

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

COMPANY PETITION NO.602 OF 2016

M/s. Ramnord Research Laboratories Pvt. Ltd.Petitioner

Vs.

M/s. Shubir S. Mukerji Productions Pvt. Ltd.Respondent

Mr. Sushil Upadhyay i/b. Mr. A.M. Saraogi for petitioner.

Mr. V.R. Tripathi for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 7th MARCH, 2018

P.C.:

1 By this petition, petitioner is seeking winding up of respondent company – M/s. Shubir S. Mukerji Productions Pvt. Ltd. (the Company) under the provisions of Companies Act, 1956 on the ground that the company is unable to pay its debts and is commercially insolvent.

2 The petition is based on an Agreement dated 23rd April, 2007 whereby respondent company agreed to pay a sum of Rs.1,64,00,000/- and against the said liability, company agreed to transfer various rights in respect of a film by the name “Gumnaam The Mystry”. Out of Rs.1,64,00,000/-, Rs.67,00,000/- was to be paid to a sister concern of petitioner – M/s. Miligare International and the balance of Rs.97,00,000/- was to be paid to petitioner. How this amount has to be paid is stated in paragraph 2(b) of the Agreement, copy whereof is at Exhibit 'B' to the petition. This paragraph 2(b) underwent a modification and parties entered into a further writing dated 15th November, 2008. The modified

paragraph 2 (b) reads as under :

2(b) Rs.97,00,000/- (Rupees ninety seven lacs) less TDS, the balance amount of the settlement will be reimbursed and be paid by the producers Shubir S. Mukerji/their agent or distributors from the overflow accrued from All India distribution (Theatrical Rights) after deducting their investment and commission as per agreement, given to M/s. SMS Films Pvt. Ltd. who will pay 75% directly to Laboratory. Apart from this, if any further recovery/realization will take place, Producers shall pay 75% of the said realization amount direct to the Laboratory. After the recovery of Rs.97,00,000/-, the Laboratory will have no objection for a payment of a sum of Rs.50,00,000/- (Rupees fifty lacs only) to Shibani Maulik and thereafter the Producers and the Laboratory will share @ 50% each upto 21 (twenty one) years. In case Rs.97,00,000/- (Rupees ninety seven lacs), the balance settled amount is not completely recovered within five years after 5-12-2008, i.e., release date, as the Director of the Company Mr. Shubir S. Mukerji of Shubir S. Mukerji Productions Pvt. Ltd. undertake to pay the remaining amount immediately after 05-12-2013 to the Laboratory.

3 It is petitioner's case that this amount of Rs.97,00,000/- has not been paid. Petitioner, therefore, caused statutory notice dated 22nd September, 2015 issued to company. Petitioner states that no reply was sent. The company, however, in its additional affidavit of one Shubir S. Mukerji affirmed on 3rd February, 2018, to which is annexed a letter dated 12th October, 2015 in reply to the statutory notice, have denied the liability. The company has also filed an affidavit of said Shubir S. Mukerji affirmed on 19th January, 2017 opposing the petition.

4 It is also the stand of the company that they have made substantial payment in excess of Rs.24,00,000/- to which no credit has been given. There is no rejoinder filed to both affidavits. It should be noted that the amount of Rs.97,00,000/- less TDS as stated in clause 2 (b) was to

be reimbursed and paid by company/their agents or distributors from the offerflow accrued from All India Distribution (Theatrical rights) after deducting their investment and commission as per Agreement, given to M/s. SMS Films Private Limited who will pay 75% directly to Laboratory. Laboratory, Mr. Upadhyay, counsel for petitioner states is petitioner. It further states that if any further recovery/realization takes place, the company shall pay 75% of the said realization amount directly to laboratory.

5 Therefore, considering clause 2 (b), evidence will have to be led to show that there has been an overflow and/or further recovery and realization that has taken place and that amount of Rs.97,00,000/- has to be paid.

6 In the circumstances, Court cannot gather itself to conclude that there is a debt payable by the company to petitioner. Petition therefore, stands dismissed with no order as to costs.

(K.R. SHRIRAM, J.)