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

COMPANY PETITION NO.797 OF 2015

IDBI Bank Limited ….Petitioner

Vs.

M/s. G.S. Entertainment Pvt. Ltd. ….Respondent

Ms. Vinita Hombalkar a/w. Ms. Sayalee Kulkarni for petitioner.
Ms. Deepti Panda a/w. Mr. Kunal Parekh i/b. M/s. Thakore Jariwala and Associates for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 30th OCTOBER, 2017

P.C.:

1 Petitioner has filed this petition alleging that respondent company is unable to pay its debts, it is commercially insolvent and it is just and necessary that respondent company be wound up.

2 Petitioner, at the request of respondent, on or about 25th June, 2008 sanctioned Foreign Currency Loan of US$ 2.35 million and Term Loan of Rs.495 lakhs as per the sanction letter dated 25th June, 2008. As per the terms of sanction, respondent was to create a 1st Pari-passu charge on the entire current assets of the company and hypothecation of entire movables and fixed assets of the company in favour of petitioner. Respondent agreed to the terms and conditions of sanction. Pursuant to the sanction, respondent also entered into Loan Agreement with petitioner on 1st July, 2008 as per the terms and conditions mentioned therein. Respondent also executed Deed of Hypothecation dated 1st July, 2008, Laboratory

Agreement dated 7th October, 2008 with defendant no.1 alongwith Reliance Media Works, General Power of Attorney dated 1st July, 2008 to inter-alia receive the monies from Distributors/Music Rights/TV/DVD or any other rights; Guarantee Agreement in favour of petitioner by the guarantors to secure repayment of principal of USD 2.35 million and Rs.495 lakhs together with all interest, liquidated damages, costs, charges, expenses and any other monies due to petitioner bank.

3 It is petitioner's case that in terms of the Loan Agreement, respondent was required to repay to petitioner the entire principal amount of loan on or before 1st July, 2009 or before the release of the film, whichever was earlier. Petitioner, in view of defaults made by respondent, also filed an Original Application in Mumbai Debt Recovery Tribunal (I) on 28th July, 2011 registered under O.A. No.65 of 2011 for recovery of an outstanding amount of Rs.22,01,68,480/- as on 1st June, 2011 with further interest at 15% p.a. at monthly rests together with liquidated damages at 2% p.a. at monthly rests from 1st June, 2011 till date of full and final payments.

4 Ms. Panda, counsel appearing for respondent raised a preliminary objection that the petition itself is barred by limitation.

5 When I considered paragraph 25 of the petition, petitioner has not explained how the period of limitation has got extended. It is simply

stated, "petitioner submits that no part of petitioner's claim is barred by limitation and therefore, the present petition is filed within the prescribed period of limitation". As stated in paragraph 12, the entire amount of loan was to be repaid on or before 1st July, 2009 or before the release of the film, whichever is earlier. Nowhere it is mentioned when the film was released.

6 Ms. Panda states that the film was released on 16th July, 2010 as stated in the additional affidavit in reply. The O.A. in Debt Recovery Tribunal was filed on 28th July, 2011. This petition was lodged on 7th May, 2015. So even if we take the date before O.A. was lodged, i.e., 27th July, 2011, as the date on which the cause of action arose (in my view cause of action arose on 1st July, 2009), still the petition has been lodged more than four years after the cause of action arose.

7 The counsel appearing for petitioner tendered across the bar four communications (i) letter dated 15th July, 2013 from respondent to petitioner; (ii) letter dated 12th July, 2013 from petitioner to respondent; (iii) letter dated 19th June, 2013 from petitioner to respondent and (iv) letter dated 13th November, 2014 from respondent to petitioner, to submit that respondent has acknowledged its liability and therefore, the period of limitation would get extended. The first three letters are all marked without prejudice. The fourth letter though not marked without prejudice it only states “however we could look into the prospects of

submitting a proposal if and when financial position improves.”. From this sentence, it does indicate that respondent do admit that some amount is payable to petitioner but what is the amount is not mentioned. At the same time, as stated earlier, if we take 27th July, 2011 itself as the date on which the cause of action arose and even if we take the letter dated 13th November, 2014 as the acknowledgement of debt, the said letter is written more than three years after the cause of action arose. If one has to consider an acknowledgement as extending the period of limitation, as required under Section 18 of the Limitation Act, the acknowledgement should be before the expiration of the prescribed period. Since the alleged acknowledgement itself is beyond the three years period calculated from 27th July, 2011, in my view, the debt alleged in the petition will be barred by limitation.

8 Therefore, petition stands dismissed.

(K.R. SHRIRAM, J.)