



IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH-II

CP (IB) No.670/MB/2024

[Under Section 9 of the Insolvency and Bankruptcy Code, 2016, Under the provisions of Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016]

Ordered on: 08.04.2026

IN THE MATTER OF:

Gutz Feel Film Production LLP

C/o Hope Productions Private Ltd.

Ground Floor, Impaa House, Moru Mahal,

Pali Naka, Bandra (West), Mumbai-400050

...Operational Creditor

VERSUS

Eros International Media Limited

L99999MH1994PLC080502

901/902, Supreme Chambers,

Off Veera Desai Road, Andheri (West)

Mumbai - 400053 Mumbai,) Mumbai City

MH 400053

...Corporate Debtor

CORAM:

HON'BLE SHRI ASHISH KALIA, MEMBER (JUDICIAL) HON'BLE

SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances : Hybrid

For Operational Creditor: Adv. Shyam Kapadia a/w Adv. Ruchita Jain & Yash

Dhruva i/b MDP Legal

For Corporate Debtor: Adv. Rohit Gupta, Mr. Zeeshan Farooqui a/w Ms. Disha

Mehta i/b



ORDER

Per: Ashish Kalia, Member (J)

1. This is an Application filed on 05.09.2024 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (AAA Rules), by **Gutz Feel Film Production LLP**, the **Operational Creditor**, for initiating Corporate Insolvency Resolution Process (CIRP) in respect of **Eros International Media Limited** the **Corporate Debtor** for the alleged default in operational debt of 3,33,07,752 /- along with 18% interest from the date of present demand notice until final realization. The date on which default occurred mentioned in Part IV of the Application is 15.05.2023.
2. **The submissions of the Operational Creditor are as follows:**
 - 2.1. The Operational Creditor and the Corporate Debtor entered into Film Rights Acquisition Agreement for the movie titled as 'English Vinglish' on 05.05.2012 i.e. English Vinglish Agreement Under the English Vinglish Agreement, the Operational Creditor assigned the entire copyright and intellectual property rights to the Corporate Debtor for a price consideration of minimum guarantee amount of Rs.19,65,00,000/-
 - 2.2. Further under clause 14 of the English Vinglish Agreement, the Corporate Debtor was required to share profits with the Operational Creditor after the recoument and appropriation of the amounts as mentioned in clauses 14 (a) to (c), in the ratio of 50:50 percent.
 - 2.3. Further under the clause 15 of the English Vinglish Agreement, the




Corporate Debtor was required to provide status of income in respect of the exploitation of the film i.e. English Vinglish from time to time to the Operational Creditor.

2.4. The Operational Creditor and the Corporate Debtor entered into Film Co- Production Agreement i.e. Ki and Ka Agreement on 03.02.2016 for the purpose of producing a film under the terms and conditions as set out in the Ki and Ka Agreement. Under the said Ki and K Agreement, the Corporate Debtor was to recoup certain monies which included costs, charges, insurance premiums on policies for distribution and loss of profit etc. Under clause 5 of the said Ki and Ka Agreement, the Corporate Debtor was required to share profits after recoupment in the ratio of 50:50 percent.

2.5. Further, vide an email dated 15.02.2023 the Corporate Debtor further informed that as per the business statements prepared by it, amounts of Rs.2,10,52,187/- and Rs.1,22,55,565/- in respect of English Vinglish and Ki and Ka respectively shall be paid within 3 months of the said email.

2.6. It is stated that from 15.02.2023, more than 3 months have lapsed and the Operational Creditor was supposed to receive its payment on or before 15.05.2023, however, the said payment was not made by the Corporate Debtor, Accordingly, Corporate Debtor defaulted in making payment to the Operational Creditor.

2.6. In view of the non-payment by the Corporate Debtor, the Operational Creditor issued email dated 13.06.2023 seeking status on the payment and the monies, as agreed between them. However, the monies have



remained unpaid till the date of issue of present demand notice.

2.7. In view of the above, a total unpaid, undisputed Principal Amount of Rs.3,33,07,752 /- (including 1. Rs.2,10,52,187/- under English Vinglish Agreement and 2. Rs. 1,22,55,565 /- under Ki and Ka Agreement) remains due and payable as an Operational Debt owed by the Corporate Debtor to the Operational Creditor as on 15.07.2023 . Accordingly, a demand notice dated 15.07.2023 under the provision of the Insolvency and Bankruptcy Code was issued by the Operational Creditor.

2.8. After receiving the demand notice and in order to wriggle out of the obligations to make payments, vide a letter dated 25.07.2023, the Corporate Debtor through its advocates inter alia wrongly refuted the claims of the Operational Creditor on the grounds that the Operational Creditor and Corporate Debtor were in talks to adjust the amount payable by Operational Creditor to Corporate Debtor in respect of certain Films. It is pertinent to note that no such discussion were ever held between parties and in fact the Corporate Debtor have failed to produce any record indicating disputes between the parties.

2.9. It is submitted that there is a clear and undisputed debt due and payable by the CD under the Agreements to the OC. This debt arises from provision of goods and services by the OC to the CD. There is complete agreement on the factum and quantum of debt. No pre-existing dispute under the ambit of Section 9 can be said to have arisen inasmuch as, until delivery of the Demand Notice, there is no record of any dispute. Even the Response Letter raising frivolous disputes is issued more than 10 days after the Demand Notice. In view thereof, it is respectfully submitted that the present Petition be admitted, with costs.




3. **Affidavit of Reply on behalf of the Corporate Debtor**

3.1. Notices were issued. Reply has been filed by the Corporate Debtor. It is stated that the Petition is ex facie barred by limitation. The Film Rights Acquisition Agreement (2012) and Film Co-Production Agreement (2016) were executed nearly 8 years prior to filing of the Petition. The Petitioner has relied upon the email communications of 2023 to allege the existence of an Operational Debt, whereas the limitation for any alleged cause of action, expired in 2019. Any acknowledgement or communication subsequent to the expiry of period of limitation cannot revive a cause of action.

3.2. The Petitioner has not supplied any goods nor rendered any services to the Respondent. The Agreements executed were in the nature of a commercial collaboration and revenue-sharing arrangement for exploitation of cinematographic works. The Petitioner was, at best, a commercial partner or co-investor and not a service provider. A reading of the Film Rights Acquisition Agreements dated 5th May 2012 shows that under Clause 14 [Page 23 of the Company Petition

3.3. The purported claim of the Petitioner is premised upon a certain Film Rights Acquisition Agreements dated 5th May 2012 and a Film Co-Production Agreement dated 3rd February 2016, which is insufficiently stamped. The Demand Notice dated 15 July 2023 and the Petition disclose contradictory dates of default. The Petitioner states that the debt fell due on 15 February 2023, while simultaneously claiming default on 15 May 2023. The Petitioner has not given any justification for arriving at the aforesaid dates and has construed the date of default as 15th May 2023, whilst asserting that the date on which the debt fell due is 15th February 2023. 17. Such inconsistency strikes at the root of



maintainability. Section 9 requires strict compliance, and incorrect or fabricated default dates render the Petition liable to be dismissed.

3.4. The alleged debt of Rs. 1.22 crores (Co-Production Agreement) and Rs. 2.10 crores (Rights Acquisition Agreement) is disputed and misconceived. Negotiations were ongoing between the parties regarding adjustment of accounts under other films, including "Shamitabh." The Respondent had proposed mutual settlement, and the Petitioner was aware of such discussions.

3.5. The Petition is a classic attempt to misuse IBC as a debt recovery forum, contrary to the law laid down by the Hon'ble Supreme Court in *M/s S.S. Engineers v. Hindustan Petroleum Corporation Ltd* (Civil Appeal No. 4583 of 2022, decided 15.07.2022). 21. The Supreme Court has categorically held that Section 9 cannot be invoked where the debt is disputed or where the company is solvent. The present Petition is therefore malafide and deserves dismissal with exemplary costs. The levy of 18% interest in the Demand Notice for the first time also evidences the Petitioner's intent to arm-twist and harass the Respondent.

4. **Finding and Analysis**

5. The short question that arises for consideration in the present Petition is:
(i) whether the dues claimed by the Applicant qualify as 'operational debt';
and (ii) whether the present Petition is barred by limitation.
6. An agreement dated 5th May, 2012 was executed between the Petitioner, Guta Feel Film Production LLP, and the Respondent corporate debtor, EROS INTERNATIONAL Media Ltd, for the production of the film *English Vinglish*. Under the said agreement, the Petitioner's claim amounts to ₹2,10,52,187/-, whereas the consideration under the agreement was agreed at ₹1,22,55,565/-.



7. According to the Petitioner, the Respondent had assigned the sole rights of the intellectual property to the Petitioner, and in turn, the Respondent agreed to pay a sum of Rs. 19.65 crores, along with a share of the revenue accruing from the exploitation of rights under the said film.

8. Petitioner has relied upon the Film Rights Acquisition Agreement dated 5th May, 2012, which is annexed as Annexure 4 on page no. 20, where Clause 13 reads as follows:


13(i) Payment Subject to the full, complete and timely performance and observance by the Assignor of all their obligations and warranties and as Minimum Guarantee Amount for the irrevocable, sole and exclusive assignment of all copyrights and all other rights of the said Film granted to the Assignee, the Assignee hereby agrees to pay to the Assignor a total Minimum Guarantee of Rs.19,65,00,000/- (Rupees Nineteen Crores Sixty Five lakhs only) ("MG") as per the terms of payment specified in the payment Schedule 13(H) which shall be recouped in the manner stated in clause 14 hereof.

13(ii) Payment Schedule

- | | | |
|-----|-------------------|--|
| (a) | Rs.2,00,00,000/- | On execution of this Agreement |
| (b) | Rs.2,00,00,000/- | On or before 31st May 2012 |
| (c) | Rs.2,00,00,000/- | 2012 On or before 30th June 2012 |
| (d) | Rs.13,65,00,000/- | Against delivery of prints & trailers of the said film |

Total Rs.19,65,00,000/- (Rupees Nineteen Crores Sixty-Five Lakhs only)

13(iii) Out of the Minimum Guarantee amount of Rs.19,65,00,000/- (Rupees Nineteen Crores Sixty Five lakhs only) a sum of Rs.10,65,00,000/- (Rupees Ten Crores Sixty Five Lakhs only) shall be towards Theatrical Rights of the said Film in Clause 1 of Annexure "A" hereto for the Territory and the balance amount




thereof towards all the other Assigned Rights of the said Film in Clause (2) to (19) of Annexure "A" hereto.

13(iv) Cross Collateralization : If consequent to exploitation of Theatrical Rights of the said film in Clause 1 of Annexure "A" the Assignee is unable to recoup all or any amounts of sum of Rs.10,65,00,000/- (Rupees Ten Crores Sixty Five Lakhs only) and/or sustains any losses then Assignee without prejudice to Clause 14 shall be entitled to cross collateralize, adjust, offset and set off all the losses so sustained in the said film against the profits, revenues, incomes, all overflow accrued and generated from the exploitation of all or any Assigned Rights in Clause (2) to (19) of the said Film in Annexure "A" and vice-a-versa.

9. The Petitioner, vide email dated 15th February, 2023, stated that the Respondent had admitted an amount of Rs. 2.10 crores and Rs. 1.22 crores as outstanding in respect of both films. The Respondent acknowledged these amounts as payable to the Petitioner.
10. It is further stated that the assignment and transfer of the intellectual property rights in respect of the film, for consideration, constitutes a supply of goods and services, and therefore falls within the definition of 'operational debt' under Section 5(12) of the Insolvency and Bankruptcy Code, 2016. Reliance is placed on the judgment of the NCLAT **Company Appeal (AT) (Insolvency) No. 501 of 2021; Order dated August 18, 2022 Somesh Choudhary vs. Knight Riders Sports Private Limited** has held that granting an exclusive right and license to use, manufacture, market, sell and distribute licensed products; and to use a trademark would constitute a provision of "goods and services" and a claim in respect of the same would fall within the ambit of "operational debt" under Section 5(12) .



11. The Respondent opposed the contentions raised by the Petitioner, stating that the Petitioner neither supplied any goods nor rendered any services to the Respondent. The Respondent contends that the agreement between the parties is in the nature of a commercial collaboration and revenue-sharing arrangement for the exploitation of the cinematographic work. Accordingly, the Petitioner is considered a commercial partner or co-Investor, and not a service provider.
12. Petitioner has relied upon the Film Rights Acquisition Agreement dated 5th May, 2012, which is annexed as Annexure 4 on page no. 23, where Clause 14 reads as follows:
14. Recoupment: The revenue accrued from the exploitation of all rights of the said film in the territory and for the Term shall be recouped by the Assignee in the following manner:
- a. Firstly the Assignee shall recoup 20% commission on net realization of the revenues from the exploitation of all assigned rights of the said Film,
- b. Secondly the Assignee shall recoup all the Publicity, Advertising expenses, cost, charges and all expenses for exhibition and distribution of the said Film.
- c. Thirdly the Assignee shall recoup the entire Minimum Guarantee amount of Rs.19,65,00,000/-
- After recoupment and appropriation of the amounts mentioned in clause 14(a) to 14(c) above, thereafter all monies, revenues, income, recoveries and realizations receivable {"Profits^} shall be recouped by the Parties in the ratio of 50:50 i.e. 50% by the Assignee and 50%.
13. If the law laid down by the Hon'ble NCLAT is applied to the present case, the facts remain clear. A plain reading of the two agreements executed between the parties clearly shows that they had agreed to share revenue or profits arising from the exploitation of cinematographic rights through various sources. The Petitioner has not raised any invoice for services rendered or goods supplied, as claimed, relying on the judgment in NCLAT **Company Appeal (AT) (Insolvency) No. 501 of 2021; Order dated August 18, 2022 Somesh Choudhary vs. Knight Riders Sports Private Limited**, herein above.



Rather, the Petitioner is claiming a 50% share of the profits or revenue realized from the exploitation of the cinematographic rights. Therefore, the Petitioner cannot be said to be claiming dues in respect of services rendered or goods supplied. On this point, reliance is also placed on the Hon'ble NCLAT's decision in ***Prashanth Shekara Shetty vs Alcuris Helathcare Private Limited on 20 October, 2022, Company Appeal (AT) (Ins.) No. 359 of 2022 & I.A. No. 1321 of 2022.***

14. Rather, the Petitioner is claiming a 50% share of the profits or revenue realized from the exploitation of the cinematographic rights. Therefore, the Petitioner cannot be said to be claiming dues in respect of services rendered or goods supplied. On this point, reliance is also placed on the Hon'ble NCLAT's decision in ***Prashanth Shekara Shetty vs Alcuris Helathcare Private Limited on 20 October, 2022, Company Appeal (AT) (Ins.) No. 359 of 2022 & I.A. No. 1321 of 2022.***
15. Thus, the profit from the revenue-sharing arrangement cannot be equated with an operational debt, and the agreement is essentially in the nature of a joint venture can not be construed as service or goods supplied to the Respondent by any stretch of imagination. At best, it can be termed as recoverable amount, which can be agitated before the Civil Court leading document and evidence etc.
16. The other point raised by the Respondent is that the present claim, by relying on the date of the agreement, is barred by limitation. For computing limitation, we must look into the facts of the case. It was agreed that the profit or revenue would be shared 50:50, after exploiting all commercial sources of the cinematographic rights and related intellectual property rights. Limitation would therefore commence from the date when the last payment was received or when default occurred by the Respondent. The dates on which revenue received from all sources has not been disclosed.



17. However, it is noted that the Respondent acknowledged the dues of the Petitioner vide email dated 13th June, 2023. The present Petition was filed 05.09.2025, which is within the time prescribed. It is also not the case of the Respondent that payments were made from all sources in 2016 or 2017. Moreover, the exact dates of receipt of revenue have not been disclosed. In view of these facts, this point is decided in favour of the Petitioner, and the objection of the Respondent is brushed aside.
18. The Respondent's other objections regarding insufficient stamping and lack of proof of any dispute are not relevant for consideration. The Petitioner has, however, failed to prove that the present dues constitute an operational debt within the meaning of Section 5(12) of the Insolvency and Bankruptcy Code, 2016, as discussed above.
19. In view of the above, the present Petition fails on merit, as it has not established that the dues claimed qualify as operational debt to be dealt with under Section 9 of the IBC. Accordingly, the Petition is **dismissed**.

Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)

Sd/-
ASHISH KALIA
MEMBER (JUDICIAL)