

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated : April 2, 2012

M.A. No.130 of 2012 in Petition No. 483(C) of 2011

RVR Infrastructures Ltd.

...Petitioner

Vs.

Media Pro Enterprise India Pvt. Ltd.

...Respondent

BEFORE:

**HON'BLE MR. JUSTICE S.B. SINHA, CHAIRPERSON
HON'BLE MR.P.K. RASTOGI, MEMBER**

For Petitioner

: Mr. Navin Chawla & Mr.Sharath
Sampath, Advocates

For Respondent

: Ms.Pratibha M. Singh, Mr. Vadivelu
Deenadayalan and Mr. Upender Thakur,
Advocates

ORDER

Respondent has filed an application for a direction upon the Petitioner herein to pay a sum of Rs.31,75,964/- being the amount outstanding till March, 2012 towards the subscription fee payable by

it. Petitioner has filed this petition, inter alia, praying for the following reliefs:

- (a) Hold the Public Notice dated 26.11.2011 and Notice under Clause 4.1 dated 23.11.2011 issued by the Respondent as illegal and unsustainable and quash the same;
- (b) Restrain the Respondent from in any manner interfering/disrupting or disconnecting the signal services being provided to the area of operation of the Petitioner until disposal of this petition;
- (c) Direct the Respondent to honour its commitment to enter into a Placement Agreement with the Petitioner on such terms and conditions as mutually agreed between the parties;
- (d) Direct the Respondent to hold a meeting to reconcile the entire accounts of the petitioner;
- (e) Pass an ad-interim ex-parte order in terms of prayers (b) & (d) made above;
- (f) Pass such other and further orders as may be deemed fit and proper in the facts and circumstances of the case.

On an interim prayer having been made, this Tribunal restrained the respondent from not giving effect to the public notice dated 26.11.2011, subject to the following:

“It is made clear that in the event it is found that the Petitioner owes the amount demanded from it by the Respondent or any other sum, the same shall be paid to the Respondent without any demur whatsoever, albeit may be on a provisional basis.”

Pursuant to the observations made in the said order, the parties met but reconciliation of accounts between the parties did not materialize. On a suggestion made at the bar, Mr. Arun Kathpalia, a senior member of the bar was requested to examine the accounts submitted by the parties, inter alia, on the premise that whereas according to the Petitioner a sum of Rs.15.00 lakhs was outstanding, the Respondent contended that a sum of Rs.43.00 lakhs was due to the Petitioner.

Before Mr. Kathpalia accounts were produced.

A statement of the Chairman of the Petitioner company was also recorded.

A report was filed by Mr. Kathpalia stating:

"8. From the documents enclosed and the above statements made it is submitted:

- A. The billing as reflected in the statement of account prepared by the Respondent tallies with the amounts stated in the Agreement as Enclosures I to IV;
- B. The Annexure submitted by the Petitioner was different from the Annexure to the corresponding subscription agreement submitted by the Respondent;
- C. All payment made by the Petitioner are reflected in the statement of account prepared by the Respondent;
- D. The statement also reflects receipt of payments from/or to the account of the Petitioner for the period February to July, 2008, the payment of which the Petitioner disclaims having been made and the

Petitioner disputes its liability to make any payment for this period.

E. Though in the statement of account prepared by the Petitioner, other billing also did not tally with the subscription Agreement produced by the Respondent, on 25.1.2012, the Petitioner limited its dispute to the charges for the period August, 2008 to December, 2008, claiming that for this period the correct billing should have been Rs.5,75,579.61;

F. The said statement of account also contains a charge of Rs.1,22,514/- on account of cheque bouncing charges.

The said report was produced before us on 9.2.2012. Copies thereof were made available to the counsel for the parties. Relying on or on the basis of the said report the present application was filed. By an order dated 19.3.2012 it was directed:

"An application has been filed by the Respondent directing the Petitioner to pay the amount as found to be due and owing to it from the Petitioner by the learned Commissioner.

Put up this matter on 22.3.2012 under the same heading. Reply thereto, if any, may be filed by 22.3.2012."

However, as on 22.3.2012 Mr. Sampath, wanted to have instructions from his client on the said application. It was directed to be put up on 27.3.2012.

Mr. Naveen Chawla, learned counsel appearing on behalf of the Petitioner would contend:

1. Mr. Kathpalia having been appointed only as a mediator and not as a commissioner, he could not have filed the report.
2. In any event, from the documents filed by the respondent itself and in particular its statement of accounts, it would appear that there exist various discrepancies therein.
3. The Petitioner's positive case being that the agreement dated 24.7.2008 came into effect on and from 1.8.2008 and not from February, 2008 and a sum of Rs.6.00 lakhs, shown in the Petitioner's statement of accounts to have been paid in July, 2008, but in fact paid in August, 2008 and no payment prior thereto has been shown, it is evident that no amount by way of outstanding as owing and due to the Respondent.
4. Respondent never supplied any copy of the agreement to the Petitioner.

Had a copy of the said agreement been supplied, the Petitioner could have shown that no IRD boxes had been supplied in respect of CNBC channel.

5. The Petitioner agreed to the enhancement in the subscription fee only because a reciprocal promise was made by the Respondent that it would get a sum of Rs.40.00 lakhs per annum from the Broadcasters by way of placement charges.

6. A part from the claim of the Petitioner in any event is barred under the law of limitation.

Mrs. Pratibha M. Singh, learned counsel appearing on behalf of the applicant-Respondent, however, would contend that Mr. Kathpalia was in fact appointed as a Commissioner.

Disputes between the parties revolve around the quantum of the outstanding amount.

From the report filed by Mr. Kathpalia, it is evident that even the Petitioner has filed a part of the agreement which would also go to show that the supply of signals started from February, 2008.

Even if no payment is directed to be made towards supply of CNBC channel, the Petitioner would be entitled to a rebate of only Rs.2,25,000/- i.e. at the rate of Rs.75,000/- per month.

So far as the charges towards bouncing of cheques are concerned from the annexures appended to the Miscellaneous Application it appears that a large number of cheques bounced.

So far as submission of Mr. Chawla relating to the status of Mr. Kathpalia is concerned, from a perusal of the order dated 22.12.2011 it would appear that he was not appointed as a Mediator. The word 'Mediator' only appears in the order dated 24.1.2012 when some submissions might have been made at the Bar.

In our order dated 9.2.2012 both the words Mediator/Commissioner have been used.

The dispute between the parties at this stage revolves round the interim order passed by this Tribunal. Mr. Kathpalia was neither appointed to act as a Mediator in terms of Section 89 of the Code of Civil Procedure nor was he appointed as a Commissioner for the purpose of taking accounts between the parties as if a preliminary decree has been passed.

Keeping in view the fact that both the parties are companies incorporated and registered under the Indian Companies Act, 1956 it was expected, that they would produce their respective books of accounts, on the basis whereof the parties would be able to reconcile the same in the presence of Mr. Kathpalia. It was only for the purpose of determination of any amount which is found to be due and owing; albeit on a provisional basis and subject to determination of the issues between the parties.

From the proceedings which took place before the learned counsel, it does not appear that the parties treated him to be a Mediator *stricto sensu* having been appointed in terms of Section 89 of the Code of Civil Procedure or otherwise.

Both parties produced their respective documents.

Even as noticed heretobefore, the Chairman of the Petitioner company got his objection to the statement of accounts recorded, which read as under:

"7. In the proceedings of 25.1.2012, the Chairman of the Petitioner stated that while the statement of account prepared by the Respondent reflected all the payments made by the Petitioner, they had the following objections to the statement;

- i. Though the Petitioner had not made any payment of subscription dues between the period February, 2008 to August, 2008, the Statement wrongly reflected payments by the Petitioner in this period;
- ii. The payment of Rs.6,00,605/- reflected to have been made in the month of July, 2008 was actually paid in August, 2008;
- iii. The Petitioner was not liable to make any payment for the months of February, 2008 to July, 2008 as in this period it did not have any agreement with the Respondent.
- iv. The Petitioner disputed the subscription charges for the period August, 2008 to December, 2008 as, according to it the correct billing should have been Rs.5,75,579.61, as against the reflected billing of Rs.6,50,583/-"

The Respondent produced five documents in support of its case; whereas the Petitioner produced two documents, one of them being an Annexure to the subscription agreement dated 24.7.2008 which was described as annexure `A' and ex facie would go to show that the relationship between the parties started from February, 2008 and in

terms thereof, towards subscription charges for Bouquet-I and Bouquet-II a sum of Rs.5,12,263.80 was payable.

Apart from the said Annexure, the agreement dated 24.7.2008 contains another annexure which has been described as Annexure 1-A. The said annexure relates to CNBC channels for the period 1.4.2008 to 31.12.2008 for which a sum of Rs.66,817.02 was payable. If the said sum is added to the aforementioned sum of Rs.5,12,263.80, the monthly subscription amount comes to Rs.5,79,016.46/-.

Mr. Chawla's submission that the relationship between the parties started only in August, 2008, and not in February 2008, thus, prima facie, cannot be accepted.

It may be true that the Petitioner has signed three different sheets attached to the agreement. Moreover, the agreement also prima facie shows that it was valid from 1.2.2008. The correctness of the contention of the Petitioner that the agreement became operative from 1.8.2008, thus, requires detailed scrutiny at the trial.

So far as submission of Mr.Chawla that there had been a reciprocal promise on the part of the Respondent that placement agreement would also be entered into; suffice it to say that before the learned Commissioner no such case has been made out. Even otherwise the books of accounts of the parties evidently do not reflect that such a transaction has been carried out.

Mr. Chawla however, produced before us a statement of accounts which was submitted by his client before the Respondent for the purpose of reconciliation of the accounts on or about 8.6.2011 contending that in one entry, viz. in respect of April, 2010 to March, 2011 that although according to the Respondent a sum of Rs.84,46,5544/- was due, according to the Petitioner a sum of Rs.67,26,305/- only was due and the difference in the amount of Rs.17,20,249/- was towards placement charges.

Even the said statement of account does not show that the aforementioned difference in the accounts between the parties was towards placement charges.

At this stage, it is not necessary to go into the nitty gritty of the aforementioned issues between the parties.

A final determination in that behalf can only be made upon consideration of the evidence which may be adduced.

However, keeping in view the issues with regard to supply of signals of CNBC channels, we are of the opinion that deductions to the extent of Rs.2,25,000/- may be allowed. It has also not been shown before us that as to on what basis the opening balance Rs.1,79,236 has been made.

It is accepted by Mr. Chawla that in terms of the interim order, the Petitioner has made itself liable to pay at the rate of Rs.7,55,356/-

per month towards the feed charges. It is also accepted that no such payment has been made for the month of March, 2011.

In its Miscellaneous Application the Respondent contended, before this Tribunal that a sum of Rs.31,70,964/- is due.

Having considered the entire matter we are of the opinion that if the Petitioner is directed to make a further payment of Rs.20.00 lakhs upto March, 2012 the same would meet the interest of justice. We have passed this order merely on a provisional basis and without prejudice to the rights and contentions of the parties. The Petitioner, it goes without saying, shall continue to pay the monthly subscription charges at the aforementioned rate.

The Miscellaneous Application is disposed of with the aforementioned directions.

(S.B. Sinha)
Chairperson

(P.K. Rastogi)
Member

April 2, 2012