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ATUL GANESH KULKARNI

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMM ARBITRATION PETITION (L) NO.9509 OF 2026

The Capturing Factory (Division of Israni Entertainment India Limited … Petitioner

V/s.

Ullu Digital Limited & Another … Respondents

Mr. Yash Vardhan with Vishnudutt Mishra for the petitioner.

Mr. Rubin Vakil with Nishank Barolia, Abhijeet Deshmukh, Shlok Bodes, and Ashish Kankal i/by Khurana and Khurana for respondent No.1.

Mr. Shon Gadgil for respondent No.2.

CORAM : AMIT BORKAR, J.

RESERVED ON : JUNE 11, 2026

PRONOUNCED ON : JUNE 16, 2026

JUDGMENT:

1. The present petition is filed under Section 9 of the Arbitration and Conciliation Act, 1996. By filing the present proceedings, the petitioner has mainly prayed that the respondents be restrained from further broadcasting, streaming, sharing, transferring or creating any third party rights in the web series known as “KINK 2”, which according to the petitioner was produced by it. The petitioner has also sought a direction that the respondents should deposit and secure an amount of

Rs.2,58,29,005/-, which according to the petitioner represents unpaid amounts arising out of production and delivery of the said web series. The petitioner further seeks certain protective reliefs by contending that although the respondents have already streamed the web series on their platform and allegedly earned commercial benefit from the same, the payments which according to the petitioner became payable under the arrangement between the parties have not been released till date.

2. The facts leading to the present proceedings, as narrated by the petitioner, may briefly be stated thus. The petitioner is engaged in the business of creating, developing and producing audio visual content. According to the petitioner, sometime in November 2023 the respondents approached it for production of a web series titled “Kiss Ishq N Konnections 2”, also referred to as “KINK 2”. The petitioner states that during the initial discussions there was a broad understanding that the production cost would be around Rs.12,00,000/- per episode. According to the petitioner, it was also discussed that part payment would be released after delivery of raw footage and the remaining amount would be paid after completion of further stages of the work. The petitioner states that although discussions and negotiations continued for some period, execution of a formal agreement was repeatedly delayed. According to the petitioner, despite absence of a finalized agreement, it was expected to continue with pre-production activities and necessary preparations relating to the project. The petitioner contends that repeated requests for execution of a proper agreement and for financial assistance did not receive any

meaningful response and, therefore, it was compelled to continue investing its own funds and resources for carrying forward the project.

3. The petitioner further states that delays in approvals and repeated demands for changes from the respondents resulted in increase in the overall cost of production. According to the petitioner, while the respondents continued to exercise control over different creative as well as operational aspects of the project, they did not provide corresponding financial support necessary for carrying out such work. It is the petitioner's case that in order to ensure completion of the web series, it had no practical option except to raise funds from different lenders and financial institutions. According to the petitioner, shooting of the web series commenced on 28 June 2024 and was completed on 25 July 2024. Thereafter, editing work, post-production activities and various technical processes were undertaken by the petitioner. The petitioner states that all such activities were carried out with an expectation that payments would eventually be released in accordance with the commercial understanding which existed between the parties.

4. The petitioner further alleges that after completion of production and post-production activities, episodes of the web series were delivered to the respondents from time to time. According to the petitioner, assurances regarding payment continued to be given, but despite such assurances substantial amounts remained unpaid. It is further alleged that throughout the execution of the project the respondents repeatedly demanded

changes, modifications, and corrections at different stages. According to the petitioner, compliance with such requirements resulted in additional expenditure and also caused delay in release of payments. The petitioner contends that because of this situation it suffered serious financial difficulties and its liabilities towards lenders, creditors and other entities from whom funds had been arranged for completion of the project continued to increase.

5. The petitioner has placed particular reliance upon the facts stated in paragraphs 20 to 22 of the Arbitration Petition. According to the petitioner, the first twelve episodes of the web series were delivered to the respondents on 19 November 2024 and such delivery was acknowledged through challans issued by the respondents. The petitioner states that further episodes were thereafter supplied between January 2025 and April 2025. According to the petitioner, every episode underwent review and thereafter passed through the stage of master delivery before ultimately being released on the respondents' streaming platform. The petitioner has produced a detailed chart indicating the date of delivery of each episode, the date of master delivery and the date on which the episode was streamed. Relying upon the said chart, the petitioner contends that the respondents accepted the content, completed their internal procedures and thereafter voluntarily released the web series for viewing on their platform.

6. The petitioner further submits that the sequence of events reflected in the delivery chart itself reveals the conduct of the respondents. According to the petitioner, episodes 1 to 5 were streamed on 28 February 2025 after completion of master delivery

on 24 February 2025. Episodes 6 to 10 were streamed on 7 March 2025. Episodes 11 to 15 were streamed on 14 March 2025. Episodes 16 to 20 were streamed on 21 March 2025. Episodes 21 to 25 were streamed on 28 March 2025 and the remaining episodes were streamed during April 2025. According to the petitioner, such streaming could not have taken place unless the respondents were satisfied that the content was ready for release and suitable for publication on their platform. The petitioner therefore contends that the subsequent refusal to release payments is inconsistent with the respondents' own conduct in broadcasting and commercially utilizing the web series.

7. The petitioner further alleges that even after the entire web series came to be streamed, the respondents intentionally delayed and withheld payments by raising objections which, according to the petitioner, were neither genuine nor justified. The petitioner refers to demands made at a later stage relating to background music, technical corrections and post-production modifications. According to the petitioner, compliance with these requirements necessitated re-editing of content, engagement of additional personnel and appointment of a new music director, resulting in further expenditure. The petitioner contends that these additional steps became necessary only because of changing requirements raised by the respondents and that the respondents thereafter relied upon the very same circumstances as grounds for withholding payment.

8. The petitioner has also relied upon a chart showing payments allegedly due in respect of each episode. According to

the petitioner, even the initial 30% payments which were contractually payable within the prescribed period after delivery were not released within time. The petitioner points out that although certain payments relating to episodes 1 to 12 were ultimately received, such payments were received only after considerable delay beyond the stipulated due dates. The petitioner further states that no payment whatsoever has been received in relation to episodes 13 to 32 despite delivery of those episodes and despite subsequent streaming thereof on the respondents' platform. According to the petitioner, the respondents have thus continued to enjoy the benefit of completed content without making payment of the consideration which had allegedly become due under the arrangement between the parties.

9. The petitioner has further relied upon paragraph 22 of the Arbitration Petition and contends that after all episodes were submitted, the respondents launched the web series on their OTT platform from 28 February 2025 onwards and continued making it available for viewing. According to the petitioner, screenshots, and photographs showing such streaming have been placed on record. The petitioner submits that continuous streaming and public exhibition of the web series clearly indicate acceptance of the content delivered by it. It is argued that once a party has chosen to release, stream and commercially utilize content for its own benefit, it cannot thereafter avoid payment by alleging deficiencies in the very content which it has elected to exploit.

10. On the basis of these circumstances, the petitioner contends that the conduct of the respondents demonstrates a deliberate

attempt to secure commercial benefit from the project while avoiding payment of legitimate dues. According to the petitioner, the respondents continue to stream the web series, attract viewership and derive commercial advantage therefrom, whereas the petitioner has been left to face demands from lenders and creditors. The petitioner, therefore, submits that the respondents should not be permitted to continue exploiting the web series unless the petitioner's claim is adequately secured or the amount claimed by it is deposited before the Court.

11. The petitioner further states that because of the conduct attributed to the respondents, it has been pushed into serious financial difficulties. According to the petitioner, loans obtained for financing the project remain outstanding, and mortgage liabilities created for completion of production continue to subsist. The petitioner states that the respondents were informed on several occasions regarding such financial difficulties and were fully aware that timely release of payments was necessary for the petitioner. According to the petitioner, continued refusal to release payment despite streaming and commercially exploiting the web series amounts to a serious commercial wrong which requires immediate intervention under Section 9 of the Arbitration and Conciliation Act, 1996.

12. Based upon the aforesaid facts, the petitioner contends that delivery of the episodes, issuance of challans, completion of master deliveries, release of the web series on the respondents' platform and continued streaming thereof collectively establish substantial performance of its obligations under the arrangement between the

parties. According to the petitioner, the respondents cannot be permitted to take benefit of the content by streaming and commercially exploiting the same while at the same time disputing their obligation to make payment for such content.

13. The respondents have opposed the petition and submit that the matter cannot be looked at as a simple case where money has been withheld without any cause. According to them, the dispute has arisen because the petitioner failed to carry out several obligations which were specifically required under the Production Service Agreement dated 23 May 2024. The respondents contend that the petitioner has placed only one side of the story before the Court and has not disclosed the complete position regarding pending deliverables, technical requirements and various conditions forming part of the agreement. According to the respondents, “KINK 2” was planned as the second season of a web series which had already achieved success and therefore considerable commercial expectations were attached to the project from the beginning itself. It is their case that because substantial investment and business expectations were involved, strict compliance with contractual requirements and technical standards was necessary at every stage. The respondents further contend that under the agreement, entitlement to payment was not dependent merely upon delivery or telecast of episodes. According to them, payment could arise only after all deliverables were furnished in the prescribed manner and after successful completion of the Quality Control and Technical Compliance process. It is therefore their contention that unless those requirements stood satisfied, the

stage for release of balance payment could not be said to have arrived under the contract.

14. The respondents further contend that the petitioner did not adhere to the timelines agreed between the parties and that delays had commenced from the very early stages of the project. According to them, even the first set of deliverables was not furnished within the stipulated period and repeated reminders became necessary. The respondents state that respondent no.2 was entitled under the agreement to participate in various stages of production and post-production work, including the Quality Control and Technical Compliance process. According to them, therefore, review of content, seeking corrections and suggesting modifications were all actions fully contemplated by the agreement itself. The respondents contend that throughout the project several emails, technical communications and QC reports were exchanged wherein shortcomings and deficiencies were pointed out and corrective steps were requested. It is their case that despite repeated follow-ups and opportunities being granted, the petitioner failed to provide complete and compliant deliverables. According to them, several issues continued to remain pending for a considerable duration and therefore the difficulties experienced during execution of the project cannot be attributed solely to the conduct of the respondents.

15. The respondents also contend that mere telecast of the web series cannot automatically mean that the petitioner had completed all its obligations under the agreement. According to them, the episodes ultimately came to be released because

commercial commitments and pre-fixed schedules required the respondents to proceed with telecast notwithstanding the deficiencies which, according to them, continued to exist. The respondents state that respondent no.1 was required to undertake substantial editing work, post-production activities and finishing processes through its own team so that the project did not completely fail. According to them, such efforts were only remedial measures undertaken in difficult circumstances and required additional expenditure, manpower, and resources. It is further their case that even after carrying out such corrective work, technical defects and quality issues continued to remain in the content. The respondents contend that only a limited number of episodes could eventually be approved after extensive corrections and modifications, whereas several other episodes continued to suffer from deficiencies. According to them, because of these shortcomings the web series did not achieve the level of commercial success which was initially expected and opportunities relating to further licensing, exploitation, and monetization of the content could not progress in the manner anticipated by them.

16. The respondents further state that they repeatedly informed the petitioner regarding pending deliverables, incomplete submissions and deficiencies which according to them remained unresolved. They contend that throughout this period they consistently maintained that payment obligations had not matured because approved and compliant deliverables were still awaited. According to the respondents, despite the disputes regarding performance, an amount exceeding Rs.85 lakhs has already been

paid to the petitioner. They contend that such payments themselves indicate that there was no intention on their part to avoid all payment obligations altogether. The respondents further claim that they possess independent claims against the petitioner arising out of delays, deficiencies, corrective expenditure and commercial losses which, according to them, were suffered because of the petitioner's conduct. They also state that during the relevant period they themselves were facing financial and operational difficulties. Nevertheless, according to the respondents, efforts were made to amicably resolve the disputes and even possibilities of phased payment arrangements were explored between the parties. On these grounds, the respondents contend that the petitioner is seeking to recover disputed contractual amounts through proceedings under Section 9 without first establishing complete performance of its own obligations. According to them, the dispute is essentially contractual and monetary in nature and involves several disputed questions of fact which require proper examination before the arbitral tribunal. The respondents therefore submit that no case for grant of interim relief is made out and the petition deserves to be rejected.

REASONS AND ANALYSIS:

17. I have carefully gone through the petition, documents annexed with the petition, affidavit filed in support thereof, correspondence relied upon by the petitioner and also the affidavit in reply together with supporting documents placed on record by respondent no.1. After considering the material brought before the Court by both sides, what appears at the first look is that though

both parties are speaking about the same transaction, they are understanding the entire arrangement in two completely different ways.

18. At this stage, it may not be proper for the Court to accept one version as correct and reject the other version as incorrect. The material available on record does indicate that there exists a written agreement regulating the rights and obligations of the parties. A prima facie reading of the clauses relied upon by the respondents appears to show that the payment structure was not linked merely with the lapse of period of time. The scheme of the agreement appears to suggest that certain deliverable based obligations were required to be fulfilled before payments could become due. Whether those obligations were fulfilled by the petitioner or whether the respondents are placing undue reliance upon such clauses only for avoiding payment are questions which would require a detailed scrutiny than what is possible at this stage. The Court is not called upon to record final findings on such disputed aspects. However, it is equally difficult, at least at this interim stage, to hold that the respondents have no contractual basis for the stand now sought to be taken by them. The existence of provisions dealing with compliance and deliverables indicates that the controversy travels beyond allegation of non-payment. The dispute appears to involve questions relating to performance of contractual obligations and interpretation of the contractual terms. Therefore, the matter cannot be viewed as a case where liability is admitted and payment alone is being withheld without any contractual basis.

19. The petitioner has narrated in detail the circumstances under which the project progressed from one stage to another. According to the petitioner, the respondents initially approached it sometime in November 2023 for production of the web series. It is the petitioner's case that although discussions had commenced earlier, a Letter of Intent came to be issued on 4 January 2024. The petitioner further contends that even after issuance of the Letter of Intent, the terms and conditions continued to undergo changes at the instance of the respondents. According to the petitioner, there was no certainty in the arrangement and repeated alterations continued to affect the project. It is further alleged that despite repeated requests, financial support was not provided by the respondents and the petitioner was compelled to continue the production activities entirely on its own financial strength. The petitioner submits that by that stage substantial commitments had been undertaken and resources had already been invested. According to the petitioner, withdrawal from the project was not possible and discontinuation of the work would have resulted in serious consequences. The petitioner therefore seeks to project that it was placed in a vulnerable position where continuation of the project became a necessity.

20. The petitioner has further emphasized that because of the conduct of the respondents, it became necessary to arrange finances from various sources. The documents relied upon by the petitioner indicate that loans were obtained from financial institutions as well as other entities. According to the petitioner, as production expenses continued to increase, additional financial

commitments had to be undertaken for sustaining the project. The petitioner further asserts that mortgage obligations had to be created, and financial exposure kept increasing with every stage. According to the petitioner, all aspects of the project were undertaken under severe financial pressure. It is the petitioner's case that despite these difficulties and despite increasing liabilities, the project was carried forward in the expectation that payments contemplated under the arrangement would be released. According to the petitioner, had timely financial support or payments been forthcoming, the extent of financial burden which ultimately came to be borne by the petitioner would not have arisen.

21. The petitioner has also drawn attention to the schedule regarding delivery of episodes. According to the petitioner, episodes were supplied in stages and acknowledgements were issued by the respondents. It is further pointed out that the web series came to be streamed on the respondents' platform and remained available for viewing by the public. Based upon these circumstances, the petitioner argues that once the content was accepted for telecast and was utilized by the respondents, there could be no justification for withholding payments. According to the petitioner, the conduct of the respondents itself demonstrates that the content was found suitable for broadcast. The petitioner submits that if the content suffered from serious deficiencies of the nature now alleged, the respondents would not have proceeded to stream the episodes on their platform. Therefore, according to the petitioner, the objections regarding performance are not genuine

but only reasons now being put forward to justify delay in payment of amounts.

22. In the opinion of this Court, the submissions advanced by the petitioner cannot be brushed aside as being unsupported. The petitioner has placed on record a chronology of events, copies of correspondence, details of borrowings, delivery records and screenshots indicating streaming of the episodes. These materials do lend some degree of support to the petitioner's contention that substantial work was undertaken and that the content came to be made available on the respondents' platform. The documents also indicate that the petitioner assumed financial obligations while carrying out the project. Therefore, the grievance raised by the petitioner regarding financial hardship and delayed payments cannot be said to be without substance. However, at the same time, the existence of such material does not establish that every amount claimed by the petitioner became immediately payable without reference to the terms of the agreement. Whether the amounts claimed have actually become payable necessarily depends upon the contract governing the parties, the nature of obligations undertaken and the extent to which such obligations stood complied with. Thus, while the petitioner has raised issues requiring consideration, the material presently available cannot be treated as establishing an unconditional liability on the part of the respondents.

23. It is important to note that the respondents have placed before the Court version of events which differs from the case sought to be projected by the petitioner. According to the

respondents, the first season of the said web series had achieved success and had performed well. It is their case that because of such success, discussions commenced regarding production of a second season. The respondents contend that after negotiations between the parties, a Letter of Intent came to be issued and thereafter a detailed Production Service Agreement dated 23 May 2024 was executed. According to them, after execution of the said agreement, the relationship between the parties was required to be regulated in accordance with the terms and conditions contained in the written agreement. Their case is that the rights available to the petitioner and the obligations cast upon both sides flowed from the said agreement and, therefore, any monetary claim now raised by the petitioner needs to be examined as per contract. According to the respondents, the issue is whether the contractual obligations attached to such production were performed in the manner agreed between the parties.

24. The respondents have laid considerable emphasis on the obligations which were specifically cast upon the producer under the agreement. Their contention is that the petitioner was not merely required to hand over edited episodes for streaming purposes. According to them, the scope of obligations was much wider and included delivery of the entire set of production and post-production materials. The respondents state that these materials included technical files, quality compliant outputs, raw footage, open project files, unmixed audio files, master outputs and several other deliverables contemplated by the agreement. It is their case that such materials formed an essential part of the

contractual arrangement. According to the respondents, these materials were necessary because the content was intended to be commercially exploited across different platforms, formats and modes of distribution. They therefore contend that unless all such materials were supplied in the required manner and format, the contractual obligations of the petitioner could not be treated as having been fully performed. According to them, delivery of episodes alone could not amount to complete performance when other contractual deliverables continued to remain outstanding. The respondents further contend that the agreement itself contained a mechanism under which payments were linked with submission, verification, and approval of deliverables. According to them, release of payments was not intended to take place automatically on production of episodes but was dependent upon fulfillment of various contractual milestones. Their case is that the petitioner repeatedly failed to satisfy those requirements. The respondents assert that deficiencies were pointed out on more than one occasion and that opportunities were given to rectify the same. However, compliance was never achieved. It is therefore their contention that the unpaid balance has remained outstanding not because of any unwillingness on their part to make payment but because the contractual stage at which such payment could become due had not yet arisen. In substance, the respondents seek to contend that the dispute is not regarding refusal to pay but regarding whether the conditions necessary for payment were ever satisfied.

25. An additional circumstance strongly relied upon by the respondents is that substantial amounts were released to the petitioner during the course of the project. According to them, an amount of approximately Rs.85,26,252/- has been paid. The respondents argue that if their intention was to deny payment altogether, there would have been no occasion for release of such sums. On this basis, they seek to portray the dispute as one arising from alleged non fulfillment of contractual obligations rather than deliberate withholding of admitted dues. Their contention is that the controversy concerns the stage at which further amounts become payable and not the existence of a payment mechanism. Whether such stand is found to be correct or otherwise can only be determined after parties lead evidence and the factual aspects are examined in detail. However, for present purposes, it would not be proper to ignore that a defence supported by contractual provisions has been raised and cannot be rejected merely because the petitioner disputes the same.

26. The Court also finds it necessary to examine whether the stand now taken by the respondents is a defence developed only after commencement of the present proceedings or whether such position existed even earlier. This aspect assumes significance because one of the principal submissions advanced by the petitioner is that objections were raised only after the respondents had already streamed and utilized the content. According to the petitioner, the contractual dispute now projected is a convenient explanation invented after the event. If such allegation were found to be correct, it could certainly lend support to the petitioner's

contention that the contractual defence lacks genuineness and is being used only as a shield against payment obligations.

27. However, from the material available on record, it is not becoming possible for this Court to accept the contention of the petitioner that all objections now raised by the respondents were brought for the first time only after filing of the present proceedings. When the correspondence placed by the respondents is looked into, it appears that issues regarding delay in delivery, non-submission of required materials and compliance with contractual requirements were being spoken about much before the present petition came to be filed. The respondents have invited attention to the Production Service Agreement dated 23 May 2024, and particularly to the delivery schedule forming part thereof. As per that arrangement, episodes were not required to be supplied in one single lot. The schedule contemplated delivery in different stages beginning from 6 August 2024 and thereafter continuing batch by batch. The agreement also appears to show that apart from episodes, various technical deliverables were also required to be submitted and the same were required to pass through QC approval process before the payment mechanism under the contract could operate. Therefore, it cannot be said that the respondents are raising a new story having no earlier foundation in the record.

28. Seen in this background, the email dated 12 August 2024 assumes relevance. By the said communication addressed to Mr. Luv Israni, the respondents recorded that the first batch consisting of Episodes 1 and 2 was required to be delivered on 6 August

2024. According to the respondents, even though the due date had passed, the deliverables had not been received. The respondents further reminded the petitioner that the second batch consisting of Episodes 3 and 4 was to be delivered on or before 15 August 2024. The contents of the communication show that respondents stated that deliverables were required in accordance with the specifications already supplied and further indicated that timely submission was necessary so that the Quality Control process could be undertaken without interruption. They also requested adherence to the timelines and sought submission of the material. Therefore, as early as August 2024 itself, there existed written correspondence on record wherein delay in submission of deliverables was being complained of by the respondents. Whether such complaint was justified or not may be examined later, but the fact that such concern was being expressed at that point of time cannot be ignored.

29. The position appears to have become even more clear in the communication dated 26 August 2024. In the said communication, the respondents again referred to the delivery schedule under the Production Service Agreement and listed out the first four batches of deliveries. It was recorded that Episodes 1 and 2 were due on 6 August 2024, Episodes 3 and 4 were due on 15 August 2024, Episodes 5 and 6 were due on 22 August 2024 and Episodes 7 and 8 were due on 29 August 2024. The respondents stated that till that date none of the aforesaid deliverables had been received. What is also important is that the respondents referred to the contractual clauses relating to penalties and indicated that

consequences contemplated by the agreement could follow in the event of delay. At least prima facie, this communication does not appear to be something generated after disputes had crystallised between the parties. It was exchanged during the subsistence of the project. Therefore, it constitutes contemporaneous material which requires consideration and cannot be brushed aside merely because the petitioner disputes the correctness of the allegations therein.

30. The respondents have placed reliance upon the Production Service Agreement and have submitted that the contract contemplated submission of a large number of deliverables. These included raw camera files, sound recordings, stock footage, unmixed files, master outputs, project timelines, XML files, DaVinci Resolve files, after-effects project files, final background music timelines, sound mix timelines, scripts, run orders, artist NOCs, KYC documents, credit lists and several other supporting materials. The respondents further point out that under the contractual arrangement QC approval was not deemed complete merely upon delivery of content. According to them, QC approval could be said to be completed only after issuance of an approval report by the QC department. On this basis it is contended that mere delivery of episodes could not amount to performance of contractual obligations. Whether this interpretation of the agreement is accepted or rejected is a matter which may fall for determination before the arbitral tribunal. However, the existence of such clauses does lend support to the respondents' contention that approvals formed an important part of the payment schedule agreed between

the parties.

31. The affidavit in reply proceeds on the same basis. The respondents have specifically pleaded that payments under Schedule V of the agreement were linked with submission of deliverables and successful completion of QC and TC requirements. It has been asserted that the petitioner was under an obligation to provide completed content together with all technical materials in the format prescribed. The affidavit records that repeated communications had to be addressed to the petitioner concerning deficiencies, delay in timelines and failure to satisfy contractual requirements. The affidavit refers to the email communications dated 12 August 2024 and 26 August 2024 and relies upon them showing that such concerns had already been raised long before institution of the present proceedings. Thus, the stand now being canvassed before this Court appears consistent with the position reflected in earlier correspondence.

32. The Court also notices that the communications relied upon by the respondents appear to continue the same line of grievance. The documents placed on record indicate that the respondents maintained that delivery of content remained incomplete, that certain deliverables had not yet received approval and that discussions regarding release of payments were taking place in stages linked to completion of outstanding requirements. In the communication dated 15 December 2025, the respondents referred to a meeting held on 4 November 2025 and recorded that issues regarding outstanding payment had been discussed between the parties. However, in the same communication it was also stated

that content delivery still remained incomplete and that approved deliverables had not been submitted. The respondents further asserted that payment had not become due because approved deliverables were still awaited. Reference was also made to contractual provisions relating to delay penalties. Whether these assertions are found to be correct or otherwise is a matter for final adjudication. Yet the correspondence does indicate that the respondents were consistently linking their payment obligations with completion of pending approvals.

33. The material accompanying the affidavit in reply also indicates that the respondents have maintained a stand regarding deficiencies in the delivered content. One of the communications relied upon by them records that out of 32 deliverables only 13 had received approval after in-house corrections and that the remaining deliverables continued to suffer from shortcomings. Reference has been made to QC failures, frame jerks, black frames, colour mismatches, DI inconsistencies and defects in audio quality. The respondents further recorded that unmixed masters were still pending, and that corrective measures contemplated under QC and TC reports had not been carried out. At present, this Court is not in a position to determine whether such allegations are correct. Affidavit evidence alone may not be sufficient for that purpose. Nevertheless, these communications do show that the respondents were asserting that there existed deficiencies.

34. Another circumstance which also deserves notice is the communication dated 25 February 2025 addressed by Atrangii Network Private Limited to Ullu Digital Limited. In the said

communication it was recorded that the delivery materials relating to KINK 2 contained deficiencies and had failed to clear the Quality Check and Technical Check process. The letter further recorded that communications had taken place with the concerned production house, but satisfactory resolution had not been received. Intervention was therefore sought for obtaining rectified materials. It is true that the value of this document may require scrutiny during arbitral proceedings. However, the document does indicate that concerns regarding compliance and deficiencies in deliverables were being discussed during the period when the project was under exploitation.

35. At this stage, the Court is not expected to determine whether every objection raised by the respondents is correct. Similarly, the Court is also not required to decide whether the petitioner will establish that all deliverables had in fact been supplied and that the objections were merely raised as a device to postpone payments. Such issues would necessarily require a detailed examination of documents, QC reports, technical specifications, email exchanges. These are matters which fall within the scope of arbitral adjudication and are not required to be decided at the interim stage. However, one aspect appears clear from the available record. The respondents have been able to point out contemporaneous communications existing prior to institution of the present proceedings wherein concerns regarding delayed deliveries, pending materials, incomplete approvals and contractual compliance were raised. The affidavit in reply reflects the same concerns. Therefore, it would be difficult to hold that the

defence sought to be raised by the respondents has emerged for the first time only after filing of the present petition.

36. Therefore, though the petitioner has raised contentions which cannot be said to be without basis, especially regarding use of the content, streaming of the web series and earning of benefit from the same, the material available on record does not show a situation where the amount claimed by the petitioner can be treated as an admitted liability. At present, when the record is looked at as a whole, it appears that the dispute between the parties is not only about non-payment of money. The controversy seems to have arisen because both sides are reading the agreement in different ways and both are claiming that they have acted according to their understanding of the contract. The Court is also conscious of the financial difficulties which have been narrated by the petitioner. The documents placed on record indicate that funds were borrowed, and financial liabilities were undertaken during execution of the project. According to the petitioner, money had to be arranged from different sources, liabilities continued to increase and demands for repayment are now being made by lenders and creditors. The petitioner states that because amounts remain unpaid, financial hardship has resulted. If these assertions turn out to be correct, it cannot be denied that the petitioner may be under considerable financial pressure. The Court does not ignore such circumstances. In projects of this nature, delays in expected payments often create financial stress for the party carrying out the work. The material on record does indicate that the petitioner has attempted to place before the Court a picture of financial distress

arising from its version of events. However, financial hardship by itself cannot become a ground for directing payment of an amount which continues to remain disputed between the parties. In commercial dealings it is not unusual that parties invest substantial amounts, raise loans, incur expenses and undertake financial risks in expectation of future returns. Merely because a party is facing financial pressure does not automatically mean that every disputed claim must immediately be treated as payable. If financial difficulty were accepted as sufficient reason for directing payment, the distinction between an admitted claim and a disputed claim would disappear. Courts dealing with applications at an interim stage are required to proceed on settled legal principles. Therefore, while the hardship alleged by the petitioner may be a relevant circumstance, it cannot by itself provide a sufficient basis for granting the relief sought.

37. The same reasoning would apply to the prayer seeking restraint against further streaming, exploitation or use of the web series. The material on record indicates that the web series has been released and has been subjected to use. It further appears that discussions regarding commercial exploitation of the content have taken place at different stages. According to the respondents, future opportunities relating to exploitation were affected because of issues concerning standards and compliance. The petitioner maintains that no such deficiencies existed. Once again, these are disputed factual questions. To determine which version is correct, it would be necessary to examine evidence and surrounding circumstances. At this stage, the Court does not possess material to

conclusively decide which side is correct. Granting a broad injunction restraining exploitation of the content would amount to deciding disputed issues before they are examined in accordance with law. Such a course may not be appropriate at the interlocutory stage. Upon an overall assessment of the material available, the Court is unable to find any admission of liability on the part of the respondents which may justify directing deposit of the amount claimed by the petitioner.

38. For all the aforesaid reasons, I am not persuaded that the petitioner has established a case for grant of the interim directions sought in the present proceedings. Consequently, the prayer seeking direction for payment or deposit of the amount claimed and the prayer seeking a broad restraint against exploitation of the web series cannot be granted at this stage. The parties must therefore pursue their respective remedies before the arbitral tribunal where all contentions shall remain open for consideration in accordance with law.

39. In view of the foregoing discussion, and upon overall assessment of the material submissions, evidence on record, and the findings arrived at hereinabove, the following order is passed:

(a) The Arbitration Petition is dismissed;

(b) The prayer seeking restraint against the respondents from broadcasting, streaming, exploiting, licensing, assigning, transferring or creating any third party rights in respect of the web series “KINK 2” is rejected;

(c) The prayer seeking a direction to the respondents to deposit, secure or pay the amount of Rs.2,58,29,005/- or any part thereof at this stage is also rejected;

(d) It is clarified that the observations made in this order are prima facie in nature and confined only to adjudication of the present petition under Section 9 of the Arbitration and Conciliation Act, 1996;

(e) All questions relating to performance of contractual obligations, QC/TC compliance, approvals and all other disputes between the parties are kept open for consideration by the learned Arbitral Tribunal;

(f) The learned Arbitral Tribunal shall decide the arbitral proceedings independently and on their own merits without being influenced by any observations contained in the present order;

(g) In the facts and circumstances of the case, there shall be no order as to costs.

(h) Pending Interim Applications, if any, do not survive and are disposed of accordingly.

(i) Liberty is reserved to the parties to seek such ther reliefs as may be permissible in law before the learned Arbitral Tribunal.

(j) The Arbitration Petition stands disposed of in the above terms.

(AMIT BORKAR, J.)