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

COMPANY PETITION NO. 685 OF 2015

Digital Cinema Solution ....Petitioner
Vs.
K Sera Sera Digital Cinema Pvt. Ltd. ....Respondent

Ms. Brenda N. Barnes I/b Udaya S. Samudrala for petitioner.

Mr.Nirman Sharma I/b Shrikant Koshti for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 19TH JULY, 2018

P.C.:

1. Petitioner is seeking winding up of the respondent company K Sera Sera Digital Cinema Pvt. Ltd. (the company) and the petition came to be admitted on 6th February 2017.

2. The company took out an application for recall of the order of admission and in between the petition got dismissed and then restored. All those stories are over now and today, the petition is restored for hearing and final disposal. Company application No.383 of 2018 for recall of the order of admission is also taken up by consent of the parties as the application is not listed. The petition and the application is taken up together.

3. The basis of petitioner's claim is that petitioner had supplied various

equipments to one M/s.Digital Cinema & Technology India Pvt. Ltd. (DCTIPL) and the said company owed a sum of Rs.8 lakhs to petitioner. The company entered into a Share Purchase Agreement with one K Sera Sera Digital Cinema Private Limited (K Sera Sera) under which K Sera Sera was to acquire the shares of the shareholders in the company and the K Sera Sera was to pay the shareholders of the company a sum of Rs.1.13 crores to pay off the liabilities of the company's creditors. One such creditor listed in Clause 16 of the Share Purchase Agreement which is at Exh.'A' to the petition is petitioner.

4. Ms.Barnes states that out of this Rs.8 lakhs, petitioner has received a sum of Rs.5 lakhs through the shareholders of the company and what remained was only Rs.3 lakhs. Ms. Barnes submitted that K Sera Sera not having paid this amount of Rs.3 lakhs which they agreed to pay and since in the Share Purchase Agreement, K Sera Sera had agreed to pay the shareholders of DCTIPL Rs. 8 lakhs which was to be paid to petitioner, it is a debt admitted by K Sera Sera and, therefore, K Sera Sera should be wound up.

5. I am afraid I cannot agree with Ms.Barnes. The Share Purchase Agreement is with DCTIPL which has already been ordered to be wound up by an order dated 10th April 2017 and its shareholders and K Sera Sera.

Petitioner is not a party to the said agreement. Mr. Sharma for respondent states that out of Rs.1.13 crores mentioned in the Share Purchase Agreement, Rs.90 lakhs was paid to the shareholders of DCTIPL and thereafter disputes arose and the Share Purchase Agreement was terminated and proceedings are going on between K Sera Sera and the Partners of the DCTIPL which is already in liquidation.

6. In these facts and circumstances, I cannot accept that K Sera Sera actually owes any money to petitioner. If at all any amount is owed, it will be by DCTIPL which is already in liquidation.

7. In view of above, petitioner is at liberty to file an affidavit of proof of debt with the official liquidator of DCTIPL, who shall consider the same in accordance with law.

8. Petition accordingly disposed.

9. Company Application No.383 of 2018 also accordingly disposed.

Shraddha Kamlesh Talekar

Digitally signed by Shraddha Kamlesh Talekar
Date: 2018.07.21 18:48:58 +0530

(K.R. SHRIRAM, J.)