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NEUTRAL CITATION NO: 2022/DHC/003050



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 22.07.2022

+ **CO.APP. 4/2019**

AUGUST INFOCOM PVT. LTD. Appellant

Through: Ms Shumaila Altaf, Adv.

versus

MICROVIEWS INFOSYSTEMS PVT. LTD.Respondent

Through: Mr Sharad Singhanian, Adv.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. This appeal is preferred against the order dated 07.01.2019 passed by the Learned Single Judge.

2. The Learned Single Judge, *via* the impugned order, has admitted the winding up petition preferred by the respondent under Sections 433(e), 434 and 439 of the Companies Act, 1956 [hereafter referred to as the “1956 Act”.]

3. A consequential direction was also issued by the Learned Single Judge, appointing the Official Liquidator (OL) as the Provisional Liquidator.

3.1 The Provisional Liquidator was directed to take over, forthwith, the assets, books of accounts and records of the appellant-company.

4. Furthermore, a direction was also issued to publish citations in the Delhi edition(s) of newspaper(s) indicated in the impugned order.

4.1 Towards the costs of publication, the appellant company was required to deposit Rs.75,000/- with the OL.

5. Aggrieved by the order of the Learned Single Judge, the instant appeal, as noticed above, has been filed.

5.1. A coordinate bench of this Court, while issuing notice in the appeal on

13.02.2019, had stayed the operation of the impugned order, *albeit*, till the date of hearing. The same has continued to operate up until now.

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6. Ms Shumaila Altaf, who appears on behalf of the appellant, says that the impugned order cannot be sustained. For this purpose, Ms Altaf has taken us through the record.

7. Mr Sharad Singhania, who appears on behalf of the respondent, on the other hand, has relied upon the impugned order, in opposition to the contentions advanced by Ms Altaf.

8. The record shows that the parties entered into an agreement dated 15.05.2008 [in short “2008 Agreement”.] The following recital of the 2008 Agreement gives the background in which the said agreement was entered into between the parties herein:

*“1. The first party, August¹ have secured an order No.WTL.PUR.08-09 dated 7th May, 2008 from Webel Technology Ltd. Kolkatta (hereinafter referred WTL) for making of electoral photo identity cards, printing of form 001B and photo roll etc. defined in the said order.
2. MICRO², the party hereto of this second part, is in the business of making voters card, electoral list printing and such allied jobs and has necessary resources to execute the work.”*

9. It appears that disputes arose, not only between the parties; but also involved an entity going by the name Webel Technology Ltd, Kolkata (“WTL”), for which work had to be performed by the parties herein.

9.1. The details of the work are set forth in the recitals of the 2008 Agreement, which have been extracted hereinabove.

10. The dispute between the parties, essentially, veered around the distribution of proceeds from WTL.

10.1. This led to the parties executing the Settlement Agreement dated 13.06.2009 [in short “SA”.] The SA recognizes the fact that certain amounts had been spent, both by the appellant, as well as the respondent.

¹ August Infocom Pvt. Ltd., the appellant-company.

² Microviews Infosystems Pvt. Ltd., the respondent-company.

11. Furthermore, as per the SA, the monies received from WTL were t
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distributed in the ratio 50:50. This is evident on a perusal of the following
extracts taken from the SA:



*“II. EXCESS PAYMENT MADE/TO BE MADE BY AUGUST
INFOCOM PVT. LTD.*

NO.	PARTICULARS	SETTLEMENT MADE AS UNDER	
		August Infocom Pvt. Ltd.	Microviews Infosystems Pvt. Ltd.
A.	Difference of I-Expenditure (as above) to be paid to	17,66,514.00	00.00
B.	August Infocom Pvt. Ltd. issued cheques to different vendors which is to be honoured as under:		
	Dharath Computers	11,47,200	
	Dharath Computers	9,40,000	
	EIH	3,03,108	
	EIH	5,00,000	
	Anand Trading	1,25,000	
	TRS Forms	50,000	
	VPS Technology	1,10,000	
	CAAM Computers	2,00,000	
	CAAM Computers	2,20,000	
	Total Amount	35,95,358	
	TOTAL OF A+B (To be paid to August Infocom Pvt. Ltd.	51,61,872.00	00

III. PAYMENTS RECEIVED FROM WEBEL TECHNOLOGIES
DISTRIBUTED

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	Payment received from WTL, Kolkatta	Received Payment Distributed	
		August Infocom Pvt. Ltd.	Microviews Infosystems Pvt. Ltd.
1.	10,00,000	5,00,000	5,00,000
2.	15,00,000	7,50,000	7,50,000
3.	52,00,000	52,00,000	00.00
Total Amount Received From payment		64,50,000	12,50,000
4.	Liability of cheques etc. as above	53,61,872	0
5.	To be paid by Microview Infosystems Pvt. Ltd.	1,61,872	0
Accounts Settled		12,50,000	12,50,000

1. From today onwards whatever payment against the bills submitted by August Infocom Pvt. Ltd. which is to be received from Webel Technology ltd. after deducting Rs.1,61,872/- all the payments will be distributed between both the parties 50:50 (Fifty:Fifty) as both the parties mutually agreed and signed these documents relates to settlement of account. All the 50% payments will be made through cheques in the name of Microviews Infosystems Pvt. Ltd. Axis Bank A/c No.025010200012290. [Emphasis is ours]

12. Besides this, clauses 2 to 4 of the SA, being relevant, are also extracted hereafter:

“2. If any anomaly/discrepancy in receiving/distribution of payment will be clear at the time of final payment

3. However, it is also mutually agreed that all the received payments from WTL related to TDS and Security will be distributed equally and the expenses of ITR and other taxes if applicable (for tax audit and others for FY 2008-2009 of M/s August Infocom Pvt. Ltd. will also be shared 50:50 (Fifty:Fifty).

4. Similarly, if required to claim disputed or outstanding payment from Webel Technology, through any Judicial Court/arbitrator the expenses will be born by both the parties 50:50 and M/s Microviews infosystems Pvt. Ltd. will deposit the 50% expenses on demand from

August Infocom Pvt. Ltd. within 10 days from the date of demand by cheque failing which the claim of M/s Microviews Infosystems Pvt. Ltd. will be null and will loose (sic.) their claim.”



[Emphasis is ours]

13. A perusal of the details given in the first table (marked as II), would show that certain monies had to be paid to the appellant with respect to the payments made by it, *inter alia*, to various vendors.

13.1. To be noted, Rs. 53,61,822 is the sum total of the amounts given against ‘A’ and ‘B’ appearing in the first table. Pertinently, the amount marked against ‘B’ although is shown as Rs.35,95,358/-, when tallied up, adds up to Rs. 35,95,308/-. Thus, the total expenses incurred by the appellant would be a sum total of Rs.17,66,514/- and Rs.35,95,308/-, which is Rs.53,61,822 and not Rs. 51,61,872/-. It appears, a typographical error crept in, inasmuch as the first table shows the cumulative amount as Rs.51,61,872/-. The typographical error is reflected in serial no. 4 of the second table (marked as III.)

13.2. Therefore, the amount shown against serial no. 4 of the second table should read as 53,61,822/-.

13.3. The details given in the second table (marked as III) clearly demonstrate that after the expenditure incurred by the appellant was taken into account, the parties had agreed to distribute Rs.77,00,000/- received from WTL (which is the cumulative sum of Rs 64,50,000/- and Rs.5,00,000/- and Rs.7,50,000/-.)

13.4. Accordingly, Rs. 12,50,000/-, after monies payable to the appellant-company towards expenses was adjusted, fell to the share of each party herein.

14. Furthermore, clause (1) of the S.A shows that a further sum of Rs.1,61,872/- had to enure to the benefit of the appellant.

15. The balance amount, which is Rs.21,76,256/-, after deducting Rs. 55,23,744/- [sum of Rs.53,61,872 and Rs.1,61,872] from Rs.77,00,000/-, evidently, has been divided equally with Rs.10,88,128/- falling to the share of each party. Since Rs.1,61,872/- has already been accounted for, insofar as the

appellant is concerned, the same can be added to the amount of Rs.10,88,128

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16. From the record, what has emerged is that apart from Rs.77,00,000/-, that had been received by the appellant-company from WTL, it had received a further sum of Rs.66,05,661/-.

16.1. This figure cannot be disputed, as the appellant-company has admitted, both before us as well as before the Learned Single Judge, a total amount received until December 2009 from WTL was Rs. 1,43,05,661/-.

16.2. As indicated above, the S.A. accounted for the sums that each party was to receive, after adjustment of sums expended by the appellant-company.

16.3. Insofar as the balance money was concerned, which is Rs.66,05,661/-, the appellant seems to have adjusted, once again, a sum of Rs.1,61,872/-.

16.4. According to the appellant-company, the balance sum i.e., Rs.64,43,789/-, after adjusting Rs. 1,61,872/-, was thereafter to be divided in the ratio of 50:50 between the parties.

17. Therefore, according to Ms Altaf, the amount that fell to the share of each party is Rs.32,21,894.50.

17.1. Ms Altaf has drawn our attention to the winding up petition filed by the respondent, which, *inter alia*, sets out in paragraph 11 the details of payments received by the respondents. The aforesaid paragraph is extracted hereunder-

11. That after completion of the allotted job to the petitioner herein M/s Microviews Infosystems Pvt. Ltd. raised its bill upon the company and the company accepted the said bills without any demour and made part payment thereof. The details of the said statement of accounts as on 31st March, 2010 is given below:

<i>Date</i>	<i>Party Name</i>	<i>Invoice No./ Cheque No.</i>	<i>Memo</i>	<i>Bills raised</i>	<i>Payment Received</i>
01.08.2008	August Infocom Pvt. Ltd.	202208	Advance recd.		4,89,700/-

..10.2008	August Infocom Pvt. Ltd.		Advance recd.		7,33,500
15.02.2009	August Infocom Pvt. Ltd.	Bill/Del/01	001B	56,608/-	
15.02.2009	August Infocom Pvt. Ltd.	Bill/Del/03	Photo Rolls	9,52,294/-	
15.02.2009	August Infocom Pvt. Ltd.	Bill/Del/04	Photo Rolls	1,46,070/-	
15.02.2009	August Infocom Pvt. Ltd.	Bill/Del/05	Photo Rolls	11,39,948/-	
15.02.2009	August Infocom Pvt. Ltd.	Bill/Del/06	Photo Rolls	65,98,500/-	
25.06.2009	August Infocom Pvt. Ltd.	578501	Payment Recd.		6,12,000/-
29.08.2009	August Infocom Pvt. Ltd.	651304	Payment Recd.		10,00,000/-
...12.2009	August Infocom Pvt. Ltd.				4,10,000/-
			Total:	1,07,50,087/-	34,45,200/-
Total outstanding as on 1 st April, 2010 is Rs. 73,04,887/-. (Rupees Seventy Three Lac Four Thousand Eight Hundred and Eighty Seven)only.					



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17.2. A perusal of the table would show that between 25.06.2009 and December

2009, the respondent has received Rs.20,22,000/-.

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17.3. Ms Altaf says that a typographical error has crept in the figure which is shown against the date set forth as 25.06.2009 (Rs.6,12,000/-.) It is Ms Altaf's submission that the figure should read as Rs.8,12,000/-.

17.4. Ms Altaf states that if this figure of Rs. 2,00,000/- (the difference between Rs.8,12,000/- and Rs.6,12,000/-) is taken into account, the total amount the respondent would have received between 25.06.2009 and December 2009, would be Rs.22,22,000/-.

18. Furthermore, Ms Altaf says that if this amount is adjusted against the respondent's share of Rs.32,21,894.50, what would remain is Rs.9,99,894.50/-

19. The figures, according to Ms Altaf are based on the record, which cannot be disputed i.e., the 2008 Agreement, the S.A. and the figures set out in paragraph 11 of the winding up petition filed by the respondent.

20. It is, therefore, Ms Altaf's contention that notwithstanding the fact that the appellant-company was remiss in not responding to the additional affidavit dated 21.02.2015, there is no statable case set up by the respondent to seek winding up of the appellant company. For the respondent to seek winding up of the appellant-company, it would have to demonstrate that the appellant-company received monies after 2009 from WTL and secondly, despite receiving money, the same was not distributed.

21. Insofar as the balance amount of Rs.9,99,894.50/- is concerned, Ms Altaf says that the appellant is prosecuting the arbitration action lodged against WTL and as per the terms of the S.A., the respondent is required to share the financial burden.

22. In sum, it is Ms Altaf's contention that the impugned order should be set aside.

23. Mr Sharad Singhania, on the other hand, says that these arguments were not advanced before the Learned Single Judge.

23.1. It is also his contention that the appellant had not responded to the

additional affidavit dated 21.02.2015. Mr Singhania, as alluded to above, re
in defence of the appeal, on observations made in the impugned judgement.

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24. We have heard counsel for the parties at length and perused the record.

24.1. In our view, Ms Altaf is right in contending that, even though the appellant did not respond to the additional affidavit dated 21.02.2015, it could still demonstrate that sums received from WTL had been fairly distributed between the parties, in terms of the S.A.

24.2. We may note that the appellant-company has not moved from the position that it is required to distribute, in terms of the S.A., monies received from WTL in the ratio 50:50.

24.3. The point in issue before the Learned Single Judge, was, as to, whether the appellant-company had received amounts in excess of Rs.1,43,05,661/-, and furthermore, as to how the said amount(s) were distributed.

24.4. The S.A. seems to suggest that Rs.77,00,000/-, received in the first instance, was accounted for, and after adjusting the expenses that had been incurred by the appellant-company, was distributed equally between the parties.

24.5. Insofar as the balance amount i.e., Rs.66,05,661/- is concerned, the figures given in the winding up petition show that the respondent received, if not, Rs.22,22,000/-, it surely did receive Rs.20,22,000/-.

24.6. It does appear that there is a typographical error *vis-à-vis* the figure shown against the date set forth in the table, which is 25.06.2009.

24.7. The respondent clearly did not place any material before the Learned Single Judge, to demonstrate that the appellant had received monies in excess of Rs.1,43,05,661/-.

25. This brings us to the last limb of the discussion, as to the distribution of Rs.9,99,894.50/-.

25.1. Although Ms Altaf says that the respondent is required to bear the burden of expenses incurred in the arbitration proceedings, there is no material to demonstrate, at least presently, that the respondent was called upon to share the

expenses.

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26. Therefore, for the moment, the appeal is disposed of with the following directions:

- (i). The impugned order dated 07.01.2019 is set aside.
- (ii). The appellant-company will deposit 50% of Rs.9,99,894.50/- with the Registry of this Court.
- (iii) The Registry will invest the money in an interest-bearing FDR, maintained with a nationalized bank.
- (iv) The aforesaid amount will abide by the decision in the arbitration proceedings, taken out by the appellant-company against WTL.
- (v) In case, the OL has not incurred expenses towards citation, Rs.75,000/-, deposited by the respondent, on account of the stay granted by this Court, the O.L. will refund the same to the respondent.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

JULY 22, 2022/pmc

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