadapalani, Chennai - 600026, having PAN: AAGPV0851L, GSTN : 33AAGPV0851L1ZH(hereinafter referred to as the "Artist" which expression shall, unless it be repugnant to the meaning and context thereof, be deemed to mean and include his heirs, executors and administrators) of the SECOND PART.

The aforementioned "Producer" and "Artist" shall hereinafter be referred to individually as the "Party" and collectively as the "Parties".

For TRIDENT ARTS

*R.Ravindran*  
Proprietor

*Vishal Krishna*



Whereas, the Party of the First Part is engaged in the Production and Distribution of Cinematographic film and presently producing the film tentatively titled as "ACTION" starring the Party of the Second Part in a lead role in the said film. Whereas, the Party of the First Part represented to the Second Part that the said film shall be directed by Sundar .C and Script of the film was narrated by the Director and impressed by the Party of the Second Part. The cost of production of film was originally estimated at Rs.40 Crores excluding the print and publicity and cost of interest.

Whereas, the Party of the First Part entered into an agreement with the Party of the Second Part on 27<sup>th</sup> July 2018 and engaged the Second Part to act as a lead role in the said film for the remuneration of Rs.9,00,00,000/- (Rupees Nine Crores Only) and the First Part has agreed to pay the said remuneration as specified in the said agreement.

Whereas, the Party of the First Part has represented to the Second Part that the two schedule of shoot has already been over and exceeded the cost than the estimated budget and expressed to the Second Part that the total cost of the film shall be at Rs.44 Crores excluding print and publicity and cost of interest.

Whereas, the Party of the Second Part has assured the First Part that the film will become Box office hit theatrically since the said film has good content besides directed by Mr.Sundar .C. The Second Part has further assured to the First Part that the said film shall collect from theatrical exploitation of minimum Rs.20 Crores from the territory of Entire Tamilnadu , Andhra Pradesh/Telengana states.

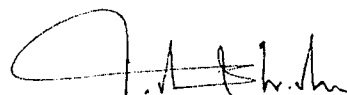
Whereas, the Second Part has undertaken the business of theatrical exploitation for the assured and guaranteed return of Rs.20 Crores for the territory of Entire Tamilnadu and Andhra Pradesh/Telengana states on the certain terms and conditions as enumerated below:

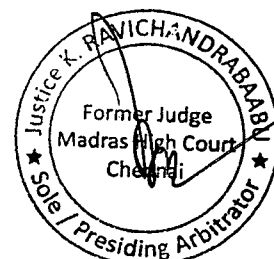
**NOW THE MOU IS WITNESSETH AS FOLLOWS:**

1. The Second Part has assured to the First Part that the excess of Cost of Production of Rs.4,00,00,000/- (Rupees Four Crores Only) can be recovered by the First Part from the theatrical exploitation of the said film since the movie will sure be a box-office hit and the first part shall recover minimum of Rs.20,00,00,000/- (Rupees Twenty Crores Only) from the theatrical exploitation of Entire Tamilnadu and Andhra Pradesh/Telengana states.
2. In case if the first part could not collect the assure amount of Rs.20,00,00,000/- (Rupees twenty crores ) from the theatrical exploitation as stated above the shortage of the amount shall be paid by second part to the first part within 30 (thirty) days from the general release of the said film.
3. If the total realization exceed Rs.20,00,00,000/- (Rupees twenty crores) from Exploitation of theatrical share from territory of Entire Tamilnadu and Andhra Pradesh/Telengana states the excess amount (Net share) shall be paid by first part to the second part as additional remuneration.
4. The Second Part has not paid any consideration to the First Part for the theatrical release of the said film in Entire Tamilnadu and Andhra Pradesh/Telengana states.

For TRIDENT ARTS

  
Proprietor.





5. The Second Part has agreed with the First Part that the entire business of theatrical exploitation of the said film for the territory of Entire Tamilnadu and Andhra Pradesh/Telangana states shall be done by First Part and all the agreements with the distributors / buyers/assignees shall be executed by the First part.
6. The First Part alone shall be entitled to receive any consideration for the assignment of theatrical exploitation of the said film to any person and the First Part shall give statement of collection to the second part after 30days of the date of first general theatrical release of the said film in India.
7. If any dispute arises between the parties on the terms and conditions of the MOU, the same shall be referred to the Arbitration and decision of the arbitrator shall be binding by the parties to this MOU.
8. The Parties agree that the Courts at Chennai shall have the jurisdiction in all the matters arising out of this MOU.

IN WITNESS WHEREOF the Parties hereto have hereunto set their respective signatures on the day and year first hereinabove written.

Singed By the within named

"PRODUCER "

For Trident Arts

TRIDENT ARTS



Proprietor

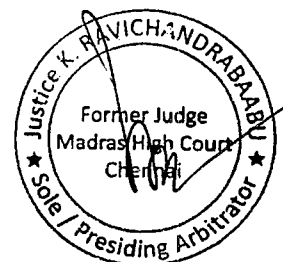
singed BY the within named

"ARTIST"

Mr. Vishal Krishna



WITNESSES :





19. A careful perusal of Ex C-2 would show that both parties have affixed their signature though there being no attesting witness to the said document.

(a) The following facts emerge from the bare reading of Ex C-2:

(i) The Claimant is the Producer and the Respondent is the Artist of the film 'Action'.

(ii) The cost of production of the said film was originally estimated at Rs. 40 Crores, excluding the print and publicity cost.

(iii) The Respondent was engaged on 27.07.2018 by entering into an agreement for acting in the said film as a lead role, for the remuneration of Rs. 9 Crores.

(iv) The Claimant represented the Respondent that the estimated budget of the film exceeded the total cost of the film of Rs. 44 Crores, excluding print and publicity cost.

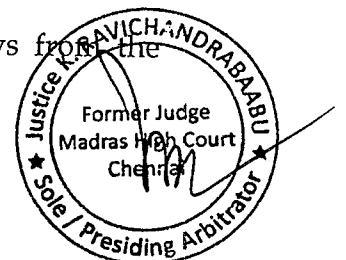
(v) The Respondent had assured the Claimant that the said film will become box office hit and would collect from theatrical exploitation of minimum Rs. 20 Crores from the territory of entire Tamil Nadu, Andhra Pradesh and Telangana States.

(vi) The Respondent had undertaken the business of theatrical exploitation for the assured and guaranteed return of Rs. 20 Crores for the territory of entire Tamil Nadu, Andhra Pradesh and Telangana States.

20. The above are the recitals made in the preamble portion of Ex C-2. The following are the terms and conditions enumerated thereafter:

(i) The Respondent assured the Claimant that the excess of cost of production of Rs. 4 Crores can be recovered by the Claimant from the theatrical exploitation of the said film as it was going to be a box office hit and would recover a minimum of Rs. 20 Crores.

(ii) If the Claimant could not collect the assured amount of Rs. 20 Crores from the theatrical exploitation, the shortage of the amount shall be paid by the Respondent to the Claimant within 30 days from the general release of the said film.

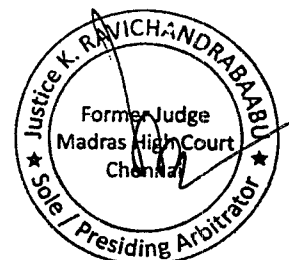


- (iii) If the total realization exceeds Rs. 20 Crores, the excess amount (net share) so collected shall be paid by the Claimant to the Respondent as additional remuneration.
- (iv) No consideration was paid by the Respondent to the Claimant for the theatrical release of the said film in the said area.
- (v) The Respondent agreed that the entire business of theatrical exploitation for the said area shall be done by the Claimant and all the agreements with the distributors/buyers/assignees shall be executed by the Claimant.
- (vi) The Claimant alone shall be entitled to receive any consideration for the assignment of the theatrical exploitation of the said film and he shall give statement of collection of the amount to the Respondent after 30 days of the date of first general theatrical release.

21. The above are the terms and condition stipulated under Ex C-2. Therefore, based on the above MOU, more particularly by strongly placing reliance on condition No.2 therein, the Claimant seeks for a direction to the Respondent for paying the differential sum of Rs. 9,29,57,468/- after giving credit to the total collection made. In other words, out of the sum assured by the Respondent i.e. Rs. 20 Crores, since the Claimant has collected only Rs. 10,70,42,532/-, the shortage amount is claimed in this claim petition.

22. The said claim is vehemently disputed and denied by the Respondent not in respect of the execution of the said agreement under Ex.C-2, but in respect of the validity and maintainability of the same for its enforcement in the eye of law.

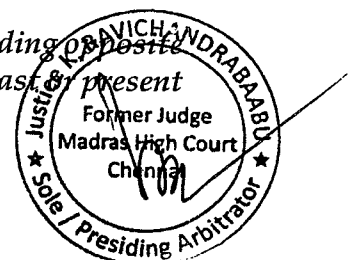
23. It is the stand of the Respondent that though such an agreement was entered into between the parties, the said agreement cannot be enforced in the eye of law, as the said agreement is only a wagering Contract and thus hit and barred by section 30 of the Indian Contract Act, 1872.



24. On the other hand, the contention of the Claimant is that the essential requirements to call and agreement by way of wager are totally absent in this case and therefore, Ex C-2 is not a wagering Contract and on the other hand it is a Contingent Contract as defined under Section 31 of the Indian Contract Act. Therefore, it is contended that Ex C-2 is valid in law and is enforceable, since, its execution is not disputed by the Respondent.
25. Therefore, going by all the facts and circumstances, more particularly the recitals of Ex C-2 and by taking note of section 30 and 31 of the said Act, this Tribunal has to decide whether Ex C-2 is a wagering Contract or contingent Contract.
26. Section 30 of Indian Contract, 1872 act reads as follows:
- 30. Agreements by way of wager, void:**  
*Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.*
27. Section 31 of the Indian Contract Act reads as follows:
- 31. "Contingent Contract" defined.**  
*A "contingent Contract" is a Contract to do or not to do something, if some event, collateral to such Contract, does or does not happen.*
28. There is no quarrel to the position of law that an agreement by way of wager is void and thus unenforceable as contemplated under section 30 of the said act. On the other hand, if it is a contingent Contract, the maintainability and enforceability or otherwise of such is dealt with under section 32 to 36 of the said act.
29. The Hon'ble High Court of Madras in its decision rendered in *Rajashree Sugars and Chemicals Ltd. V Axis Bank Limited , reported in (2009) 1 CTC 227* has dealt with in detail and observed as to what are the essential features of a wagering Contract. In paragraph, 55, it is observed as follows:

**"55. The essential features of a Wagering Contract as formulated by the English Courts are as follows:**

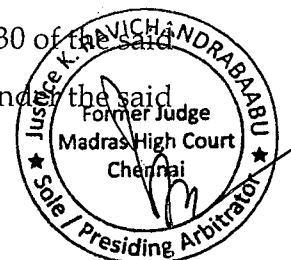
- (1) *There must be 2 persons or 2 sets of or 2 groups of persons holding opposite views touching a future uncertain event. It may even concern a past or present fact or event.*



*(2) In a Wagering Contract, one party is to win and the other to lose upon the determination of the event. Each party must stand either to win or lose under the terms of the Contract. It will not be a Wagering Contract if one party may win but cannot lose or if he may lose but cannot win or if he can neither win or lose.*

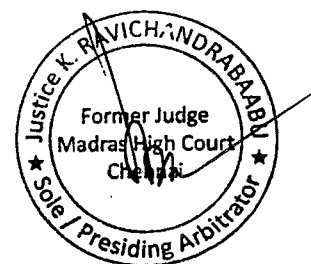
*(3) The parties have no actual interest in the occurrence or non- occurrence of the event, but have an interest only on the stake."*

30. For formulating such essential features, the Hon'ble High Court had referred to various decisions of the English Courts as well as our Courts.
31. According to the Respondent, Ex C-2 is nothing but a betting between the parties about the revenue collection of the said film by having two opposite views. Thus it is contended by the Respondent that as per the said agreement, upon the determination of the event, one party will win and other party will lose.
32. It is further contended that no consideration is paid by the Respondent while entering into Ex C-2 and the parties have no actual interest in the occurrence or non-occurrence of the event but have an interest only on the stake in so far as Ex C-2 is concerned. Therefore, going by the very decision itself, it is contended that all the three essential features referred to at para 55 of *Rajashree Sugars* are attracted in this case and consequently Ex C-2 is undoubtedly an agreement of wager and thus become void.
33. Relying on the very same decision, the Claimant contended that Ex C-2 will not come under the purview of Section 30, as not all the essential features referred to in the said decision for constituting a wagering Contract are present in this case. Therefore, it is contended by them that Ex C-2 will fall under Section 31 of the said act by treating the same as contingent Contract and thus enforceable under Section 32 of the said act.
34. I will first consider as to whether the Ex.C-2 is a wagering Contract, as claimed by the Respondent. If the answer is in affirmative, the claim based on such Contract/agreement is liable to be rejected as it is barred under Sec. 30 of the said Act. I have already pointed out that the term 'wager' is not defined under the said



Act. Hence the interpretation or meaning given by the courts will be the guiding force to find out whether a Contract is wager or not. In *Rajashree Sugars*, the Hon'ble High court of Madras, formulated the essential features that are required for constituting a wagering Contract. Three conditions are stated therein, satisfaction of which would constitute a contract a Wagering Contract.

35. The first condition says that there must be two persons holding opposite views touching a future uncertain event. Here in this case, there are two persons viz. the Claimant and the Respondent. Did they have opposite views touching a future uncertain event? The claim petition, under para 12 to 14 narrated the circumstances under which Ex C-2 came to be entered into. Though the averments made in those paragraphs do not specifically state that the parties had opposite views regarding the 'future uncertain event' namely the total collection of the said film, through its theatrical release, the Respondent in his counter statement at paragraph 6 has admitted that there was a challenge thrown by the Claimant on the Respondent about the collection of the film through theatrical release which culminated into the execution of Ex.C-2. Thus, it is evident that the parties had opposite views of the future uncertain event viz. about the collection of the film through theatrical release. Consequently, Ex C-2 will satisfy the requirement under the first condition.
36. The second condition to be satisfied is that one party is to win and the other party to lose upon determination of the event. Further, it is not wagering Contract if one party may win but cannot lose or if he may lose but cannot win or if he can neither win or lose. Let me consider as to whether the terms of ExC-2 satisfy the above requisite.
37. Clause 2 and 3 of terms and conditions of Ex C-2 are relevant for appreciating the facts on the above question.



38. Under Clause 2, the Respondent agreed to pay the shortage of the assured amount of Rs.20 crores, to the Claimant, if the film fails to generate the said assured amount, within thirty days from the general release.
39. Under Clause 3, the Claimant agreed to pay the excess amount collected over and above the assured amount of Rs.20 crores, to the Respondent, as additional remuneration, if the film collects more than the assured amount of Rs. 20 crores.
40. Thus, it is seen the bench mark set by the parties is Rs.20 crores as the assured collection (as per Respondent)/doubted collection (as per the Claimant).
41. If the determination of the event happened as per clause 2, the winner is the Claimant in so far as Ex C-2 is concerned and the Respondent is the loser. On the other hand, if the event happened as per clause 3, the winner is the Respondent and the loser is the Claimant.
42. The second condition does not stop with this. It further states if one party may win but cannot lose, then it is not wagering Contract. Applying the above position to the present facts, it could be seen that the Claimant will be the loser in terms of money under both circumstances, though he will be the winner under clause 2 and loser under clause 3. In other words, though the Claimant will get the shortage amount out of the assured amount of Rs.20 crores, still he will be loser as the total expenditure spent on the film was 44 crores, which fact is not in dispute. Likewise, if the event takes place as contemplated under cause 3, the Claimant again is the loser as he has to pay the excess collection over and above Rs. 20 crores to the Respondent as additional remuneration. So, it is crystal clear that one party, viz. the Claimant may win under clause 2 but lose under 2 and 3. Hence, in the considered view of this Tribunal, the second condition is not satisfied to hold Ex C-2 as wagering Contract.
43. The last condition stipulates that the parties should not have actual interest in the occurrence or non-occurrence of the event and that they should have an interest only on the stake. Going by the relationship of the parties to the event



under Ex.C-2, this Tribunal is of the firm view that this condition again is not attracted to the present case to hold Ex C-2 as wagering Contract. In cannot be said at any stretch of imagination that the parties herein have no actual interest in the occurrence or non-occurrence of the event viz. revenue collection of the film. Admittedly the Claimant is the producer and the Respondent is the actor of the said film. Going by the terms under clause 2 and 3 of Ex C-2, both parties certainly have personal interest on the occurrence/ non-occurrence of the event. They are not third parties to the event. They can not be said as parties unconnected with the event. It is not a simple betting on a game or event by two mere spectators or fence sitters of a game, but the actual participants themselves. Hence, the third condition is not fully attracted to hold Ex C-2 a Wagering Contract.

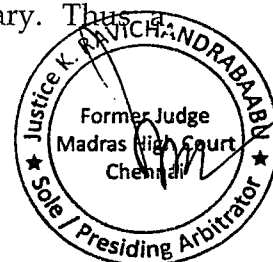
44. Learned counsel for the Respondent relied on AIR 1959 SC 781 to contend that the wagering Contract is void and unenforceable under S.30 of the Contract Act. Absolutely no dispute on the above proposition of law, more particularly when the statute itself says so. But the question as to whether a Contract is a wagering Contract or not has to be considered and answered based on the facts and circumstances of each case, more particularly going by the terms and conditions of the Contract and the circumstances under which it came to be executed.

45. In view of the above stated facts and circumstances and the observations made, this Tribunal is of the firm view that EX C-2 is not a wagering Contract/agreement, as contented by the Respondent.

46. Next question that arises for consideration is, when Ex C-2 is not a wagering Contract, whether it is a contingent Contract as defined under S.31 of the Indian Contract Act, 1872, as claimed by the Claimant.

47. S.31 of the said Act defines the 'contingent Contract' as a Contract to do or not to do something, if some event, collateral to such Contract does or does not happen.

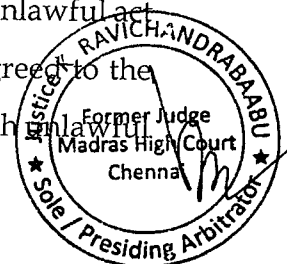
The term 'collateral' means additional but subordinate; secondary. Thus a



'collateral Contract' is a subsidiary Contract which induces a person to enter in to a main Contract or which depends upon the main Contract for its existence.

48. By taking note of the above position of law under S.31 of the said Act and by considering the scope and ambit of Ex.C-2, this Tribunal could see that, Ex.C-2 is not a subsidiary or secondary or subordinate Contract to any other main Contract and on the other hand, that itself is the main Contract or only Contract in respect of the subject matter dispute. The event viz. the Rs. 20 crores bench mark collection is the main event to happen, as per clause 2 and 3 therein, without there being any other collateral event connected with such main event. In other words, the bench mark viz. collection of Rs.20 crores, fixed by the parties, is not a collateral event so as to bring the Contract between the parties under Ex C-2 a 'Contingent Contract'.

49. As already stated supra, the Claimant is the producer and the Respondent is the main actor in the said film 'Action". The Claimant being the producer is bound to bear the entire production cost and face the profit or loss of such production, depending on the revenue collected by the release of the movie. The responding being the lead actor in the said film is paid his remuneration of Rs.9 crores for acting in the film. Apart from that he does not have any connection either directly or indirectly with the production cost of the film. The producer viz. the Claimant is taking all risks to invest in the production of the film and thus none of the artists or technicians can be legally faulted, if the production of the film does not become a profitable one after its release. Those people may be morally held responsible for the failure of a film, depending upon the nature of their role in the film on the screen or off the screen. However, for such moral failure, if any, they cannot be dragged before a court of law as responsible for loss and to ask them to compensate monetarily. Any such attempt will not have the sanction of law as it such action would oppose to public policy and thus, unlawful. The agreement entered between the parties herein under ExC-2 is one such nature of unlawful act not having any legal sanctity to withstand. No doubt, both parties agreed to the terms and entered into the said agreement. That does not mean that such





act of the parties should automatically bear a legal sanction too. At this juncture, it is worth to note S.23 of The Indian Contract Act, 1872, which reads as follows:

23. What consideration and objects are lawful, and what not.

*The consideration or object of an agreement is lawful, unless — —*

*it is forbidden by law; or*

*is of such a nature that, if permitted, it would defeat the provisions of any law; or*

*is fraudulent; or*

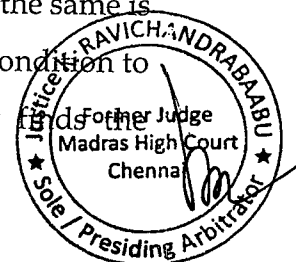
*involves or implies, injury to the person or property of another; or*

*the Court regards it as immoral, or opposed to public policy.*

*In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.*

50. The above provision of law makes it clear that the consideration or object of Ex C-2 is not lawful as it is opposed to public policy. Asking a person to compensate another person, who is not legally bound to do, is certainly an unlawful act and so any agreement or Contract entered into with such object or consideration automatically becomes unlawful and consequently void. At this juncture, at the risk of repeating, is to be noted that the event mentioned under ExC-2 is not a collateral one to any other main contract and so it loses its legal sanctity under Sec.31 too.

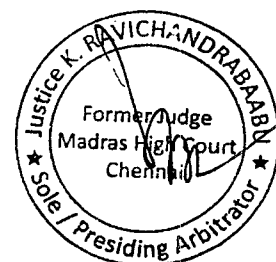
51. This Tribunal is fully conscious of its scope and power to decide the dispute between the parties. It is also a common law that clauses in an agreement bind the parties, if the agreement is not disputed. At the same time when such agreement is placed before a legal forum as the basis of the claim, such forum is not precluded from going into the said agreement in full and find out as to whether the same is a lawful or not, based on its object or consideration and its terms and conditions to achieve such object. It cannot be said that even if the Arbitrator



agreement is unlawful, he is also bound by the object, terms and conditions of the agreement, merely because the execution of the agreement is admitted and the said agreement contains an arbitration clause. What is binding on the Arbitrator is the Arbitration clause contained therein and not all other terms and conditions stipulated. Otherwise, the courts would not have vested the power on the Arbitrator to decide the 'arbitrability of a dispute' between the parties arising out of such agreement. At this juncture, it is pertinent to note Section 16 of the A&C Act.

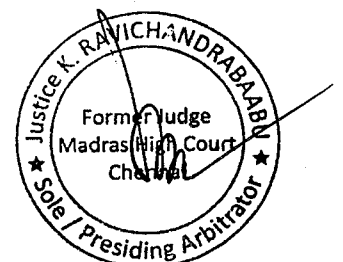
52. A careful perusal of the said provision of law would make it clear that an arbitration clause contained in an agreement shall not become invalid even if a decision by the arbitral Tribunal that the Contract itself is null and void. To put it in reverse, a valid arbitration clause in an agreement to be treated as an independent agreement of the other terms of the Contract and does not prohibit the Tribunal to decide whether any of the or all terms of the Contract as null and void. Therefore, this Tribunal is fully convinced that Exhibit C-2 is an unlawful agreement, cannot be enforced through a legal course of action.

53. Further, without affecting the above findings and observations on the nature of Ex.C-2, this Tribunal is surprised to note certain contradiction in the terms and conditions therein entered between the parties herein. Such contradiction make the very agreement itself an unworkable one and consequently, even assuming that the said agreement is lawful, based on such unworkable clauses, none of the parties to the same is entitled to approach for redressal for their grievance based on such agreement. While the preamble portion of Exhibit C-2 reads that the second part namely the Respondent herein has undertaken the business of theatrical exploitation for the assured and guaranteed return of Rs. 20 Crores, clause 5 of the terms of the said agreement reads totally contra, as if, the Respondent has agreed with the Claimant that the entire business of theatrical exploitation of the said film shall be done by the Claimant himself.

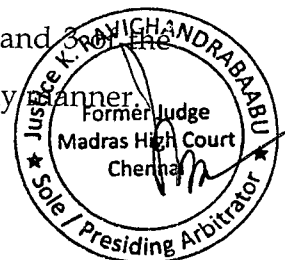


54. In the said agreement, in between the above said preamble portion and clause 5, nothing is stated or explained as to why the parties have changed their mind regarding the party to make such theatrical exploitation of the film. At this juncture it is to be stated that the learned senior counsel appearing for the claimant relied on the decision of the Hon'ble Supreme Court reported in 1975 (1) SCC 199 to contend that change of terms in a contract itself does not vitiate the contract. This Tribunal is of the view that the above decision is not helping the claimant in any way going by the findings rendered therein at paragraph 16, which reads as follows:

*"16. We are not certain that if evidence of subsequent acting under a document is admissible, it might have the result that a contract would mean one thing on the day it is signed but by reason of subsequent event it would mean something a month or year later. Subsequent 'interpreting' statements might not always change the meaning of a word or a phrase. A word or a phrase, is not always crystal clear. When both parties subsequently say that by the word or phrase which, in the context, is ambiguous, they meant this, it only supplies a glossary as to the meaning of the word or phrase. After all, the inquiry is as to, what the intention of the parties was from the language used. And, why is it that parties cannot clear the latent ambiguity in the language by a subsequent interpreting statement? If the meaning of the word or phrase or sentence is clear, extrinsic evidence is not admissible. It is only when there is latent ambiguity that extrinsic evidence in the shape of interpreting statement in which both parties have concurred should be admissible. The parties themselves might not have been clear as to the meaning of the word or phrase when they entered into the contract. Unanticipated situations might arise or come into the contemplation of the parties subsequently which would sharpen their focus and any statement by them which would illuminate the darkness arising out of the ambiguity of the language should not be shut out. In the case of an ambiguous instrument, there is no reason why subsequent interpreting statement should be inadmissible...."*

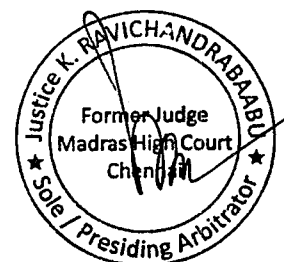


A careful perusal of the above observation made by the Apex Court would make it clear that change of terms or mind of the parties must be a subsequent event after entering into the agreement and that there must be some ambiguity in understanding the intention of the parties to the agreement. In this case, the two different minds, opposite to each other, are apparent on the face of the very day of entering into the agreement itself regarding the right to release the film, going by the terms of the agreement itself. Neither it is a subsequent event or with ambiguity. Self-contradictory terms of an agreement cannot be termed as ambiguous. Only when a doubt arises on a particular clause or term as to its applicability or executability and such doubt is beyond any possible interpretation, then it can be said that such clause or term is ambiguous. In this case the preamble portion and clause 5 are contradicting with each other and each clause, if read, does not exhibit any ambiguity. When contradiction is not ambiguity, the above decision does not help the claimant in any way. Therefore, this Tribunal is not in a position to appreciate Exhibit C-2 as an intended and meaningful Contract between the parties, as it contains such material contradictions which goes to the root of the matter. Though, such being the position, exposed under Exhibit C-2, during the course of the hearing, it is admitted by the parties that the Claimant alone has done the entire business of theatrical exploitation of the said film as per clause 5 and not the Respondent as per the preamble portion. Therefore, the loss in collection of the revenue from the theatrical exploitation of the said film cannot be legally attributable to the Respondent. In any event, when this Tribunal has found that Ex C-2 is not lawful one, it makes no difference whether the film is released by the claimant or respondent. No doubt, clause 2 and 3 of the said agreement speak about mutual obligation of the parties if the benchmark collection of Rs. 20 Crores does or does not reach. This Tribunal has already found that the above clauses in the agreement do not fall either within section 30 or 31 of the Indian Contract Act, 1872 and on the other hand, the very agreement itself is unlawful and thus void as contemplated under Section 23 of the said Act. Therefore, clause 2 and 3 of the said agreement will not come to the rescue of the parties herein in any manner.



55. The Ld.Counsel for the Respondent, while arguing the matter submitted that if the film collected Rs. 100 Crores, it is un imaginable that the Claimant will part with the excess collection of Rs. 80 Crores to the Respondent as additional remuneration when he has spent Rs. 44 crores for its production. I find force in the said submission that any terms of the Contract should be a practicable one and not with an intention of not to act upon. A prudent approach to the terms of the Contract should unearth that such terms are not only legal and also reasonable for its execution before the legal forum. It is further to be noted that while entering into Exhibit C-2 the Respondent has not paid any consideration to the Claimant for the theatrical release of the said film as stated under clause 4. Therefore, it is evident that the Respondent has neither release the film nor paid any consideration to the Claimant for entering into Exhibit C-2 agreement. As already pointed out supra, it is seen from the preamble portion that the parties were with one intention only namely, that the Respondent will do the business of theatrical exploitation. However, suddenly they took a U turn at the very next clause, viz. clause 5 and taken a different stand that the Claimant will do the said business. In the absence of any explanation available in the very agreement itself for such change of mind and more particularly when the said agreement was not attested by any witnesses, it is very difficult for this Tribunal to rely upon the said agreement and consider the claim of the Claimant based on such unlawful agreement.

56. It is further contended by the claimant that the respondent admitted the execution of ExC-2 in an another proceedings before the Hon'ble High Court in O.A.434 of 2020 in respect of a film "Chakra" under Ex.C7. This Tribunal has already found that the execution of Ex C-2 is not disputed. What is disputed is its enforceability, which is already answered by this Tribunal against the claimant. Therefore, Ex C7 does not alter the position in any way.

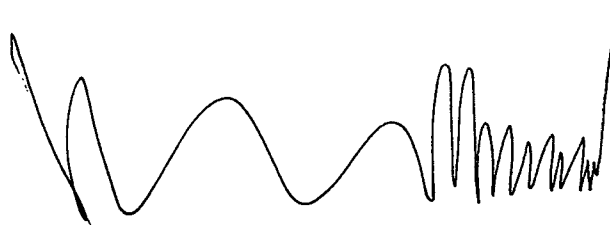


57. The learned Senior Counsel for the claimant also contented that equity does not find a place in arbitral proceedings. It is made very clear that this Tribunal has not chosen to reject the claim based on any equity, but on the ground that ExC-2 is unlawful and thus unenforceable. It neither falls within the purview of Sec.30 nor Sec.31 of Indian Contract Act. On the other hand it falls under scope of Sec.23 of the said Act to hold it as void.

58. It is stated that the respondent has made court deposit of Rs. One Crore to the credit of OSA No.304 and 305 of 2020 as directed by the Hon'ble High court while referring the matter for Arbitration. If it is so, it is for the respondent to work out his remedy as against such deposit before the Hon'ble High Court.

59. Therefore, considering the above stated facts and circumstances, this Tribunal finds that the Claimant is not entitled to succeed in these arbitral proceedings based on Exhibit C-2. Consequently, the claim petition is dismissed, however, by directing both parties to bear their own cost of this arbitral proceedings.

Dated at Chennai on this the 3<sup>rd</sup> day of June 2023



JUSTICE K.RAVICHANDRABAABU (RETD)

SOLE ARBITRATOR

