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

COMPANY PETITION NO.323 OF 2015

Sun Distribution Services Pvt. Ltd. ....Petitioner

Vs.

Digicable Networks (India) Pvt. Ltd. ....Respondent

Mr. Saiprasad Mandlik I/b. Mr. Rakesh Sawant for petitioner.
Mr. Ramesh S.P. Pandey for respondent.
Mr. Pratik Gandhi, authorised representative of respondent present.

CORAM : K.R.SHRIRAM, J.
DATE : 17th JULY 2018

P.C.:

1 This petition is for winding up of respondent company - Digicable Networks (India) Pvt. Ltd. (the company) under the provisions of the Companies Act, 1956 on the ground that the company is unable to discharge its debts and is commercially insolvent.

2 Petitioner is engaged in the business of aggregating content in the form of different television channels. Petitioner is engaged in the broadcast and distribution of channels like Sun TV, Sun News, Sun Music, KTV etc. Petitioner also further licenses and sub-licenses these television channels through and across distribution platform, for example, Cable Operators, Direct to Home etc. Respondent is a Multi System Operator engaged in the business of distribution of TV channels.

3 Petitioner had entered into a Subscription Agreement dated 21st October 2013 with the company for grant of signals of the channels

distributed by petitioner company for the Digital Addressable System (DAS) notified area of Hyderabad for the period from 1st October 2013 to 30th September 2014. The company was to pay to petitioner certain amounts for providing signals of the channels distributed by it and these amounts were payable as per monthly invoices raised by petitioner. It is stated that all invoices till and including February 2014 have been raised and served on the company.

4 It is petitioner's case that the company has been, right from the commencement of the term of the agreement, committed default on its obligations to pay equated monthly installments of the agreed subscription fee. Petitioner had also filed petition before the Telecoms Disputes Settlement and Appellate Tribunal (TDSAT), New Delhi being broadcasting petition no.144(C) of 2014. In the broadcasting petition before TDSAT, the company had filed an affidavit of one Virender Kumar affirmed on 13th October 2017. This was a recovery action filed by petitioner in the broadcasting petition. In the affidavit of TDSAT, respondent has recorded that petitioner and respondent company had arrived at figure of Rs.1,31,93,280/- as an outstanding payable by the company to petitioner upto August 2017. It is also recorded in the affidavit that certain broadcasting equipments belonging to petitioner, which were with the company, were to be given to another company called “Sanny Digital

Communications Private Limited" (Sanny) and petitioner was entering into a fresh interconnect agreement with Sanny. It is also recorded in the affidavit that Sanny has also undertaken to clear the outstanding dues arrived at between the parties and the company has also sent a letter to petitioner regarding the understanding arrived at, viz., Sanny will assume the liability of the company and pay the amount of Rs.1,31,93,280/- to petitioner. To that extent, Sanny had also issued five post dated cheques to discharge the liability of petitioner that it had assumed. The affidavit also records that Sanny was to continue to make payments of monthly subscription dues to petitioner in addition to the liability of the company, which Sanny has assumed. It is also recorded that if any of the cheque was dishonoured, it will be open to petitioner to disconnect the signals of its channels to Sanny and/or respondent. This affidavit was taken on record by TDSAT and pursuant to an order dated 9th November 2017, the broadcasting petition filed by petitioner came to be disposed as withdrawn.

5 The stand of the company is that though the company had initially owed money to petitioner, parties had settled their disputes whereby Sanny had agreed to pay a sum of Rs.1,31,93,280/- in full and final settlement of petitioner's claim and thereby the company was relieved of its liability to petitioner.

6 There is nothing on record to indicate that this arrangement, which was reflected in the affidavit dated 13th October 2017 which has been filed in TDSAT, was not correct. On the contrary, there is an order of TDSAT taking this affidavit on record and disposing of the broadcasting petition filed by petitioner. There is also nothing on record to indicate that it was an agreement between the parties that if Sanny commits a default, the liability of the company gets reactivated.

7 In my view, these are all disputed questions of fact which cannot be gone into in the petition filed for winding up of the company under Section 434 of the Companies Act, 1956.

8 Mr. Mandlik, counsel for petitioner states that infact there has been a collusion between the company and Sanny and they have joined hands to deprive petitioner of its legitimate dues. For this, certainly petitioner will have to lead evidence.

9 In the circumstances, as there are disputed questions of fact, I am not inclined to exercise my discretion to wind up the company.

10 Petition dismissed. No order as to costs.

Gauri Amit Gaekwad

Digitally signed by Gauri Amit Gaekwad
Date: 2018.07.19 17:58:14 +0530

(K.R.SHRIRAM, J.)