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**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI**

Dated 11th January, 2010

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Petition No.81(C) of 2009

M/s Vision Digital Cable

... Petitioner

Versus

Star Den Media Services Pvt. Ltd. & Anr.

... Respondents

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BEFORE:

**HON'BLE MR. JUSTICE S.B.SINHA, CHAIRPERSON
HON'BLE MR. G. D. GAIHA, MEMBER**

For Petitioner : Mr. B.S.Sai, Advocate

For Respondent No.1 : Mr. Gopal Jain, Advocate
Mr.Gaurav Junjea, Advocate

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ORDER

S.B. Sinha

This petition has been filed by the petitioner herein praying inter alia for a direction on the respondents to provide uninterrupted signals of its channels to the petitioner's network, to provide decoders, viewing cards thereof as also enter into an agreement with it for the area of Vijayawada (Urban and Rural).

The petitioner is a MSO. One Shri P.Venkata Siva Prasad is its Managing Director. It is said to be in the said business since 2007. The petitioner made a request to the respondent who is the broadcaster of Star Den TV channel for grant of signals for the urban and rural areas of Vijaywada. The petitioner contends that it has invested more than Rs.75 lakhs for the purpose of laying optic fiber cables in the area in question. It has 5 link operators. It has also 1400 subscribers in total. It had also been telecasting free-to-air channels along with Gemini and Teja pay channels.

According to the petitioner the authorized representative of the respondent orally informed it that the respondent No.2 having been appointed as its distributor/ agent; approach should be made to it for supply of Star Den TV signals. The petitioner approached the respondent No.2 also for the said purpose, which however went unheeded. The petitioner made a request in writing to the respondents on or about 09.08.2008. It sent a lawyer's notice on or about 05.03.2009. The petitioner thereafter sent a reminder on or about 01.04.2009 but as despite receipt thereof no action was taken, the petitioner has filed the instant petition.

The respondent in its reply to the petition inter alia contended that Shri P.Venkata Shiva Prasad, the managing partner of the petitioner have been running a cable network business under the name and style of "Nuzvid Communications Network" but as it had not paid a huge amount; the agreement entered into by and between the respondent and the said Mr.Siva Prasad was terminated. A sum of Rs.1,24,695.95p is stated to be owing and due from the said Nuzvid Communications Network. It has

furthermore been contended that there exists a discrepancy in regard to the number of subscribers in the petition itself and thus the petitioner is not entitled to supply of any signal from the respondent.

The petitioner in its rejoinder has denied and disputed that any sum as alleged in the reply or at all were due from Nuzvid Communications Network. According to the petitioner if any amount is due from the said concern, the respondent is at liberty to initiate a separate proceedings for recovery of the amount from the persons concerned.

Mr.B.S.Sai, learned counsel appearing on behalf of the petitioner would contend that keeping in view of the provisions contained in clause 3.2 of The Telecommunication (Broadcasting & Cable Services) Regulation 2004 (hereinafter referred to as 'the said Regulations'), the respondent is bound to supply signals of its channels to the petitioner.

Mr.Gopal Jain, learned counsel appearing on behalf of the respondent on the other hand, would contend that the request of the petitioner being not in consonance with the existing law, the respondent has no legal obligation to supply any signal to the petitioner in so far as no details with regard to the area of operation, the map in relation thereto, the list of operators, the list of individual subscribers have been supplied. It was furthermore urged that the petitioner has not filed any application in the form prescribed by the respondent company.

The matter relating to broadcasting services is governed by the provisions of the Telecom Regulatory Authority of India Act, 1997 and the Regulations framed thereunder. Clause 3.2 of the Regulation reads as under:

“3.2 Every broadcaster shall provide on request signals of its TV channels on non-discriminatory terms to all distributors of TV channels, which may include, but be not limited to a cable operator, direct to home operator,

multi system operator, head ends in the sky operator; Multi system operators shall also on request re-transmit signals received from a broadcaster, on a non-discriminatory basis to cable operators.

Provided that this provision shall not apply in the case of a distributor of TV channels having defaulted in payment.

Provided further that any imposition of terms which are unreasonable shall be deemed to constitute a denial of request.”

The principal question which arises for consideration in this application is as to whether the respondent could have denied supply of signals to the petitioner inter alia on the premise that one Shri P.Venkata Siva Prasad was running a proprietary concern and did not pay off his dues.

Clause 3.2 of the Regulation lays down a ‘must provide’ clause. The proviso appended thereto would apply only in a case the distributor of a TV signal had defaulted in payment.

The question which, thus, arises for consideration is as to whether the managing partner of the petitioner who is said to be running a proprietary concern, viz. the aforementioned Nuzvid Communications Network, the proviso appended to clause 3.2 will have any application in the instant case.

In legal parlance there exists a distinction between a partnership firm and a proprietary concern. Whereas a partnership firm is governed by the Indian Partnership Act 1932, a proprietary concern is not a separate entity. The rights and obligations of the partners of a partnership firm are governed by the terms of the deed of partnership and/or the provisions of the 1932 Act. In the case of a proprietary concern however, the proprietor himself would have the obligations to pay any dues of a third party and

thus, would be solely responsible for conduct of its affairs. A proprietary concern thus would not answer the description of a partnership firm.

Thus, so far as the principal contention of Mr.Gopal Jain is concerned, we are of the opinion that the respondent could not have refused to give supply of signals of its channels to the petitioner on the aforementioned premise. It has been so held in Raghu Lakshminarayanan Vs Fine Tubes - 2007(5) SCC 103 wherein the Supreme Court of India stated the law in the following terms:

“13. The distinction between partnership firm and a proprietary concern is well known. It is evident from Order XXX Rule 1 and Order XXX Rule 10 of the Code of Civil Procedure. The question came up for consideration also before this Court in Ashok Transport Agency v. [Awadhesh Kumar and Anr.](#) AIR1999SC1484 wherein this Court stated the law in the following terms:

6. A partnership firm differs from a proprietary concern owned by an individual. A partnership is governed by the provisions of the Indian Partnership Act, 1932. Though a partnership is not a juristic person but Order XXX, Rule 1, CPC enables the partners of a partnership firm to sue or to be sued in the name of the firm. A proprietary concern is only the business name in which the proprietor of the business carries on the business. A suit by or against a proprietary concern is by or against the proprietor of the business. In the event of the death of the proprietor of a proprietary concern, it is the legal representatives of the proprietor who alone can sue or be sued in respect of the dealings of the proprietary business. The provisions of Rule 10 of Order XXX, which make applicable the provisions of Order XXX to a proprietary concern enable the proprietor of a proprietary business to be sued in the business names of his proprietary concern. The real party who is being sued is the proprietor of the said business. The said provision does not have the effect of converting the proprietary business into a partnership firm. The provisions of Rule 4 of Order XXX have no application to such a suit as by virtue of Order XXX, Rule 10 the other provisions of Order XXX are applicable to a suit against the proprietor of proprietary business "in so far as the nature of such case permits." This means that only those provisions of Order XXX can be made applicable to proprietary concern which can be so made applicable keeping in view the nature of the case.”

In Deputy Commissioner of Sales Tax (Law) Board of Revenue (Taxes) v. K. Kelukatty - 1985(4) SCC 35, the Supreme Court of India laid down the law that “for taxing purposes a partnership firm is treated as an entity distinct from the persons who constituted the firm.”

It was furthermore held:

“11. The Indian Partnership Act, 1932 has, by Section 4, defined a "partnership" as "the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting "for all". The section declares further that the persons who have entered into partnership with one another are called individually "partners" and collectively "a firm". The components of the definition of "partnership", and therefore of "a firm" consist of (a) persons, (b) a business carried on by all of them or any of them acting for all and (c) an agreement between those persons to carry on such business and to share its profits. It is the relationship between those persons which constitutes the partnership. The relation is founded in the agreement between them. The foundation of a partnership and, therefore, of a firm is a partnership agreement. A partnership agreement is the source of a partnership; it also gives expression to the other ingredients defining the partnership, specifying the business agreed to be carried on, the persons who will actually carry on the business, the shares in which the profits will be divided, and the several other considerations which constitute such an organic relationship. It is permissible to say that a partnership agreement creates and defines the relation of partnership and therefore identifies the firm. If that conclusion be right, it is only a further step to hold that each partnership agreement may constitute a distinct and separate partnership and therefore distinct and separate firms. That is not to say that a firm is a corporate entity or enjoys a juristic personality in that sense. The firm name is only a collective name for the individual partners. But each partnership is a distinct relationship. The partners may be different and yet the nature of the business may be the same, the business may be different and yet the partners may be same.”

Our attention has been drawn to an order of this Tribunal being Petition No.17(C) of 2008 (Venkata Sai Media Pvt. Vs. Channel Plus-AP) disposed of on 18.12.2008 wherein on fact, it was held that the benefit of the proviso to clause 3.2 of the Interconnect Regulations was available to the petitioner therein.

Now coming to the other contention of Mr.Gopal Jain, it appears that the same is based on clause 9 of The Telecommunication (Broadcasting & Cable Services) (Third Amendment) Regulation, 2006. Clause 9.1 and 9.2 thereof read as under:

“9. Finalising Subscriber Base at the time of first agreement

First agreement between Multi System Operator and Cable Operator

9.1 In non-addressable systems, while executing an interconnection agreement for the first time between a multi system operator and a cable operator, the parties to the agreement shall take into account the subscriber base of the cable operator on the basis of the Subscriber Line Report (SLR) where such SLR exists. Where such SLR does not exist, this shall be negotiated on the basis of the evidence provided by the two parties on the subscriber base, including the subscriber base of similarly placed cable operators and local survey.

Explanation

The Subscriber Line Report (SLR) is only an indicative basis for arriving at the subscriber base and the subscriber base as mutually agreed by the two parties could be more than or less than the number indicated by the SLR.

First agreement between Multi System Operator and Broadcaster

9.2 In non-addressable systems, while executing an interconnection agreement for the first time between a multi system operator and a broadcaster, the multi system operator shall furnish a list of the cable operators who will be getting signals from its network along with their subscriber base. The parties to the agreement shall take into account the subscriber base of cable operators connected to the multi system operator while negotiating the subscriber base of the multi system operator. For the consumers proposed to be directly served by the multi system operator, the procedure as laid down in sub-clause 9.1 of this regulation shall be followed.”

Apart from the aforementioned clause, our attention has not been drawn to any other provision relying on/or on the basis whereof the respondent can refuse to give effect to clause 3.2 of the said Regulation. The Regulations do not provide for an application in the prescribed format. If the respondent apart from the informations and particulars furnished by the petitioner, bonafide wanted any other information it could have said so explicitly in its reply to the notices issued by the petitioner. The Regulations do not contemplate that the names of each individual subscriber should be supplied. The petitioner has clearly stated that it intends to carry on its business in respect of urban and rural area of Vijaywada. The petitioner, however, would supply a map showing the areas in which it intends to take supply of signals from the respondent. The respondent furthermore having regard to the decisions of the Supreme Court of India in Star India Pvt. Ltd. Vs. Sea TV Network Ltd. & Anr. - 2007(4) SCC 656 would not insist that the petitioner must take supply of the signals of the respondent's channels through the respondent No.2. It must supply the signals directly.

Subject to the observations made hereinbefore and compliance of the statutory regulations this petition is allowed. The petitioner may comply with the provisions of clause 9.1 and 9.2 of Regulations and furthermore supply a map to the respondent and whereupon the respondent may supply its signals to the petitioner in terms of the prevailing law.

The respondent shall pay and bear the costs of the petitioner. Counsel's fee assessed at Rs.50,000/-.

.....J
(S.B. Sinha)
Chairperson

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(G.D. Gaiha)
Member