

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

IN ITS COMMERCIAL DIVISION

COMM.ARBITRATION PETITION (LODG.) NO. 189 OF 2017

Scorg International Consulting Pvt. Ltd. & Anr. ...Petitioners

Versus

Gaurang Doshi Productions Pvt Ltd. & Anr. ...Respondents

WITH

ARBITRATION PETITION NO. 222 OF 2017

Rajtaru Studios Limited ...Petitioner

Versus

Gaurang Vinod Doshi & Ors. ...Respondents

WITH

CONTEMPT PETITION NO. 12 OF 2017

IN

ARBITRATION PETITION NO. 91 OF 2013

Rajtaru Studios Ltd. ...Petitioner

Versus

Gaurang Vinod Doshi ...Respondents

Dr.Abhinav Chandrachud a/w. Ms. Monisha Mane-Bhangale and Ms.Trisha Singhvi-Mehta i/b ALMT Legal for petitioner in CARBPL/189/2017.

Mr.Som Sankar Sinha for Petitioner in CONP/12/2017 & in ARBP/222/2017.

Mr.Datta Mane for respondent Nos.1 and 2 in CARBPL/189/2017 and ARBP/222/2017.

CORAM : K.R.SHRIRAM, J.

DATE : 20TH JUNE, 2017

P.C.

1. Petitioner no.1 and respondent no.1 had entered into an Agreement

dated 26th December 2015 through petitioner no.2 and respondent no.2. As it appears from the Agreement, respondent no.1 was to produce a feature film, viz., 'ANKHEN-2' (the said film), and the estimated budget for the said film was Rs.160 crores. Under the Agreement, petitioner No.1 was to provide finance to the extent of Rs.1 crore to respondent no.1. As mentioned in the Agreement, Rs.25 lakhs was paid before the Agreement was signed. Admittedly, the balance amount of Rs.75 lakhs has also been paid. The respondents, by its Advocates' letter dated 25th May 2016 has acknowledged receiving the sum of Rs.1 crore.

2. It is the case of the petitioners that they have paid an additional amount of Rs.25 lakhs to respondent no.1 but there is no agreement to that effect annexed to the petition. Copies of bank statements are, of course, annexed to the petition to show that this additional amount of Rs.25 lakhs were paid in three tranches, i.e., (i) on 25th January 2016 an amount of Rs.10 lakhs; (ii) on 10th February 2016, an amount of Rs.5 lakhs; and (iii) on 16th February 2016, an amount of Rs. 10 lakhs.

3. According to the petitioners, the amount repayable by respondent no.1 is Rs.1,25,11,111/- plus interest. As per the Agreement, the amount was to be returned on or before the release of the said film theatrically or

within 12 months or 3 months grace of the date of the execution of the Agreement, whichever is earlier. The said film has not been released and the 12 months plus 3 months expired on 26th March 2017. Therefore, the amount lent or financed by the petitioners to respondent no.1 and respondent no.3 has become due and payable on 26th March 2017. Clause 9(xiv) of the Agreement provides for arbitration. Petitioner no.1, through it's Advocates' communication dated 9th January 2017, called upon respondent no.1 to repay the amount financed. Of course, the demand notice was premature, but there has been no response from respondent no.1. Both the respondents are represented by Advocate. The respondents were represented even on 20th April 2017 when this Court was pleased to make an ad-interim order in terms of prayer clause (c) directing the respondents to make a disclosure of all their assets.

No affidavit in compliance of this order has been filed. No explanation is coming forth as to why the order dated 20th April 2017 has not been complied. When this petition was listed on 13th June 2017, nobody appeared for the respondents and the matter was stood over to today. Even today, the counsel for the respondents is unable to give any reason why the order has not been complied with. At this stage, the counsel states that the settlement talks have been going on. Dr.Chandrachud for the petitioners states that just because the settlement talks are going on does not mean that

the respondents will not comply with the order passed by this Court. As settlement talks have not fructified into a concrete settlement, the counsel for the petitioners prays that the petition should be made absolute.

4. I have seen the conduct of the respondents. Paragraph 3.9 of the petition reads as under :-

“3.9 The Petitioners apprehend that the Respondents are going to dispose of their assets in such a manner so as to defeat any Award which may eventually be passed in their favor. In fact, annexed hereinunder are orders which have been passed by this Hon'ble Court against Respondent No.2 which speak for themselves and which reveal the conduct of Respondent No.2. The said orders reveal that Respondent No.2 has no respect of orders passed by this Hon'ble Court, and the Petitioners therefore apprehend that the Respondents will make every possible attempt to frustrate and/or defeat any Award which might eventually be passed against the Respondents in the arbitration. Thus :-

*i) In the order of a learned Single Judge of this Hon'ble Court in Contempt Petition (L). 55 of 2016 in Arbitration Petition No.91 of 2013, it was observed that Respondent No.2 herein “has repeatedly made false statements before this Court” [paragraph number 7], that Respondent No.2 herein “has willfully made false statements through his Advocate before this Court on 4th August 2016 and has willfully breached the order dated 22nd August 2016 and on 24th August 2016, and thereafter, again made a false statement before this Court.....” Consequently, a contempt show cause notice was issued against Respondent No.2. A copy of the order dated 30th July 2016 passed by this Hon'ble Court is annexed herewith at **Exhibit-“H”**.*

ii) In the order dated 19th August 2016 in the said matter, the learned Single Judge observed that the counsel who had appeared for Respondent No.2 on the earlier occasion had not appeared before the Court on that date (indicating that the said counsel had perhaps returned the brief). It was also recorded that as the learned Senior Advocate who was appearing for Respondent No.2 on that date had been incorrectly instructed, both the learned Senior Advocate and the learned junior counsel who had appeared for Respondent No.2 herein on the said date

were also returning their respective briefs to Respondent No.2. A copy of the order dated 19th August 2016 passed by this Hon'ble Court is annexed herewith at **Exhibit-“I”**.

iii) On 7th March 2017, a learned Single Judge of this Hon'ble Court recorded that the attorney who was representing Respondent No.2 before this Hon'ble Court was seeking a discharge as she was not being give instructions by Respondent No.2 herein. A copy of the order dated 7th March 2017 passed by this Hon'ble Court is annexed herewith at **Exhibit-“J”**.

iv) In the order dated 10th March 2017, a learned Single Judge of this Hon'ble Court observed that Respondent No.2 herein “is in breach of at least two orders of this Court and possibly as many as four. His strategy and tactics of engaging Advocates and discharging them at the last minute (Ms.Malhotra is the seventh in the series and she was discharged on the last occasion and here today only at my request), will not work any longer.” (paragraph 2). A copy of the order dated 10th March 2017 passed by this Hon'ble Court is annexed herewith at **Exhibit-“K”**.

v) In the order dated 17th March 2017, a learned Single Judge of this Hon'ble Court observed that Respondent No.2 herein was “once again.....attempting to mislead the Court” (paragraph 5). A copy of the order dated 17th March 2017 passed by this Hon'ble Court is annexed herewith at **Exhibit-“L”**.

vi) The said matter appears to still be pending.

vii) In fact, the said orders reveal that Respondent No.2 has absolutely no rights in the Film “Aankhen 2”, and that he obtained financing from the Petitioners on the false assurance/promise that he did, in fact, have such a right to make the said film.”

5. There are orders against the respondents observing the conduct of the respondents. Even contempt petition has been filed by other parties against the respondents. In my view, no purpose will be served in granting further time to the respondents and this is one of those cases where the petition

should be made absolute without any further delay.

6. In the circumstances, the petition is made absolute in terms of prayer clause (a) and accordingly disposed.

ARBITRATION PETITION NO. 222 OF 2017

7. Mr.Som Sinha appearing for the petitioner seeks leave to withdraw the petition.

8. The petition dismissed as withdrawn.

**CONTEMPT PETITION NO. 12 OF 2017
IN
ARBITRATION PETITION NO. 91 OF 2013**

9. Mr.Sinha for the petitioner states that in view of the withdrawal of Arbitration Petition No.222 of 2017, the contempt petition also be disposed.

10. The contempt petition stands disposed.

11. Time for the Arbitral Tribunal to complete arbitration proceedings is extended upto and including 31st December 2017.

(K.R. SHRIRAM, J.)