

**TELECOM DISPUTES SETTLEMENT & APPELLATE  
TRIBUNAL**

**NEW DELHI**

**Dated 13<sup>th</sup> May, 2011**

**Petition No.70 (C)/2010**

M/s. Ravi Teja                      Communication                      ...

Petitioner

Vs.

M/s. Zee Turner Ltd.                      ...

Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE S.B. SINHA, CHAIRPERSON**

**HON'BLE MR. G. D. GAIHA, MEMBER**

**HON'BLE MR.P.K. RASTOGI, MEMBER**

For Petitioner                      :              Mr. Sunder Khatri, Advocate

For Respondent No.1                      :              Mr.                      Vadivelu

For Respondent No.2                      :              Deenadayalan, Advocate

Mr. G. Tushar Rao, Advocate

**J U D G M E N T**

**S.B. Sinha**

1.              The petitioner herein is a local cable operator (LCO) within the meaning of the provisions of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulations, 2004 as amended from time to time (The Regulations).

2. Questioning a notice dated 12.10.2009, as contained in Annexure 'P' to the petition whereby and whereunder inter alia on the premise that the petitioner has not cleared its dues and, thus, the network of the petitioner was disconnected as a result whereof petitioner has not been able to retransmit the signals of the channels of the respondent, this petition has been filed.

3. Before, however, we advert to the respective contentions of the parties and the questions arising in this petition, we may notice that one Miryalguda Cable Syndicate Cable TV Network said to be a partnership firm filed an application for impleadment in this matter inter alia on the premise that the petitioner being a partner, it cannot be permitted to take signals from the Broadcaster directly for retransmission thereof.

4. The petitioner in this petition, however, had offered to pay the outstandings of the respondent no.1 and in fact deposited the same and as such no objection has been raised by the later in granting signals to it.

5. In the aforementioned backdrop we may notice the factual matrix involved in the matter.

6. The petitioner and the respondent no.1 entered into an agreement on or about 12.11.2008, which was valid for a period of one year. Inter alia on the premise, as noticed heretobefore, that the petitioner did not clear its dues, it disconnected the supply of

signals. However, to the petitioner's network all the dues of the respondent no.1 have since been cleared.

7. The petitioner in the aforementioned situation has, in this petition, prayed for the following reliefs:-

(i) Quash the Letter/Notice dt. 12.10.2009 issued by M/s Zee-Turner Ltd. (Respondent) – null and void (Annexure P-2); and

(ii) Direct the respondent (M/s Zee-Turner Ltd) to execute the proper written agreement for supply of the signals with reasonable terms and conditions in the existing area of M/s Ravi Teja Communication Networks at Miryalguda, Petitioner; and

(iii) Pass any other relief (s) which this Hon'ble Tribunal may deem fit and proper in favour of the petitioner and against the respondent.

8. Indisputably, the petitioner was one of the partners of the respondent No.2 firm. The respondent no.2, however, contends that a memorandum of understanding was entered into by the said firm with Natraj Cable Communication and Sri K.K. Cable Network, which reads as under:-

“This deed of Memorandum of Understanding is executed on this the 10<sup>th</sup> Mary, 200 in between: -

The Partners of  
Nataraj Cable Communications,  
Miryalaguda Communications Network,  
Shri Sai K. K. Cable Network

All these firms are situated in Miryalaguda Town in Nalgonda District. All these firms at present are providing star network activities through different lines from their respective control rooms of the purpose of M/s. Miryalaguda Cable Syndicate. All these firms have decided to provide 3 local channels including pay Channels through one line, to their customers at the request of operators and hence this Deed of consent and hence this Deed of Memorandum of Understanding.

1. The channels pertaining to our respective control rooms henceforth will be provided to our respective customers through one line. The channels agreed to be provided are 3 local channels including Pay Channels.
2. It has been decided and agreed to bear the profit & loss equally among the partners that will be arise/caused through the maintenance of our communication Network.
3. It has been further decided and agreed among the partners that the profit from the maintenance of our communication Network i.e. Subscription from our local Cable Operators will be shared among the partners at the rate of 33% (Thirty three percent). The remaining 1% (one percent) will be spent for the purpose of our picnic.
4. It has been further, decided and agreed that the revenue from advertisement will be shared in the following ratio.
  - (i) 33% (Thirty Three Percent) to Natraj Cable Communications.
  - (ii) 34% (Thirty Four Percent) to Miryalaguda Cable Communications.

(iii) 33% to Sri Sai Cable K.K. Cable Network.”

9. The petitioner, however, contends that it is not a party to the aforesaid MOU.

10. The petitioner moreover contends that it had not been sharing any profit out of the said arrangement and it does not take part in the management of the firm either directly or indirectly.

11. According to the petitioner, it does not exercise any control far less any joint control of the said purported joint venture.

12. Mr. Khatri, learned counsel appearing on behalf of the petitioner would submit that having regard to the fact that the respondent no.2 is not and could not have been a joint venture undertaking and in any event having regard to the provisions contained in sub-Section 2 of Section 69 of the Indian Partnership Act, it could not have enforced the so-called MOU being an unregistered firm, it must be held, that the respondent no.2 has no locus standi to intervene in the matter.

13. Mr. Tushar Rao, learned counsel appearing on behalf of the respondent no.2, on the other hand, would urge that the question raised by the respondent no.2 stands settled by a judgment of this Tribunal dated 19.12.2008 in Petition no.83 (C)/2008 and other analogous

cases. It was urged that a partner of partnership firm cannot enter into a business of a competing nature.

14. Mr. Bhatia, learned counsel appearing on behalf of the respondent No.1, however, would urge that there being a serious dispute with regard to the subscriber base, this Tribunal should protect the interest of the respondent no.1.

15. This petition was filed on 27.3.2010. The fact that the petitioner and the respondent no.1 had entered into a subscription agreement on or about 12.11.2008, is not in dispute. It is also not in dispute that the said agreement came to an end. The parties also have not raised any controversy that the petitioner had been receiving signals of the channels of the respondent no1. and the same had been disconnected on or about 12.8.2009, on the ground that the petitioner was a defaulter.

16. Would in the aforementioned factual backdrop the petitioner being a partner of the respondent no.2 firm be permitted to avail the signals of the respondent no.1 is the question.

17. The petitioner is a proprietorship concern. It rightly or wrongly raised a contention that it had nothing to do with the Memorandum of Understanding entered into by and between the parties mentioned therein. Moreover, it admittedly to the knowledge of all concerned had been receiving supply of signals from the Respondent No. 1.

18. The fact, however, that the petitioner was a partner of Shri K.K. Network Media, is not in dispute.

19. The Telecom Regulatory Authority of India Act 1997 and the Regulations framed by the regulator provide for competition. It does not encourage monopoly. It is permissible in law for a person within the meaning of the provisions of the Regulations to avail the services of a broadcaster. Although, the areas were earmarked for one of the MSOs and/or Distributor of T.V. Channels, only because a person is a partnership firm, subject of course, to any negative covenant contained therein, ordinarily the network of an operator could not be restrained from carrying on any business including the business in cable services.

20. Section 27 of the Indian Contract Act deals with restraint in trade.

21. A person, thus, can be prohibited from carrying out any business as a Distributor of T.V. Channels only if there exists a statutory interdict or an agreement between the parties.

22. The Indian Partnership Act, 1932 provides for such restraint in terms of sub Section 2 of Section 36 of the Act. We may, moreover, notice that a similar provision also exists in Section 16 of the Act.

23. The restrictions provided under Section 36 of the Act and in particular sub Section 1 thereof is `subject to an agreement to the

contrary'. Sub-section 2 of Section 36 provides for a negative covenant. Such a negative covenant is permissible to be inserted in terms of the second exception appended to Section 27 of the Indian Contract Act.

24. In *M/s Vision Digital Cable vs. Star Den Media Pvt. Ltd. & Anr.* Petition No.81 (C)/2009, it has been held as under:

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.”

25. However, this Tribunal in the case of Ravi Raja Communication Cable TV Network (supra) opined that the petitioner herein was not entitled to any relief as he was the Managing partner of the firm.

26. We may notice the relevant directions.

“In Petition No. 85 (C) of 2008 (Petitioner Vs. MAA TV), the case is almost similar as in the earlier two petitions except that some additional facts have been brought out. Respondent has pleaded that the petitioner’s firm pirated the signals of the respondent and telecasted a pirated film “DESAMURU” from Damarcharala Communications, Damaracharala Village wherein Mr.N. Ravinder Reddy is one of the partners. Since the copyright of the movie is solely and exclusive owned by the respondent and therefore, under the Video Piracy Act Mr.N. Ravinder Reddy was arrested. The petitioner has also

concealed vital information and simply by virtue declaring himself as an independent entity he does not come out of the syndicate in which he is a managing partner. Since the decoders have already been issued to M/s Mriyalaguda Cable Syndicate, the petitioner's firm whose sole proprietor is Mr. N. Ravinder Reddy is not entitled for another set of decoders. Petitioner also pleaded that his control room has been burnt out only a few days back."

27. With great respect we may observe that in support of its decision neither any provisions of the Indian Partnership Act was taken into consideration nor any precedent was noticed. If there is no bar for a person to carry on a business in his individual capacity, although he is a partner of a firm, no order can be passed by a Court of law in terms whereof in stead and in place of giving effect to the purpose and object of a Parliamentary Act and the Regulations framed by an independent Regulator, a person can be restrained from carrying on a trade. Such a right having regard to Article 19 (1) (g) of Constitution of India is a fundamental right and in that view of the matter, only by reason of provisions of law, reasonable restrictions can be imposed in relation thereto.

28. More significantly in this case, the petitioner and the respondent no.1 had been carrying on a such business for a long time. There has been a temporary suspension but as noticed hereinbefore, the respondent no.1 has no objection in granting signals to the petitioner. In that view of the matter, we are of the opinion that the order of this Tribunal in the aforementioned Petition no.85 (C)/2008

cannot be said to have laid down any law constituting a binding precedent.

29. Mr. Tushar Rao, learned counsel appearing on behalf of the respondent no.2, however, urged that as a partner of a partnership firm is an agent and having regard to the fact that in terms of Section 16 (b) of the Indian Partnership Act, the partner is to account for and paid to the firm all profits made by him, if he carries on any business of the same nature competing with that of the firm, it must be held that the petitioner cannot be permitted to be granted the relief of obtaining supply of signals from the respondent.

30. There cannot be any doubt or dispute that a partner is an agent of the firm. There cannot furthermore be any doubt or dispute that a partner would have to account for the profits earned by it, if any, from the competing business, in the event if an action is brought therefor. A distinction, however, for the present case must be borne in mind i.e. right claimed under a statute and a right claimed under a contract.

31. Various decisions cited by Mr. Tushar Rao have no application to the fact of the present case. The right of a partner to carry on a business is an independent statutory right under the Regulation. It may be subject to the provisions of the Partnership Act. In the event, the respondent no.2 intends to obtain a decree against the petitioner herein for rendition of accounts insofar as he has been carrying on business under the name and style M/s Ravi Teja is concerned, it can avail its own remedy therefor.

32. But keeping in view a statutory right and furthermore in view of the fact that to the knowledge of the respondent no.2, the petitioner had been taking supply of signals from respondent no.1, in our opinion, no case has been made out to deny him the reliefs sought by it for herein subject, of course, to the right for accounts which may be claimed by the said respondent against the petitioner in an appropriate proceeding. If such a proceeding is initiated, undoubtedly the parties hereto would be entitled to raise their respective contentions which are available to them in law.

33. On the aforementioned backdrops, we may notice the decisions relied upon by Mr. Tushar Rao.

34. In *Mumtaz Ali vs. Kasim Ali* 1913 (11) Allahabad Law Journal 423, a learned Single Judge was hearing a Second Appeal. The court was dealing with a matter with reference to Section 257 of the old Code of Civil Procedure (CPC). An application for amendment of plaint was allowed and having regard to the provisions of Section 257 of the CPC an order of injunction was granted. The learned Judge, however, noticed as under:-

“...They entered into a partnership to carry on a market and a fair and to maintain an inn for the convenience of persons resorting to the market. For this purpose they executed a document on the 18<sup>th</sup> of January 1911 by which it was agreed that the market, the fair, and the inn would be jointly carried on, each brother doing his best to promote the business of the partnership. There was no specific covenant in this document that the defendant should not carry on any other business in the neighbourhood. The plaintiff brought the present suit on the allegation that the defendant had pulled down a part of the inn which stood on his cultivatory holding and had begun building shops

thereon in order to set up another market and he prayed either that the contract of partnership be rescinded or that an injunction be issued to the defendant restraining him from carrying on a rival market to the prejudice of the market in which the parties were partners...

xxx

It is true that under Section 56 of the Specific Relief Act, clause (a) an injunction should not be granted when equally efficacious relief can be obtained by any other usual mode of proceeding and it is contended by the learned Counsel for the appellant that as the plaintiff may recover profits or compensation under Section 259 of the Contract Act an injunction should not be granted, Section 54, clause (e) however, provides for the issue of a perpetual injunction, where such injunction is necessary to prevent a multiplicity of judicial proceedings, although the plaintiff may claim profits or compensation, that would lead to multiplicity of proceedings..."

35. It is difficult to hold that this petition would give rise to a multiplicity of proceedings inasmuch as the respondent no.2 is yet to invoke the provisions of Section 16 (b) of the Partnership Act. In that case a partnership was entered into to carry on a business or market and a fair and to maintain an inn for the convenience of persons resorting to the market. The suit was filed on the allegations that the defendant had pulled down a part of the inn which stood on its cultivatory holding and had begun building a shop thereon in order to set up market and prayed either that the contract of partnership should be rescinded or that an injunction be issued restraining the defendant from carrying on a rival market to the prejudice of holding a market in which the parties were partners.

36. He prayed for an amendment to the plaint on the premise that after the institution of the suit, the defendant had removed the market which he had to set up with another and had been carrying the same on the partnership with another person. Two Courts granted a decree in favour of the plaintiff. The learned Judge was hearing a Second Appeal. In the peculiar facts and circumstances of the said case and an order of injunction was passed. In this case, the respondent no. 2 is yet to bring any action against the petitioner.

37. In *Narottamdas Mayabhai Shah and Ors. Vs. Anubhai Sarabhai Shah and Ors.* reported in 1977 Gujarat Law Reporter 73, while hearing a Civil Revision Application, the Gujrat High Court opined:-

“...It is not possible to read clause (b) of sec. 16 as contemplating competition in a business carried on by a partner in present on one hand and a business which was once being carried on by the partnership in the past. The competition must be at the same point of time. The very idea of competition connotes a rival activity at the same point of time. There cannot be rival business activity on the part of a partner if the partnership itself is not carrying on any business activity at all. There cannot be a competition or a race between a person who is standing still and a person who is running. In order to fall within the ambit of competition both must be carrying on some activity. There cannot be any competition if one is inactive and the other is active. There cannot be an elocution competition between a dumb man and an eloquent man. On a true interpretation of clause (b) of sec. 16 it is impossible to hold that the business activity carried on by the appellant in a different name was one which was of the same nature as and competing with that of the firm.....”

The said decision, therefore, has no application.

38. In Mohd. Kamil and Ors. vs. Hedayetulla AIR 1926 Calcutta 380, it was held that the partner can carry on business privately, if he does not compete with the firm stating:-

“The mere fact that there were similar businesses in which the defendant was interested is not enough to justify the profits of those businesses being brought into the accounting. Unless expressly restricted by agreement, a partner may carry on another business privately, so long as it does not compete with and is not connected with the business of the firm and so long as he does not represent it to be the business of the firm. He is not bound to account for the profits of a non-competing business, even though he may be enabled to push the private trade better than would otherwise be the case by reason of his connexion with the firm.”

39. Yet again in Mulchand Tagiomal and Another vs. Shamdas Jethanand and ors. AIR 1941 Sind 73, it was observed:-

“After having heard the learned advocate for respondent, Shamdas and the learned advocate for the appellants on this point at very great length, we are of the opinion that this contention is sound and must succeed and that these second appeals must be dismissed. The contract of partnership is a contract uberrima fidei; S.9, Partnership Act, which materially reproduces S. 257, Contract Act, thus defines the relations between the partners in a partnership;

Partners are bound to carry on the business of the firm to the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information

of all things affecting the firm to any partner or his legal representatives.

All the subsequent sections of the Partnership Act dealing with the relations of partners to one another are no more than amplifications and illustrations of the principles contained in S.9. The assignment of his rights in a partnership by a partner is clearly contemplated in the Partnership Act.”

40. The right to carry on a business in terms of the Regulations is a statutory right. The Act provides for the competition. The only remedy available to a partner is to have accounts, if any.

41. In Law of Partnership Principles, Practice and Taxation, Avtar Singh III Edition at page 241, it is stated:-

“The only penalty that the section provides for the breach of this duty is that the partner shall submit an account of his profits from such business and hand them over to the firm.”

42. We think that the law has been correctly stated therein. In this case, the petitioner has contended rightly or wrongly that for all intent and purport he does not have any control over the respondent no.2 firm and that he does not get any profit therefrom. He is also not a party to the Memorandum of Understanding. As a partner he is only liable to the firm of which he is a partner. If he is not a party, as a partner or otherwise in the Memorandum of Understanding between three different firms, he cannot be bound thereby.

43. The intervention application has not been filed by the partnership firm but by the respondent no.2. The question the legality or validity of said Memorandum of Understanding and/or the binding nature thereof on the petitioner is required to be taken into consideration only if a suit for accounts is brought by the Partnership firm or any of the partners, who thinks that it could be entitled to a share in the profit of the petitioner concern. This is not the appropriate forum for determining the said question and in any event at this stage and that too only at the instance of the respondent no. 2.

44. We, however, are not inclined to agree with Mr. Khatri that the respondent no.2 can not be held to have any locus standi, on the ground that it is an unregistered firm in filing the application for impleadment, as otherwise, in law it has a locus standi to oppose the prayer of the petitioner and in view of the MOU.

45. Submission of Mr. Bhatia is that area map has not been supplied. However, it appears that the petitioner has complied with the said requirement on 6.12.2010. The petitioner, however, may, if not already complied with the requirements of Regulation 9 of the Regulations, namely supply the SLR, would do so, whereupon the respondent upon holding negotiations with it enter into an agreement.

46. With the aforementioned observations, this petition is allowed.

47. The respondent no.1 is directed to supply signals to the petitioner on usual terms on receipt of the subscriber line reports, if not

already received. In the facts and circumstances of the order there shall be no orders as to costs.

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**(S.B.  
Sinha)**  
**Chairperson**

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**(G.D. Gaiha)**  
**Member**

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**(P.K. Rastogi)**  
**Member**

**/NS/**