

THE SOLE DIRECTOR OF A ONE PERSON COMPANY CANNOT BE CALLED UPON TO DISCHARGE THE OBLIGATIONS OF THE SAID COMPANY

INTRODUCTION:

*The Bombay High Court in its decision in **Saravana Prasad vs. Endemol India Private Limited & Anr**¹ with **Innovative Film Academy Pvt. Ltd. vs. Endemol India Private Limited & Anr**.², inter alia held that Section 2(62) of the Companies Act, 2013, defines a One Person Company ("**OPC**") as a company which has only one person as a member. A shareholder of a company whose liability is limited by the shares held, cannot be called upon to discharge the obligations contracted by the company.*

FACTS:

Innovative Film Academy Private Limited ("**Innovative**") is a one-person company formed by one Mr. Sarvana Prasad ("**Prasad**"). Prasad is the Petitioner in Commercial Arbitration Petition (L) No. 22714 of 2024 ("**First Petition**") whereas, Innovative is the Petitioner in Commercial Arbitration Petition (L) No. 22746 of 2024 ("**Second Petition**").

Innovative and Endemol entered into a production agreement on 10th March, 2021 ("**said Agreement**"). Endemol was to create, produce, edit post-production and deliver episodes of the television show Masterchef in Tamil/ Telugu, Kanada and Malayalam languages.

Endemol claims that it delivered the episodes in Tamil and Telugu and was therefore contractually entitled to payments on four invoices aggregating to a sum of INR 15.93 crores, out of which it claims, INR 4.45 crores had been paid by Innovative. A sum of INR. 1.08 crores was also adjusted against dues in a separate contract between the said parties. The

outstanding dues were therefore stated to be INR 10.40 crores.

The disputes and differences relating to this above claim was under reference before the Arbitral Tribunal.

In an application filed under Section 17 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"), the Arbitral Tribunal took a *prima facie* view that parties must stick to the contractual terms of the said Agreement and accordingly passed an order dated 10th July, 2024 ("**said Award**") directing the Petitioners to *inter alia* deposit INR 10.40 crores with a nationalized bank and further to disclose all assets, encumbrances, charges, details of all companies and firms in which they are shareholders, directors, partners, disclose all income tax returns, et cetera.

Being aggrieved, the Petitions came to be filed under Section 37(2)(b) of the Arbitration Act, 1996, challenging the said Award.

ISSUE FOR CONSIDERATION:

The main issue for consideration before the Bombay High Court was whether the said Award

¹ Commercial Arbitration Petition (L) No. 22714 of 2024

² Commercial Arbitration Petition (L) No. 22746 of 2024

represents a reasonable and plausible view of whether it adopts an implausible and untenable view.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

It was submitted on behalf of Prasad that he is not party to the said Agreement in his individual capacity. It was further submitted that Endemol had failed to demonstrate much less identify any clause under the said Agreement which cast an obligation upon him for any payment. He submitted that the said Award is perverse as merely because he is a 100% shareholder of Innovative does not by itself make him liable for its dues as it is a separate entity.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

The Respondent placed reliance upon the letter dated 11th July, 2022 issued by Innovative, confirming balances of INR 10.40 crores as being due and payable ("**Confirmation Letter**") by Innovative in support of its case.

The Respondent also sought to place reliance upon the decision in ***Cox & Kings Ltd. vs. SAP India Private Limited and Another***³ to submit that Prasad was the signatory to contracts executed by Innovative in his capacity as the sole director of Innovative and all the correspondence on behalf of Innovative was also on behalf of Prasad and therefore it bound Prasad to the liability of Innovative.

JUDGMENT:

The Bombay High Court observed that the concept of OPC is meant to create a framework for individuals who need the protection of limited liability and can ring-fence their personal

liability and personal assets from the risks involved in the businesses run by them.

The Court held that while the said Award is generally incapable of being interfered with since it is an interim award, and the Arbitral Tribunal had taken a reasonable approach of ensuring that the money directed to be deposited is not alienated from the Petitioners, however, the said Award presents a material error by treating Prasad and Innovative as one and the same in terms of liability owed to Endemol. The Court observed that the said Award makes no distinction between Innovative and Prasad.

The Court held that by directing each of them to make the deposit and by directing them to make full disclosure of all personal assets, liabilities, tax returns, and ownership interests in any enterprise is in direct conflict with the fundamental policy of India. The said Award contains no analysis as to why Prasad should be roped into the liability since Innovative is a limited liability OPC.

Innovative being a limited liability company undermines the ability to direct Prasad to meet obligations by way of interim relief since there cannot arise final relief that fastens Innovative's liabilities onto Prasad. Therefore, the said Award cannot be sustained in relation to the directions issued against Prasad directing him to make a deposit and providing disclosures.

The Court held that the submission made by the Respondent that Prasad being the sole director was liable for Innovative's obligations was untenable and accordingly, the Court rejected Respondent's argument in this regard.

The Court observed that it was nobody's case that Prasad is a party to the said Agreement

³ (2024) 4 SCC 1

between Innovative and Endemol. Adding further that, OPC is meant to be the business and social alter ego of the shareholder which is by design. The legal frame work explicitly protects the sole shareholder by limiting the liability as for any other company, the Court observed, if the director signing on behalf of OPC is enough to wish away the statutory scheme of liability, it would render the very framework of the OPC redundant and otiose.

In the above circumstances, the Court held that since Prasad's liability is limited by the Companies Act, 2013, no direction against him to make a deposit or make any disclosure is legally sustainable or tenable. Such a direction is in direct conflict with the fundamental policy of India governing OPCs, as enshrined in the Companies Act, 2013.

Accordingly, the Bombay High Court set aside the said Award insofar as it directed imposition of any personal obligations on Prasad.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.