



NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P1.

C.P. (IB)/156(MB)2025

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **04.08.2025**

NAME OF THE PARTIES: **Dream Warrior Pictures**

Vs

Reliance Entertainment Studios Pvt. Ltd.

Under Section 9 of the IBC.

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, *vide* separate order. Detailed order is being uploaded on the NCLT portal today.

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI

CP (IB) No.156/MB/2025

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

IN THE MATTER OF:

DREAM WARRIOR PICTURES

Flat No.1, Ganpath Apartment
17/8, Krishna Street, T. Nagar
Chennai - 600017, Tamilnadu.

...Operational Creditor/Applicant

V/s

RELIANCE ENTERTAINMENT STUDIOS PVT. LTD.

[CIN: U22300MH2019PTC321407]
Plot No. B-06, 5th Floor, Valecha Chambers
New Link Road, Near Infinity Mall
Andheri West, Mumbai-400053
Maharashtra.

...Corporate Debtor/Respondent

Pronounced: 04.08.2025

CORAM:

HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)
HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

Operational Creditor: Adv. Mr. Shyam Kapadia a/w Adv. Mr. Aayush

Tainwala, Adv. Mr. Deepak Deshmukh, Adv. Mr. Jahan
Ajay Chokshi & Adv. Mr. Sarosh Krishnan i/b KJAC &
Associates.

Corporate Debtor: Adv. Mr. Rohit Gupta a/w Adv. Ms. Krushi Bartiwala a/w
Adv. Mr. Vishal Jathar a/w Adv. Mr. Archit Shah i/b Parinam
Law Associates.



ORDER

[PER: BENCH]

1. BACKGROUND

- 1.1 This is an Application bearing C.P.(IB) No.156/MB/2025 filed on 28.01.2025 by Dream Warrior Pictures, a Partnership Firm, the Applicant (Operational Creditor) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the AAA Rules") by Mr. Aravendraj Baskaran authorised representative and Executive Producer of the Applicant authorised *vide* a resolution dated 11.01.2025, for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of Reliance Entertainment Studios Pvt. Ltd., the Corporate Debtor (CD).
- 1.2 The Applicant released a film titled, 'Kaithi' ("Original Film in Tamil") and was the sole and exclusive copyright owner of assigned rights of the Original Film. The Remake Rights Agreement dated 29.03.2023 effective from 03.01.2022 was executed by and between the Applicant and the CD, for producing a remake of the Original Film in Hindi language. The Applicant assigned 50% of its remake rights in favour of the CD and gave the CD the right to appoint Ajay Devgn Ffilm Productions LLP ("ADF") as an Additional Producer.
- 1.3 As per Part-IV of the Application the total amount claimed to be in default is Rs.5,93,36,438/- (Five Crore Ninety-Three Lakh Thirty-Six Thousand Four Hundred and Thirty-Eight Rupees) including principal amount of Rs 4 crores along with GST and interest at the rate of 18% p.a. from the date of default.
- 1.4 The date of default is mentioned as 29.04.2023 for Assignment Fees and 29.05.2023 for Additional Fees.



1.5 The Applicant has relied on the following documents:

- i. Co-production Agreement dated 30.01.2020
- ii. Remake Rights Agreement dated 29.03.2023
- iii. Assignment Agreement dated 01.04.2023
- iv. Email correspondences between the Applicant and the CD dated 31.07.2023, 28.08.2023 and 24.09.2024
- v. Legal notice dated 28.10.2024
- vi. Demand Notice under Section 8 of the Code dated 04.12.2024
- vii. Reply by CD dated 13.12.2024 to Demand Notice
- viii. NeSL Record of Default dated 08.01.2025
- ix. Copy of Bank Statements of the Applicant showing receipt of part consideration of Rs.1,08,00,000/- and Certificate/Letter confirming receipt/non-receipt of amounts issued by South Indian Bank dated 30.12.2024.

2. AVERMENTS OF THE APPLICANT

- 2.1 On 25.10.2019, the Applicant had theatrically released its one of the most popular full-length cinematograph films in Tamil language titled, 'Kaithi', starring Karthi Sivakumar and others.
- 2.2 In 2020, one of the group companies of the CD i.e. Reliance Films Pvt. Ltd (RFPL) approached the Applicant requesting for assignment of remake rights of the Original Film in Hindi language. On the basis of representations and warranties of CD, the Applicant and RFPL entered into a Remake Rights Assignment and Co-Production Agreement dated 30.01.2020 ("Co-production Agreement"), whereby the Applicant had agreed to grant RFPL, 50% of its remake rights in the Original Film, for producing a remake in Hindi language, on the terms and conditions contained in the Co-production Agreement. The Co-production Agreement was later mutually terminated



by the Applicant and RFPL, with no obligations and/or liability upon one another. The copy of the Co-production Agreement is annexed as **Annexure-E** to the Application.

2.3 In January 2022, the CD approached the Applicant with a revised understanding for assignment of its remake right in the Original Film. On 29.03.2023, based on the representations, warranties and the assurances given by the CD, the Remake Rights Agreement was executed by and between the Applicant and the CD, which was given effect from 03.01.2022. A copy of the Remake Rights Agreement is annexed as **Annexure F** to the Application.

2.4 Under the Remake Rights Agreement, the Applicant agreed to assign its Remake Rights (defined in the agreement) in the Original Film for production of a remake in Hindi language. In this regard, (i) the Applicant assigned 50% of its remake rights in the Original Film in favour of the CD in lieu of receiving payment of assignment fee of Rs.2,50,00,000/- (plus GST); and (ii) agreed to assign the balance 50% remake rights in the Original Film to ADF for and on behalf of the CD in lieu of receiving payment of the additional fee of Rs. 2,50,00,000/- (plus GST) totalling the assignment consideration to be Rs.5,00,00,000/- with applicable GST. The total assignment consideration was agreed to be paid by the CD for 100% assignment of Remake Rights in the Original Film.

2.5 The CD paid the Applicant an amount of Rs.1,00,00,000/- (plus GST of Rs.8,00,000/-) *vide* RTGS on 05.04.2022 and for which Invoice No. EINV/22-23/001 dated 05.04.2022 was issued by the Applicant. Further, the CD agreed that the balance amount of Rs.1,50,00,000/- of the Assignment Fees (plus GST) shall be paid to the Applicant within 30 days from the date of first theatrical release of the Remade Film.

2.6 The Additional Fees of Rs.2,50,00,000/- (plus GST), was agreed and undertaken to be paid by the CD within 60 days from the date of first theatrical release of the Remade Film.



- 2.7 It was agreed by the CD that a consideration of Rs.15,00,00,000/- (with GST) i.e. the variable fee, would be paid to the Applicant within 60 days from the date of first theatrical release of the Remade Film from the revenues generated from the exploitation of the Remade Film, on achieving certain milestones set out in Clause 4.2 read with Clause 5 of the Remake Rights Agreement and the CD shall share with the Applicant, *inter alia*, the Net Box Office Collection report prepared in a manner set out in Clause 4.2 read with 5 of the Remake Rights Agreement and duly certified by a third party qualified chartered accountant.
- 2.8 Based on the understanding captured in the Remake Rights Agreement, on 01.04.2023, an Assignment Agreement for Remake Rights was executed amongst the Applicant, the CD and ADF (made effective from 11.01.2022), whereby the Applicant's 50% remake rights in the Original Film were assigned in favour of ADF on behalf of the CD; and the CD assigned its 50% remake rights in the Original Film granted to it by the Applicant under the Remake Rights Agreement, in favour of ADF. The CD once again confirmed under the Assignment Agreement that payment of Total Assignment Consideration shall be the sole obligation of the CD. A copy of the Assignment Agreement is annexed as **Annexure G** to the Application.
- 2.9 Pursuant to the Remake Rights Agreement as also the Assignment Agreement, ADF and the CD produced a remake of the Original Film in Hindi language, titled 'Bholaa', starring Ajay Devgn, Tabu and others. The Remade Film was released in theatres domestically and globally on 30.03.2023. As such, the Applicant had complied with all its obligations under the Remake Rights Agreement as also the Assignment Agreement.
- 2.10 As per the agreements, the CD was under an obligation to pay balance Assignment Fee of Rs.1,50,00,000/- (plus GST) on or before 28.04.2023 and the Additional Fee of Rs.2,50,00,000/- (plus GST) on or before 28.05.2023, with applicable GST. Under



Clause 4.5 of the Remake Rights Agreement, the CD agreed and undertook that in the event of any delay in making payment of balance Assignment Fee and Additional Fee or any other amount payable by the CD to the Applicant under the Remake Rights Agreement, the CD shall be liable to pay respective amounts with an interest at 18% per annum, calculated from the due date until actual date of payment. Admittedly, the CD had failed and wilfully neglected to make payment of the aforesaid amounts in terms of Clause 4 of the Remake Rights Agreement to the Applicant.

2.11 After the successful first round of theatrical run of the Remade Film, the Applicant sent an email to the CD on 31.07.2023, reminding them to share the final theatrical net box office collection report along with the consolidated business statement generated from the overall exploitation of the Remade Film. The CD neither replied to this email nor shared the report as requested by the Applicant. On 28.08.2023, the Applicant's representative forwarded the e-mail reminder sent on 31.07.2023 to the CD and requested once again to furnish the required documents. The CD failed and wilfully neglected to reply to this email nor did it provide the report as requested. The copy of the emails dated 31.07.2023 and 28.08.2023 are annexed to the Application as **Annexure H and I** respectively.

2.12 Considering the silence from the CD over the long outstanding payments, on 24.09.2024, Mr. S.R. Prabhu, Partner of the Applicant sent an email to the CD, *inter alia*, stating that owing to failure of the CD to make payment of amounts due under Clause 4 of the Remake Rights Agreement, the Applicant had to face financial difficulties in discharging its financial commitments towards a third party. Despite the CD's continued failure to pay the amounts due under the Remake Rights Agreement, in good faith and without prejudice to its rights, the Applicant once again called upon the CD to either immediately pay the outstanding amounts due under Clause 4 of the Remake Rights Agreement to the Applicant or directly discharge the financial



commitment of the Applicant towards the named third party for the amount mentioned therein and furnish a no dues letter in favour of the Applicant from such third party. The Applicant neither received any reply to the email nor any confirmation on the payments from the CD. A copy of email dated 24.09.2024 is as **Annexure J** of the Application.

2.13 In view of the CD's clear breach of its obligations under Clause 4 and 5 of the Remake Rights Agreement read with breach of Clause 2.4 of the Assignment Agreement, on 28.10.2024, the Applicant through its lawyers issued a notice to the CD, *inter alia* calling upon the CD, (i) to pay the Applicant an amount of Rs.5,76,59,726 the amount due and payable towards the balance Assignment Fee and Additional fee with GST together with interest at 18% per annum calculated from the due dates of respective amounts until the date of issuance of the legal notice; and (ii) to furnish the final theatrical net box office collection report along with the consolidated business statement generated from the overall exploitation of the Remade Film within 30 days of receipt of the notice, to determine the amount of Variable Fee payable by the CD. The CD despite receipt of the legal notice, wilfully failed and continued to be in default of making payment of the outstanding amounts mentioned in the notice. A copy of the legal notice dated 28.10.2024 is annexed as **Annexure K** of the Application.

2.14 The Applicant through its lawyer sent a notice under Section 8 of the Code dated 04.12.2024 calling upon the CD to make payment of the amount claimed to be in default, within a period of 10 days of receipt of the of notice. The CD replied to this notice on 13.12.2024 by raising frivolous grounds stating *inter alia* that the notice was not issued in the prescribed format and therefore, the CD was not under any obligation to deal with the contents of the IBC Notice. The reply of the CD makes it clear that it has no intentions or means to make payment of the admitted debt and the same continues to be in default. A copy of the Notice dated 04.12.2024 and the



reply of the CD dated 13.12.2014 are annexed as **Annexure L and M** to the Application respectively.

2.15 This Tribunal *vide* interim order dated 06.03.2025 records as under:

- "4. It is the case of the Applicant that certain services were provided by them regarding assignment of right of a Film to the Respondent herein. The Applicants have attached the copy of the Assignment Document at Page No. 52. A perusal of the Assignment Document reveals that the Applicant herein was to charge GST at applicable rates and the Respondent was bound to pay the amount along with the GST.*
- 5. It is also seen that the demand notice under Form 3 was issued by the Applicant, however, no documents have been attached therein and also no invoices were attached.*
- 8. We deem it fit to issue a notice to the Applicant under Section 9(5) of IBC, more importantly pursuant to the proviso thereto, and hereby give notice to remove the said defects. Learned Counsel seeks and is granted 10 days' time to file Additional Affidavit to bring on record the relevant facts and documents."*

2.16 The Applicant complied with the above order and filed Additional Affidavit dated 12.03.2025.

2.17 The Applicant in the Additional Affidavit submitted that at the hearing on 06.03.2025, the Hon'ble Tribunal inquired whether the Applicant had raised invoices upon the CD for the amounts due to the Applicant from the CD under the Remake Rights Agreement dated 29.03.2023.

2.18 In respect of the said query, the Applicant submitted that under the Integrated Goods and Services Tax Act, 2017 (IGST Act"), the obligation to report and pay GST arises "at the time of supply", i.e. the earlier of the date of issuance of invoice or the date of receipt of payment. Therefore, GST liability would arise upon issuing an invoice, regardless of whether payment is received.

2.19 To ensure that the Applicant remains in compliance with its obligations under law while also considering its operational and practical business realities, the Applicant initially raises an informal demand for payment, and raises a formal GST invoice only once payment is confirmed /received.



- 2.20 In the present case, considering the large amount of payment due from the CD (i.e. Rs. 4 crores), and the significant consequent GST liability (i.e. Rs. 72 lakhs) that would befall on the Applicant upon issuance of a GST invoice, the Applicant had elected to initially raise various demands for payment via, inter alia, email dated 24.09.2024, legal notice dated 28.10.2024 and demand notice dated 04.12.2024.
- 2.21 Since no payment appeared to be forthcoming from the CD, no GST invoices in respect thereof have been raised by the Applicant till date. However, the Applicant undertakes to always remain in compliance with applicable law by raising appropriate invoices, reporting the same under appropriate GST returns, and discharging its output liabilities towards GST as and when the relevant amounts are received by the Applicant.
- 2.22 Regarding the Applicant's claim for GST under the Application, it is submitted that the GST liability relating to the CD's outstanding obligations is a necessary legal consequence that is attached to the dues owed by the CD to the Applicant, and the same is accordingly mentioned under the Remake Rights Agreement. If the applicable amount of GST were not to be paid to the Applicant by the CD, liability for the same would have to be borne by the Applicant, which would not only be unjust in practice, but also against the intent of the applicable law.
- 2.23 The Applicant's claim for GST on the amounts due from the CD cannot be rejected on the sole ground that GST invoices have not been issued by the Applicant for the amounts claimed under the Application.
- 2.24 The amount of the Applicant's claim, even excluding GST, exceeds the threshold prescribed under the Code, and therefore the present Application deserves to be admitted and CIRP deserves to be initiated against the CD.



- 2.25 As per Rule 5(1) of the AAA Rules, the Applicant is required to deliver to the CD, "(a) a demand notice in Form 3; or (b) a copy of an invoice attached with a notice in Form 4".
- 2.26 The AAA Rules, specifically, provide two separate forms for demand notices, one that specifically requires attachment of the invoice (Form 4), and one that does not (Form 3). The Applicant may prefer to issue the demand notice under either of the form.
- 2.27 In the present case, the Applicant has preferred to issue the Demand Notice in Form 3, which does not mandatorily require attachment of invoices.
- 2.28 Nevertheless, by way of supporting documents, the legal notice dated 28.10.2024 was annexed to the Demand Notice. Both the notices clearly set out the agreements entered between the parties, under which the amount is in default. The CD is a signatory to these agreements and aware of its obligations thereunder.
- 2.29 The Applicant has also submitted along with additional affidavit, GSTR-1 and GSTR-3B for the month of April, 2022 and has confirmed that the GST collected by it under its invoice dated 05.04.2022, amounting to Rs.18 lakh has been duly deposited by GSTR-1.

3. CONTENTIONS OF CORPORATE DEBTOR

- 3.1 The CD filed Affidavit-in-Reply on 01.04.2025. The same was affirmed by Mr. Sachin Savla - Authorised Representative of the CD, *vide* Board Resolution dated 28.05.2024.
- 3.2 In reply, the CD submitted that nothing stated in the Application and Additional Affidavit dated 12.03.2025 shall be deemed to have been admitted by it. The Applicant seeks to recover damages/compensation for breach of contract from the CD as 'operational debt'. The said claim for damages/compensation cannot be



termed as 'Operational Debt' as the said claim is not yet crystallized and can only be crystallized after effective adjudication of the issues at hand.

- 3.3 The CD submits that no operational debt is due and payable as on date from the CD. A mere perusal of Clause 4.6 of the Remake Rights Agreement would reveal that any consideration payable by the CD under the Remake Rights Agreement was subject to issuance of a valid invoice by the Applicant. However, admittedly the said invoice for any amount purportedly payable by the CD has not been raised by the Applicant till date. The Remake Rights Agreement makes it clear that any payment under the Remake Rights Agreement was strictly '*subject to*' raising of valid invoice by the Applicant.
- 3.4 The Applicant, having failed to meet the pre-requisites as contemplated under the Remake Rights Agreement cannot compel the CD to adhere to the terms of the same. Therefore, the obligation to pay consideration under the same has not arisen upon the CD. Further, any explanation given by the Applicant, for not issuing the said invoices under the Remake Rights Agreement, in the Additional Affidavit is a mere afterthought and is untenable.
- 3.5 Pursuant to the termination of the Remake Rights Agreement, the Applicant, through the notice dated 28.10.2024, had invoked Clause 9 of the Remake Rights Agreement. Under the provisions of Clause 9 of the Remake Rights Agreement, upon termination of the Remake Rights Agreement, the only remedy available to the Applicant is to seek reversal of all rights assigned *vide* the Remake Rights Agreement, and nothing further. While the Applicant claims to seek the re-assignment of the Assigned Rights in its favour, it also seeks to claim a sum of Rs.5,93,36,438/- *in lieu* of the balance Assignment Fees and Additional Fees (including interest) under the Remake Rights Agreement. The Applicant's claim for the said balance Assignment Fees and



Additional Fees is misconceived, contrary to Clause 9 of the Remake Rights Agreement and legally untenable.

- 3.6 As per the provisions of Section 62 of Indian Contract Act, 1872 ("ICA"), once a contract has been terminated, the obligations undertaken by the other party under the contract need not be performed. As under Section 75 of the ICA, even if a party to a contract rightfully rescinds the same, the said party is only entitled for compensation/ damages caused due to breach of contract. It is stated that any claim of damages requires appreciation of evidence and effective adjudication to be crystallized, which falls beyond the jurisdiction accorded to this Hon'ble Tribunal. Therefore, the amount claimed by the Applicant as default cannot be said to be a 'Claim' as defined under Section 3(6) of Code, let alone an 'Operational Debt' under the provisions of the Code, as no right to remedy for the alleged breach of contract has arisen in favour of the Applicant as on the date of filing of the Application.
- 3.7 Upon termination of the Remake Rights Agreement, the only remedy contemplated under the terms of the Remake Rights Agreement is reversion of the Assigned Rights. Furthermore, the CD stated that based on a mere perusal of the notice dated 28.10.2024, it is evident that the Applicant having given a final opportunity to the CD to cure its purported defect under Remake Rights Agreement, had claimed if the said purported defect is not cured within 30 days from the receipt of the notice dated 28.10.2024, the rights conferred upon the CD shall stand reverted without need for any further documentation.
- 3.8 The CD contended that under Section 19 of the Copyright Act, 1957, the Applicant had pursuant to the purported default on the part of the CD, by termination of Remake Rights Agreement, had chosen to compensate itself by seeking a reversal of the rights conferred by the Applicant upon the CD. Thereby, the Applicant has chosen to take benefit of Clause 9 of the Remake Rights Agreement.



- 3.9 The Applicant has served upon the CD notice dated 04.12.2024, issued in Form-3 as per Rule 5(1) of AAA Rules, without attaching the invoices as proof of debt and default on the part of the CD. In the Additional Affidavit, the Applicant has admitted that it '*preferred*' to issue the said notice under Form-3 (and not Form-4). Furthermore, the Applicant had not justified as to why notice under Form-3 needs to be issued in the present case and not notice under Form-4 and had claimed that the issuance of notice under Form-3 does not require any invoices to be annexed to the same.
- 3.10 It is stated by the CD that a choice has not been accorded to the Applicant to issue notice either under Form-3 or Form-4. Both Form-3 and Form-4 serve a specific purpose, and that notice under Form-4 has to be issued in cases where invoices are raised and/or it is contemplated by the transaction between the parties, that invoices need to be raised. Whereas, notice under Form-3 can only be issued in cases where, as per the transaction between the parties, no invoices need to be issued. The present case, as per the Remake Rights Agreement it was recorded in writing that the raising of invoices shall be a pre-condition to payment by the CD to the Applicant.
- 3.11 The CD submits that it is one of India's largest content studio companies in India, having produced and distributed more than 400 films that have grossed over \$1 billion at the global box office. The CD has also been known to invest in film production companies and intellectual properties, maintaining a rich content portfolio across multiple Indian languages and relationships for digital distribution with Netflix, Amazon, Disney+ Hotstar, Jio Studios and several other platforms. In light of the same, it is evident that by no means can it be said that the CD is a company which is insolvent or one that deserves to be admitted in insolvency.

4. REJOINDER ON BEHALF OF APPLICANT

- 4.1 Under the Remake Rights Agreement, the accrual of CD's obligation to pay the fixed assignment fee and the time for the payment thereof is governed by Clause 4.1 i.e.



the Assignment Fee. Clause 4.6 of the Remake Rights Agreement does not govern the accrual of CD's payment obligation. Clause 4.6 specifies that GST at the applicable rates shall be payable in addition to the consideration specified under Clause 4.1, and requires the Applicant to issue an invoice. The issuance of an invoice is not a condition precedent to the payment of the consideration. The said clause only gives the CD the right to demand an invoice. Despite the various demands for payment made by the Applicant including the email dated 24.09.2024, the legal notice dated 28.10.2024 and the demand notice dated 04.12.2024 the CD has never before demanded an invoice or even contended that the balance fixed consideration of Rs.4 Crore is not payable until the Applicant raises an invoice. This shows that as per CD's own interpretation, it never considered the raising of an invoice to be a condition precedent to payment. The CD is now adopting this interpretation of Clause 4.6 before the Hon'ble Tribunal merely as an afterthought, because such interpretation happens to be convenient to the CD in the present proceedings. This cannot be allowed.

- 4.2 The contention of the CD that the Applicant agreed to accept the paid amount of Rs.1 Crore as the full and final consideration under the Remake Rights Agreement is patently false and concocted as an afterthought solely for the purpose of evading the present proceedings. The Applicant repeatedly and regularly sought the theatrical box office collection reports and the consolidated business statement from the CD. However, the same was never provided by the CD. Therefore, the Applicant never having provided any account of profits or losses from the Remade Film in the first place, there could never have been an occasion for the Applicant to waive the balance consideration under the Remake Rights Agreement, as contended by the CD and the CD has not furnished any document in support of this contention.



- 4.3 The CD has correctly admitted that the Remake Rights Agreement has been terminated pursuant to Clause 9.1 thereof due to the CD's failure to cure its breach *inter alia* of payment obligations with 30 days of being served with the cure notice dated 28.10.2024 and consequently, all rights in respect of the Remade Film have reverted to the Applicant.
- 4.4 The CD continues to illegally exploit the Remade Film, whether by itself or through other parties. Examples of such continuing exploitation include (i) streaming of the Remade Film on the streaming platform 'Amazon Prime Video', (ii) making the trailer of the Remade Film available on the channels of Ajay Devgn FFilms (now known as 'Devgn Films') on the video platform 'YouTube', and (iii) exploiting the songs and music videos from the Remade Film on the channel of "T-Series" on YouTube. Furthermore, the starting credits of the Remade Film include a credit 'Zee Cinema' and on this basis the Applicant has reason to believe that the CD also continues to indirectly exploit the Remade Film through satellite broadcast on Zee Cinema.
- 4.5 The contention that the payment obligations of the CD have extinguished due to the termination of the Remake Rights Agreement was also never raised by the CD in its reply dated 13.12.2024 to the Applicant's statutory demand notice dated 04.12.2024. Even under the applicable law of contracts, the termination of an agreement does not affect the rights and obligations of the parties accrued prior to termination. Therefore, the termination of the Remake Rights Agreement does not in any way discharge the CD from its payment obligations under the said agreement, and the balance consideration due under the said agreement continues to be a valid and subsisting debt of the CD.
- 4.6 The contention of the CD that there was no valid notice under Section 8 of the Code is false and erroneous. Paragraph 2 of Form-3 constitutes a table titled "Particulars of Operational Debt". Item 6 of the said table requires an operational creditor to state



the “provision of law, contract, or other document under which debt has become due”. Conversely, Form-4 makes no such reference to any “provision of law, contract, or other document” forming the basis of the debt, and refers only to the invoice required to be attached to Form-4. This shows that the applicability of Form-3 or Form-4 depends on the document forming the basis for the debt. When the debt arises on the basis of a provision of law, contract, or other document, the demand notice is required to be issued in Form-3. On the other hand, when the debt arises solely on the basis of an invoice, the demand notice is required to be issued in Form-4.

- 4.7 The CD’s claim of being a “fundamentally viable company” is wholly irrelevant to the present proceedings. The Code does not recognize any such thing as a “fundamentally viable company” and does not make any exceptions with regard to the same.

5. ANALYSIS AND FINDINGS

- 5.1 We have heard both the Ld. Counsels and have perused the records as placed before us. Our findings in the matter are as under: -
- 5.2 On perusal of the Co-production Agreement (Original Agreement) dated 30.01.2020, it is observed that the Applicant and a group company of the CD i.e. RFPL had executed this agreement to jointly produce the Remake Film which was originally produced in Tamil language titled ‘Kaithi’ and shall equally own rights in the Remake Film. The Original Agreement was terminated mutually and a Remake Rights Assignment Agreement was executed on 29.03.2023 which was effective from 03.01.2022. The Remake Rights Assignment Agreement dated 29.03.2023 states that the Applicant is the sole and exclusive copyright owner of the Assigned Rights wherein Assigned Rights is defined in Clause 1.2 under the Remake Rights Agreement as *“Assigned Rights shall mean 50% of Remake Rights of the Original*



Film in the Authorised language only". The CD was assigned 50% rights to remake the Original Film in Hindi language.

5.3 Further, an Assignment Agreement for Remake Rights was executed between the Applicant, the CD and ADF (Ajay Devgn Ffilms). The Applicant assigned 50% remake rights in the Original Film in favour of ADF on behalf of the CD and the CD assigned its 50% remake rights in the Original Film granted by the Applicant under the Remake Right Agreement in favour of ADF. The CD had accepted and was obligated to pay the Total Assignment Consideration on behalf of himself and ADF. The CD was to have all the rights to distribute, exhibit and exploit the remade film as per the terms of the said Agreement. IPR (Intellectual Property Rights) of the remade film shall jointly and equally vest into the parties i.e. 1/3rd to each party.

5.4 The payment terms for the Remake Film were as per Clause 4 of the agreement dated 29.03.2023 and more particularly, Clause 4.1 relating to Assignment Fee including Additional Fee and Clause 4.2 being Variable Fee. The terms were as follows:

"4.1.1. The Assignee shall pay a consideration of INR 2,50,00,000/- (Indian Rupees Two Crores Fifty Lakhs Only) ("Assignment Fee") plus applicable GST and subject to withholding tax deductions as per applicable laws, to the Assignor in the following tranches:

- (i) INR 1,00,00,000/- (Indian Rupees One Crore only) has already been paid by the Assignee to the Assignor vide RTGS on 5th April 2022 receipt of which is hereby acknowledged by Assignor;*
- (ii) Balance INR 1,50,00,000/- (Indian Rupees One Crore Fifty Lakhs only) shall be paid within 30 (thirty) days from the date of first theatrical release of the Remade Film.*

4.1.2. In furtherance of clause 2.4 herein, wherein the Assignor has granted 50% of its Remake Rights of the Original Film in Hindi language to the Additional Producer on behalf of the Assignee, the Assignee hereby agrees and undertakes to pay the balance amount of INR 2,50,00,000/- (Indian Rupees Two Crore Fifty Lakhs only) ("Additional Fee") plus applicable taxes to the Assignor, within 60 (sixty) days from the date of first theatrical release of the Remade Film, which shall be over and above the Assignment Fee.

4.2. Variable Fee:



Further, the Parties hereby agree that, in addition to the Assignment Fee and the Additional Fee as mentioned above, the Assignor shall also be entitled to an additional consideration of Rs.15,00,00,000/- (Indian Rupees Fifteen Crores only) as mentioned herein below ("Variable Fee") which shall be paid by the Assignee to the Assignor from the revenues generated from the exploitation of the Remade Film on achieving the following milestones:

- (i) an additional amount of INR 5,00,00,000/- (Indian Rupees Five Crores only) upon the NBOC amount of the Remade Film reaching INR 175,00,00,000/- (Indian Rupees One Hundred Seventy-Five Crores only);*
- (ii) an additional amount of INR 5,00,00,000/- (Indian Rupees Five Crores only) upon the NBOC amount of the Remade Film reaching INR 200,00,00,000/- (Indian Rupees Two Hundred Crores only);*
- (iii) an additional amount of INR 5,00,00,000/- (Indian Rupees Five Crores only) upon the NBOC amount of the Remade Film reaching INR 300,00,00,000/- (Indian Rupees Three Hundred Crores only)."*

5.5 The Assignment Fee and Variable Fee were jointly referred to as "Consideration" under Clause 4.4 of the Remake Rights Assignment Agreement dated 29.03.2023. The consideration amount was to be paid in the following manner:

"4.5. The Assignee hereby expressly agrees and undertakes that in the event of any delay in payment of the Consideration or any other amounts payable to the Assignor under this Agreement as per the terms of this Agreement, without prejudice to other rights and remedies available to the Assignor under this Agreement and applicable laws, the Assignee shall be liable to pay the respective amounts with an interest @ 18% (Eighteen per cent) p.a. calculated from the due date until actual date of payment by the Assignee.

4.6. It is clarified that the payment of the Consideration shall be plus applicable GST and subject to receipt of valid invoice from the Assignor and shall be subject to deduction of applicable taxes at source."

5.6 From the above definitions it is clear that both the parties had drawn terms to remake the Original Film in Hindi language. The Remade Film was released in theatres on 30.03.2023 which was titled as "Bholaa". The CD had to pay the balance Assignment Fee of Rs.1,50,00,000/- on or before 28.04.2023 out of the agreed Assignment Fee of Rs.2,50,00,000/- and Additional Fee of Rs.2,50,00,000/- on or before 29.05.2023 in addition to GST on both fees. The CD had paid an amount of Rs.1,08,00,000/-



inclusive of GST through RTGS out of the total consideration of Rs. 5 Crore on 06.04.2022 and no further amount was paid by the CD to the Applicant. The same is confirmed from the bank statement of the Applicant and a certificate confirming receipt/non-receipt of amount from South India Bank dated 30.12.2024.

5.7 The CD claims that no operational debt is payable by the CD to the Applicant as according to clause 4.6 of the Remake Rights Agreement, as reproduced above, which clearly states that the payment of the consideration shall be subject to receipt of a valid invoice from the assignor (herein the Applicant), the Applicant was under an obligation to raise an invoice on the CD, however, the Applicant has failed to raise any invoice and as a result no debt has come into existence.

5.8 It is a settled principle that when the parties are relying on a well-executed contract between them, then the Courts cannot rewrite or create a new contract between the parties and have to simply rely on the terms and conditions of the agreement. Reliance is placed on the judgment of the Hon'ble Supreme Court in ***Venkataraman Krishnamurthy and Another v. Lodha Crown Buildmart Pvt. Ltd. (2024 INSC 132)*** where it held that,

“15. Once the parties committed themselves to a written contract, whereby they reduced the terms and conditions agreed upon by them to writing, the same would be binding upon them.”

“17. More recently, in Shree Ambica Medical Stores vs. Surat People's Coop. Bank Ltd.3, it was observed that, through its interpretative process, the Court cannot rewrite or create a new contract between the parties and has to simply apply the terms and conditions of the agreement as agreed between the parties.”

5.9 As such when the clause 4.6 of the Remark Rights Agreement specifically states that payment of consideration shall be subject to receipt of valid invoice from the assignor, we are of the view that in such a case the Applicant cannot claim the payment before issuance of a valid invoice.



- 5.10 The Applicant sent a Demand Notice dated 04.12.2024 in Form-3 demanding payment of an unpaid operational debt due from the CD. The Demand Notice was delivered to the CD and the CD replied to the Demand Notice on 13.12.2024.
- 5.11 The CD has disputed in its Reply to the Demand Notice and Affidavit-in-Reply that, no debt is due and payable by the CD. Further, the CD stated that *“Form 3 issued was without any supporting documents to prove the existence of a debt, if any. The Demand Notice has been issued contrary to the format mandated under the Code”*. To which the Applicant argued that *“the issuance of an invoice is not a condition precedent to the payment of the consideration. The said clause only gives the CD the right to demand an invoice”*.
- 5.12 It is observed that the Applicant had issued a Demand Notice without attaching invoices, which is a mandate under the Code. It is also stated in the terms of the Remake Rights Agreement dated 29.03.2022 in Clause 4.6 that *subject to a receipt of valid invoice* from the Applicant the payment shall be made by the CD. Therefore, the inadvertent defect from the Applicant by not raising the invoice on the CD for making payment would lead to non-occurrence of the “operational debt”.
- 5.13 The Applicant has relied on the Ld. NCLT, New Delhi judgment in [***CP (IB) No. 362 of 2023 (M/s Wood Craft Furnishers v. Hare Krsna Project Pvt. Ltd.)***] and Hon’ble NCLAT, Principal Bench judgment in [***Company Appeal (AT) (Insolvency) No. 1354 of 2019 (Neeraj Jain v. Cloudwalker Streaming Technologies Pvt. Ltd. & Anr.)***], in support of its contention that the attachment of invoices to Form-3 is not mandatory.
- 5.14 The Wood Craft judgment of Ld. NCLT New Delhi Court-II cited above by the Applicant is not having a binding effect upon this Bench however, the same may have a persuasive effect. We have gone through the said judgment and are of the view that the said judgment is not applicable to the facts of this case as in the said judgment



there is no finding that the issuance of an invoice was an essential requirement before demanding payment from the CD as per the relevant Agreement.

5.15 This Tribunal has placed reliance on the following paragraphs of the judgment of Hon'ble NCLAT, Principal Bench in ***Company Appeal (AT) (Insolvency) No. 1354 of 2019 (Neeraj Jain v. Cloudwalker Streaming Technologies Pvt. Ltd. & Anr.)*** where it was held that,

“42. However, if the operational debt is of nature where the invoice is generated as part of the transaction, then in such cases the invoice becomes an essential document to prove the existence of the debt, and thus it has to be submitted. In case of operational debt where the transaction does not involve the generation of the invoice, then as per column 7 of Form 3, documents to prove the existence of operational debt and the amount in default are to be submitted along with the notice in Form 3.

43. However, it cannot be the discretion of the Operational Creditor to deliver the Demand Notice in Form 3 even if the operational debt involves transactions where corresponding invoices are generated but are not filed in court on the pretext that the Operational Creditor has chosen to send the Notice in Form 3.

44. The use of the phrase, ‘deliver a demand notice of unpaid operational debt or copy of an invoice demanding payment of the amount involved’ in Section 8(1) does not provide the Operational Creditor, with the discretion to send the demand notice in Form 3 or Form 4 as per its convenience. Rather, it depends directly on the nature of the operational debt and applicability of Form 3 or Form 4 as per the nature of the transaction.

45. It is important to mention that legislative provisions are made with a larger perspective to deal with all the eventualities that may arise in the implementation of the said provisions. Therefore, the use of the word “OR” in Section 8 cannot be interpreted as such, that the Insolvency and Bankruptcy Code has provided a choice or a discretion to an Operational Creditor, to provide an escape route from submission of the invoice, which can be treated as the most relevant document to prove the debt and amount in default.

46. On perusal of the language of Section 8, it is clear that an Operational Creditor on the occurrence of default has been provided with the option of delivering a demand notice of the unpaid operational debt or raising an invoice demanding payment of the amount involved. The two options available for initiation of Corporate Insolvency Process are provided to deal with all the eventualities that may occur. For example, if an operational debt is in the nature of salary dues, then in that situation, the question of submitting an invoice does not arise. To deal with such a situation, Section 8 contains the provision for issuance of demand notice of the unpaid operational debt. Form 3 of the



Adjudicating Authority Rules has only laid down the condition that the applicant has to give the details of the amount of debt, details of the transaction on account of which such debt fell due and the date from which such debt fell due, and as per Column 7 of the said Form 3, applicant has to attach the documents to prove the existence of operational debt and the amount in default. Likewise, where the operational debt involves the generation of the invoice, then in that case, invoice raising the demand may be sent to the Corporate Debtor demanding the invoice amount. In such a situation, the Operational Creditor has to issue the demand notice in Form 4 along with the invoice.

47. Thus, it is clear that the choice of issuance of demand notice u/s 8(1) of the Insolvency and Bankruptcy Code 2016, either in Form 3 or Form 4, under the Insolvency and Bankruptcy Code Application to Adjudicating Authority Rules 2016, depends on the nature of Operational Debt. Section 8(1) does not provide the Operational Creditor, with the discretion to send the demand notice in either Form 3 or Form 4, as per its convenience. The applicability of Form 3 or Form 4 depends on whether the invoices were generated during the course of transaction or not. It is also made clear that the copy of the invoice is not mandatory if the demand notice is issued in Form 3 of the Insolvency and Bankruptcy Code Application to Adjudicating Authority Rules 2016 provided the documents to prove the existence of operational debt and the amount in default is attached with the application.

48. It is also made clear that for filing application u/s 9 of Insolvency and Bankruptcy Code 2016, in case the demand notice is delivered in Form 3 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, then the submission of a copy of the invoice along with the application in Form 5 is not a mandatory requirement, provided the documents to prove the existence of operational debt and the amount in default is attached with the application”.

Therefore, from the above, it is clear that the choice of issuance of demand notice under Section 8(1) of the Code, either in Form 3 and Form 4 under the AAA Rules depends on the nature of operational debt. If the nature of the debt is such that invoices are required to be issued in respect of the same, in that case, the notice has to be issued in Form 4 and in case the nature of debt is such that no invoices is required to be issued, for example in respect of the employee's dues no invoices are required to be raised, the notices are required to be issued in Form 3. As such, the said case law does not support the case of the Applicant, rather it goes against its plea that the Applicant is having the discretion to issue the notice either in Form 3 and Form 4.



5.16 Further, *vide* Legal notice dated 28.10.2024, the Applicant invoked clause 9 of the Remake Rights Agreement asking the CD to cure the breaches in making payment of the dues claimed by it within a period of 30 days from the date of receipt of the said notice and in case the Respondent fails to cure the said defect, the Remake Rights Agreement would stand automatically terminated and all rights assigned in favour of the CD shall automatically and immediately revert back to the Applicant without need of any further documentation. The Applicant in para no. 15 of its rejoinder dated 08.04.2025 has clearly admitted that all rights in respect of the remade film have reverted to the Applicant. The Para no. 15 of the said notice is reproduced below:

"15. Please note, in the event RSPL fails to cure the breaches mentioned in paragraph 14 above, within 30 days of receipt of this notice, the Remake Rights Agreement would stand automatically terminated without any further action required from parties thereto. Further, upon termination of the Remake Rights Agreement, all rights assigned thereunder in favour of RSPL and on behalf of RSPL shall automatically and immediately revert back to our client, without need of any further documentation, and our client shall have unfettered rights to deal with the Assigned Rights as it deems fit, without any hindrance from RSPL or any third party claiming through RSPL, in the instant case ADF. Upon termination of the Remake Rights Agreement, RSPL and all third parties claiming the right from RSPL shall be liable to cease and desist from exploiting the Assigned Rights as also Remade Film."

5.17 The CD did not cure the defect and according to the legal notice dated 28.10.2024 the agreement stands terminated and the assigned rights revert back to the Applicant. The Applicant claimed that the CD even after the termination, continued to exploit the film on OTT and other platforms and thus, has not extinguished its payment obligations. It is observed from Clause 9 of the Agreement and the Applicant's letter dated 28.10.2024 that the termination has been effected and the Applicant cannot claim the payment from the CD as the assigned rights are reverted back to the Applicant.

5.18 The Applicant cannot now claim that the assignment rights have reverted back to it and that its claim for recovery of the balance consideration amount from the CD also



remains intact. Though the Applicant states that even after the termination of the Remake Rights Agreement, the CD has continued to exploit the Remade Film, however, for preventing the CD from doing so, the Applicant has other legal remedies under law and initiation of insolvency resolution process against the CD when the balance debt has ceased to exist post termination of the Remake Rights Agreement, in our view, is certainly not an option available to the Applicant.

5.19 The Applicant has cited in its written synopsis another judgment of Hon'ble NCLAT in the matter of Smartworks vs Turbot, Company Appeal (AT) (Insolvency) No. 772 of 2022 decided on 23.03.2023. However, the said judgment does not help the stand of the Applicant to the effect that even if it is accepted that Assignment Agreement is terminated, the OC's claim is a right to remedy for breach of contract, which gives rise to a right of payment and therefore, the OC's claim can form the basis of an operational debt under Section 9 of the Code. In the said judgment, Hon'ble NCLAT has set aside the impugned order passed by the Adjudicating Authority, which had held that amount claimed by Operational Creditor for the lock in period is not an operational debt. In the said matter, as per the agreement, the Operational Creditor was entitled to receive payment of rent for the entire lock-in period during which CD was prohibited to terminate the agreement. The CD terminated the agreement during the lock in period and therefore, the OC demanded the rent for unexpired period out of the lock in period and in the said judgment Hon'ble NCLAT held that the said amount claimed by the OC amounted to a debt. However, in the present case, the agreement entered into does not provide that even after termination and reversion of the rights assigned in the Remade Film, the right of the Applicant to claim the consideration amount from the CD will still survive. Moreover, as the rights assigned have reverted to the Applicant as a result of termination, the consideration no longer



remains payable and the right which is left with the Applicant is to seek a stay on the unauthorized exploitation of the Remade Film and also to claim damages for the unauthorized exploitation. Till the time the said claim for damages crystallises and determined by the competent Authority, the amount of debt is not clear and quantified and that the same cannot be the basis for filing a Section 9 Application under the Code. In the case of *Smartworks (Supra)* the amount of damages could have been determined from the Agreement as the same clearly specified the lock in period and also the monthly rent payable by the CD to the OC. In the present case, however, as the rights assigned as per the Agreement have reverted to the Applicant, the claim for damages has to be adjudicated by a competent court having jurisdiction and this Tribunal is not having the power to decide the same.

5.20 In the case of *Somesh Choudary, Suspended Director at M/s. Global Frangrances Pvt. Ltd vs. Knight Riders Sports Pvt. Ltd. & Anr., Company Appeal (AT) (Insolvency) No. 501 of 2021* by the Hon'ble NCLAT, New Delhi relied by the Applicant, the Hon'ble NCLAT examined the issue of whether the claim by the Respondent falls within the ambit of the operational debt. It was held that the same falls within the definition of the operational debt. We observe that the judgment is not applicable to the present case as the claim of the Applicant, being the operational debt, has not been crystallised as stated in the above findings. The case relied by the Applicant in *Heritage Oil vs. Tullow Uganda, English Court of Appeal, [2014] EWCA Civ 1048* is not applicable to the facts and jurisdiction of this case.

5.21 This Adjudicating Authority is not a competent forum to decide an issue raised under the present application by the parties qua their mutual rights as to the copyright violation or effect of termination. It is open to the parties to raise these issues by invoking other legal remedies available under law.



- 5.22 The NeSL has recorded a dispute remark that there exists no such debt and there exists a valid and subsisting dispute between the parties.
- 5.23 For the reasons stated above, we hold that the Applicant has failed to establish a debt and default on the part of the CD in the payment of an undisputed operational debt to the Applicant, exceeding Rs.1,00,00,000/- (One Crore Rupees), being the threshold monetary limit under Section 4 of the Code, prevailing on the date of filing of the present Application. Thus, this Application under Section 9 of the Code preferred by the Applicant is found to be not maintainable.
- 5.24 In view of the above, we find that requisite conditions necessary to trigger CIRP in respect of the CD are not fulfilled and the matter stands rejected under Section 9(5)(ii) of the Code.

ORDER

In view of the aforesaid findings, Application bearing C.P.(IB) No.156/MB/2025 filed under Section 9 of the Code by Dream Warrior Pictures, the Applicant, for initiating CIRP in respect of **Reliance Entertainment Studios Private Limited**, the Corporate Debtor, is hereby **rejected**.

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

//VM&SS//

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)