

# GI – PRELIM ROUND I

PREPARED BY INDUS LAW

**V RGNUL SEMC**  
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Organised by  
**CADR, RGNUL**

## BACKGROUND

1. Saas Bahu Productions Pvt. Ltd. ("SBP"), a company incorporated under the Companies Act 2013, is in the business of producing, developing, marketing, and distributing a variety of audio-visual content to Indian users. SBP owns and operates a digital OTT platform, namely 'IndieFlix', which has become the preferred choice of millions of Indian users looking for a one-stop platform for Indian regional content including movies, TV shows, web series, music videos and short videos. IndieFlix particularly focuses on exclusive original content, with emphasis on content in Hindi and other regional languages of India.

2. Encore Entertainment Pvt. Ltd. ("Encore"), a company incorporated under the Companies Act 1956, is in the business of producing, developing, marketing, and distributing a variety of audio-visual content to a variety of users, both in India and abroad ("EncoreContent"). Similar to IndieFlix, Encore also owns and operates a digital OTT platform, namely 'ALT Encore' for hosting a variety of audio-visual content including the Encore Content.

## THE DISPUTE

3. In the year 2020, amidst the growing demand for OTT content, Encore and SBP entered into negotiations for a Content Distribution Agreement wherein SBP would receive a right to host and publish the Encore Content on the IndieFlix platform.

4. On 22 August 2020, Encore and SBP entered into the Content Distribution Agreement for an initial period of 2 (two) years. Among other things, under the Content Distribution Agreement, the Parties agreed that:

4.1. SBP shall have an exclusive license to host and publish a total of 30 (thirty) audio-visual titles that form part of Encore Content ("Licensed Encore Content"), for a mutually accepted consideration.

4.2. In order to facilitate the hosting and publishing, SBP shall have a right to integrate, incorporate, and embed the APIs for the Licensed Encore Content with the IndieFlix platform.

4.3. SBP shall have a right to host and publish the Licensed Encore Content on any of its proprietary platforms, including through mobile, website, or similar medium, and shall further have a right to host such content on an unlimited runs basis without any restriction or limitation whatsoever in respect of the number of broadcasts for any part of the Licensed Encore Content.

4.4. Encore shall continue to have the right to host the Licensed Encore Content on its own platform i.e., ALT Encore without any restrictions or objections from SBP.

4.5. The Parties shall ensure that any and all parts of the Licensed Encore Content shall be released simultaneously on the IndieFlix and ALT Encore platform.

5. The Content Distribution Agreement also had a clause for termination, which stated as follows:

'Termination for convenience: Either Party shall be entitled to terminate this Agreement for convenience by giving a written notice of 7 (seven) business days to the other Party.

Termination for cause: Either Party may terminate this Agreement, with immediate effect by sending a written notice to the other party, if: any petition or notice for winding up, liquidation, insolvency or bankruptcy is filed against the other Party in any competent court and not dismissed within 60 (sixty) days; or any material breach of any obligations, covenants, representations, or warranties by the other Party and is either (i) incapable of cure; or (ii) the breaching Party fails to cure the same within 30 (thirty) days of receipt of a written notice for breach from the non-breaching Party.'

6. Through the Content Distribution Agreement, the parties also agreed that in the event of any disputes or differences arising between the parties in relation to anything under the Content Distribution Agreement, the Parties shall first attempt to resolve such disputes and differences amicably, and thereafter through mediations conducted by a mutually approved panel of mediators.

7. Upon the signing of the Content Distribution Agreement, SBP hosted and published the Licensed Encore Content available on IndieFlix in the format mutually agreed upon between the parties. The parties agreed that the Licensed Encore Content should be made available in Hindi, Marathi, Gujarati, Tamil, Telugu, Punjabi, Malayalam, Kannada and Bengali.

8. On 14 January 2022, after the coming into force of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, Encore had its annual general meeting, where the Encore board of directors decided that they want to terminate the Content Distribution Agreement with SBP, with effect from 1 April 2022.

9. In the same meeting, Encore also decided that the withdrawal of the Licensed Encore Content can be done in a phased manner. It suggested that first 10 (ten) programs can be withdrawn on 31 January 2022, the next 10 (ten) on 28 February 2022, and the last 10 (ten) on 31 March 2022.

10. Pursuant to the AGM, Encore made SBP aware of its intention on 15 January 2022. The aforesaid proposal, however, was not acceptable to SBP. Despite the same, on 22 January 2022, Encore abruptly turned off the content APIs used to integrate, incorporate, and embed the Licensed Encore Content with the IndieFlix platform and stopped making its programs available to SBP.

11. In response to the same, SBP sent Encore a legal notice alleging breach of its obligations under the Content Distribution Agreement, and contending that Encore had, without terminating the Content Distribution Agreement, caused disruption and interference in the supply and delivery of creative content on SBP's platform, IndieFlix.

12. The parties have now agreed to mediate the dispute in line with the provisions of the Content Distribution Agreement.