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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 919/2018 & IA No.7674/2018
SUPER CASSETTES INDUSTRIES PRIVATE LIMITED

..... Plaintiff

Through : Mr.Amit Sibal, Sr Advocate with
Mr.Neel Mason, Mr.Ankit Relan,
Mr.Rahul Pandit, Ms.Ridiuma Pabbi,
and Ms.P Vennela, Advocates.

versus

KAIRAJ ENTERTAINMENT PRIVATE LIMITED & ANR

..... Defendants

Through : Mr.Abhishek Malhotra, Mr.Kaushik
Moitra and Ms.Niyati Asthana,
Advocates for defendant No.1.
Mr.Sandeep Bajaj, Ms.Aakanksha
Nehra, Ms.Shourya Mittal, Mr.Soayib
Qureshi and Mr.Naman Tandon,
Advocates for defendant No.2.
Mr.Tejas Karia and Mr.Aishvary
Vikram and Mr.Mohit Oomman,
Advocates for defendant No.3/Gothic.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **31.05.2018**

1. Notice issued. Learned counsel accepts notice on behalf of the defendants No.1, 2 & 3.
2. It is the case of the plaintiff that on 28.07.2017 a memorandum of understanding was entered into between the plaintiff and defendant No.1 for co-producing the film "*Rohsini*" whose name was later changed to "*Batti Gul Meter Chalu*".

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New Delhi

3. It is alleged by the plaintiff that on 10.08.2017 a long form co-production agreement was entered into between the plaintiff and defendant No.1 for co-producing the film "Batti Gul Meter Chalu" on an equal sharing, equal funding and equal ownership basis.

4. The salient features of the said agreement are as under:-

"4.9. Laboratory

(a) xxxxx.

(b) Both Parties represent that they have not and will not, in any manner and to any extent, either individually or through an associated entity or to a third party of whatsoever nature, either alienate, exploit, assign or grant the license for use, distribution, exhibition and/or exploitation of the Distribution Rights In any territory, nor have they or will they create any lien, charge, mortgage, encumbrance of any nature on the Rim and Its materials. Delivery Materials, print and Publicity Material, and/or any Distribution Rights and/or Intellectual Property right in the Territory or any part of the Territory and/or on the Revenues of the Film, howsoever.

(c) & (d) xxxxx

5.1. The Parties shall jointly, exclusively and equally own all rights, title and Interest In and in relation to the Rim, the Intellectual Property In the Film, the Distribution Rights, the Derivative Rights, the Underlying Works, the Intellectual Property rights including all underlying. Incidental, derivative and ancillary rights therein, for the Territory for 58 years in the ratio of: KRIARJ: 50%; T-Series: 50%.

11.1.6. It is agreed between the parties that either party will not deal with, in any manner. Its rights under this agreement and MOU dated 28.07.2017 with any third party without the written consent of other party. In the event that any party (Defaulting Party) violates this clause and enters into an agreement/understanding to create third party(s) interest/lien in its rights, the same shall be void-ab-initio and the Effected Party shall not be bound by the terms of any such void agreement/ understanding of the Defaulting Party with the Third Party(s). It is specifically agreed between the parties that in the event that this clause is violated by any party (being Defaulting Party) the other party (being Effected Party) shall be within its rights not to recognize any such agreement/ understanding which has been entered into without its consent In writing. Any attempt by the Third party(s) to make such understanding/ agreement valid by sending Legal Notice or through publication of Public Notice shall always remain void and unenforceable in law being in contravention to this agreement.

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15.4. T-Series shall have the right to terminate In the event that Kriarj falls to commence the said film or abandons the said film or Is unable to complete the said film within the time schedule contemplated under this Agreement for any reason Including Its Inability to arrange the requisite funds or declares that due to financial constraints Is unable to complete the Rim. Upon any of the aforesaid taking place this agreement stand automatically terminated and following consequences shall emerge:-

a) This agreement and the MOU dated 28.07.2017 between the parties shall automatically stand terminated with effect from the date on which the said film was scheduled to be completed;

b) All rights under the above agreement shall revert to non-defaulting party (i.e. T-series) immediately on the aforesaid termination of the present agreement;

c) T-SERIES being non-defaulting party shall have right to complete the film by Introducing Its own funds In excess of Its obligation of contributing 50% of the COP and exploit commercially or otherwise any rights of the said film;”

5. It is agreed case that an amount of ₹12.5 Crores each were to be invested by plaintiff as well as the defendant No.1 herein and as per the terms of the MoU dated 28.07.2017 and the agreement dated 10.08.2017 neither the plaintiff nor the defendant No.1 could alienate its share without the *written consent* of the other.

6. On 19.04.2018 the defendant No.1 allegedly wrote a letter to the plaintiff stating *inter alia* that due to financial constraints the defendant No.1 shall not be in a position to contribute its part of the funds for shooting of the captioned film and as such it terminated the agreement dated 10.08.2017 saying the plaintiff shall be vested with all the rights to proceed ahead with the completion of the captioned film/project.

7. The plaintiff thereafter had entered into an agreement with the defendant No.4 to complete the film. However, it appears the defendant No.1 has taken the money from the defendants No.2 & 3 in

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relation to various films including the one herein and it is alleged the defendants are trying to interfere in the production/completion of the film and its sale.

8. The case made out by the defendants is the plaintiff was aware of the correspondences/agreements entered into between the defendants No.1 & 2 and with defendant No.3 wherein the defendant No.1 primarily was seeking money to be invested in various movies, including the one in dispute here. Various emails/chats etc have been shown stating *inter alia* defendant No.1 agreed to sell production rights and further rights to defendants No.2 & 3 etc. And they even referred to an order dated 22.05.2018 passed by the High Court of Bombay in *Gothic Entertainment vs KriArj Entertainment Private Limited and Others*, Commercial Arbitration Petition (L) No.502/2018 wherein the plaintiff was also a party and direction (ix), out of various directions, is relevant and it says:-

“(ix) Respondent Nos.1, 2 and 4 shall not receive any amounts from any party without seeking prior permission of this Court for any of the film.”

9. Since various disputes have been raised qua the genuineness of the agreement dated 10.08.2017 and termination letter dated 19.04.2018 and also of chats and subsequent agreements amongst defendants themselves but a perusal of such documents would reveal these subsequent agreements entered into between defendant No.1, defendant No.2 and defendant No.3 were primarily the investors agreements and it appears defendant No.1 has siphoned off the money of defendant No.2 and defendant No.3 and hence it would be

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appropriate if the defendants file the written statement and reply to injunction application along with the documents they wish to rely, within four weeks from today with an advance copy thereof to the learned counsel for the plaintiff.

10. List on 05.07.2018 and in the meanwhile, the defendants shall not interfere in the completion of the film "Batti Gul Meter Chalu" as also further exploitation of its rights by the plaintiff qua distribution etc, however, the money so received by creating such rights be deposited by the plaintiff in an Escrow Account to be maintained by the plaintiff and shall be subject to the further directions of this Court.

11. Compliance of Order 39 Rule 3 of the CPC be made by the plaintiff within ten days from today.

12. Summons be issued through all modes to defendant No.4 returnable for next date of hearing.

13. Order *dasti* under signatures of the Court Master.

-sd--
YOGESH KHANNA, J

MAY 31, 2018

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Court Master
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New Delhi