

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

DATED 7th February 2012

M.A.No.218 of 2011
in
Petition No.237 (C) of 2010

Neo Sports Broadcasting Pvt. Ltd. ...Petitioner
Vs.
Shin Star Cable Network, Uttarakhand ...Respondent

BEFORE:

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

For Applicant in M.A.218/11 : Mr. Sunder Khatri, Advocate

For Respondent : Mr. Vishal Kumar, Advocate

ORDER

P.K.Rastogi, Member

This application has been filed by the applicant/Respondent being aggrieved by an order dated 15.02.2011 passed by this Tribunal in the Petition No. 237 (C) of 2010, whereby this Tribunal had passed the ex-parte decree against it for the recovery of Rs. 1,96,854/- in favour of Neo Sports Broadcasting Pvt. Ltd.

2. The applicant has submitted that he and his partner namely Mr. Shanker Kumar were working as a cable operator in the name and style of "Shin Star Cable Network" till 31.03.2007, thereafter, they

stopped their business as a cable operator. One day, Sh. Ranjit Saini, officer of the Neo Sports Broadcasting Pvt. Ltd. informed the applicant on 22.05.2011 that a decree for the recovery of a sum of Rs. 1,96,854/- has been passed against the applicant. The said officer sent an e-mail by attaching the order dated. 15.02.2011 passed by this Tribunal alongwith false, forged and fictitious interconnection agreement dated 27.03.2008. The applicant has never signed the agreement as alleged by the Neo Sports Broadcasting Pvt. Ltd. (Petitioner).

3. The applicant further stated that no court notice or summons has been received by the applicant during the pendency of the petition no. 237(C) of 2010. The applicant was the small cable operator till 31.03.2007 only at the address # Top Floor, Super Complex, Chandra Acharya Chowk, Haridwar. It has closed its current account of the Bank namely Bank of Maharashtra, Haridwar Branch, no transactions has been made after 31.03.2007. After this date, the applicant had never applied for the postal licence as a cable operator from the department of Post or no licence directly or indirectly issued by any authorities in favour of the applicant.

4. In its further submission the applicant mentioned that no written agreement has been executed between the applicant and the Neo

Sports Broadcasting Pvt. Ltd. Again, the applicant is having no business or commercial relations with Mr. Brij Gupta. However, Sh. Brij Gupta has executed an agreement with Bharat Heavy Electronic Limited (BHEL) to run the business as a cable operator in the name and style of "New Balaji Channels".

5. The applicant wrote a letter to the petitioner "Neo Sports Broadcasting Pvt. Ltd." on 28.05.2011 itself contending that he was not a cable operator at the relevant time and all correspondence were made between the petitioner and Sh. Brij Gupta.

6. In view of the said circumstances, the applicant prayed for :

"Set aside the ex-parte order/judgment/Decree dtd. 15.02.2011 in Petition No. 237 (C) of 2010 passed by this Hon'ble Tribunal ; and

Stay the operation of order/judgment/Decree dtd. 15.02.2011 in Petition No. 237 (C) of 2010 passed by this Hon'ble Tribunal ; and

PASS such other or further orders as may deem fit and proper in the interest of justice."

7. The petitioner while opposing the contention of the applicant submitted that Respondent was duly served with the court notice/ summons vide DTDC Courier bearing Consignment No Z19876406 on 10 August 2010 at 12:00 AM at the registered address provided by the

respondent in the Inter connection Agreement and as mentioned in registration certificate dated 18.03.2008, issued by the Postal Department, Roorkee. The respondent has been duly informed and the complete petition was duly served to the petitioner through speed post. The copy of the postal receipt has been enclosed with the petition. Moreover all the orders of court including the service of Court notice and summons to the respondent were duly sent to the registered address of the respondent/ applicant and even after the knowledge the applicant/respondent has failed to appear before this Forum.

The documents filed by the applicant /respondent along with the present application specify the same address as mentioned in the petition.

8. The petitioner further submitted that the present application does not meet the legal requirement as required under Order IX Rule 13 of Civil Procedure Code, 1908. The applicant was duly aware about the entire court proceedings as all the orders of the forum were regularly delivered at the registered address of the applicant/respondent and accordingly even after the passing of the decree by the Hon'ble Forum, he was duly informed. That applicant even has been aware about the decree and has filed the present

application after inordinate delay and the reason for delay in filing the present application is also not been specified in the present application. Hence, it requested this Tribunal to dismiss the application of the applicant/respondent.

9. The principal issue for our consideration is whether ex-parte decree issued by TDSAT on 15.02.2011 can be set aside in view of the facts submitted by the applicant. While the contention of the applicant is that he did not receive the summons/notice of TDSAT, the petitioner contends that the notices were duly served at the registered address. The applicant further submits that it is not doing any cable business after 31.03.2007 and closed its current account also with the Bank of Maharashtra.

10. During cross examination of Mr. Subhash Chander, the applicant by Mr. Vishal Kumar, Advocate for the petitioner / non-applicant, the witness states:

“Q.2: When did you come to know about the ex-parte order?

A: I have come to know about the ex-parte order on 24.5.2011.

Q.3: How do you come to know about the ex-parte order?

A: I was being told by Mr. Ranjeet Saini of Neo Sports that a decree of Rs. 1,96,854/- is passed against me.

It is correct that I used to receive the correspondence on the address mentioned at Annexure A-2 at the time of the business.

I started my cable operation business on 1.4.2004.

I winded up my cable operation business on 31.3.2007.

I have not signed any agreement with the petitioner with regard to the services.

I received this letter at Annexure A-3 on 26.5.2011. Upon being inquired from the Computer Centre situated in the same building at 2nd floor, it came to my knowledge that two letters in the name of Mr. Brij Gupta were received by them. My office from where I run my Internet business at present is at the top floor of the same building.

It is correct that on 24.5.2011, I was been informed about the ex-parte order passed by the Hon'ble Tribunal and the two letters were received thereafter on 26.5.2011.

It is correct that I wrote letters to the petitioner and raised my objections in Delhi office as well as in Mumbai office.

I have closed my current bank account maintained for running of my cable business on 31.3.2007.

I have never received any notice or summons from the Tribunal with respect to the present petition."

11. From the cross examination of the applicant, it seems that the applicant has not received the notice from TDSAT. Further, the applicant alleges that the agreement copy submitted by the petitioner is forged and he is not doing any cable business after 31.03.2007. The judgment of TDSAT dated 15.02.2011 in favour of the petitioner

pertains to the period after 01.05.2008.

12. It is necessary that both the parties are given an opportunity of hearing. The TDSAT is not governed by CPC in strict sense. What is required to see that principle of natural justice is followed. Section 16 of the Telecom Regulatory Authority of India Act, 1997.(TRAI Act, 1997) reads thus :

“16. Procedures and Powers of Appellate Tribunal—(1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.”

In **International Finance Ltd. v. Fairgrowth Financial Services Ltd.**,(2005) 13 SCC 95, it was held: -

“2. Having heard the learned counsel for the parties, we are satisfied that the approach adopted by the Special Court in rejecting the application for setting aside the ex parte decree moved by the appellant has been too rigid. It is well settled that, ordinarily, a litigant should not be denied a hearing on merits unless something akin to gross negligence or misconduct on his part in contesting the proceedings is made out. Admittedly, in the present case, the appellant is a company having its corporate office at Kolkata. According to it, it had instructed its solicitors at Kolkata who, in their turn, had instructed the solicitors in Bombay to appear and plead for the appellant. It is pointed out that, initially, there was an appearance by the Bombay solicitors but, later on, there was a default in the appearance and sometime before the matters were taken up for

hearing by the Special Court, one of the members of the firm of solicitors for the appellant at Kolkata, who was looking after the appellant's cases, had suffered a serious accident and remained immobilised for a period of about nine months. In such circumstances, we agree with the learned Senior Counsel for the appellant that a liberal view ought to have been taken by the Special Court and the ex parte decree should have been set aside. We place on record the plea vehemently raised by the learned Senior Counsel for the appellant that it is the same claim which forms part of two proceedings and there has been in effect a double decree for the same amount passed against the appellant and if only the appellant would have been given an opportunity of defending itself, it would have demonstrated that the payments made by the appellant have more than satisfied the respondents' claim. We note the pleas, but we are not expressing any opinion thereon.

3. In the totality of the facts and circumstances of the two cases, we are satisfied that the appellant deserves to be allowed an opportunity of hearing and on testing the two cases on merits.

4. The appeals are allowed as per the conditions expressed hereunder. The impugned order dated 17-9-2003 rejecting the application for setting aside the ex parte decree dated 9-7-2003 is set aside. The ex parte decree dated 3-7-2003 is also set aside.

5. Both the cases shall stand restored to the file of the Special Court. The appellant is allowed the liberty of filing written statements in both the cases and contesting on merits but subject to the condition that the appellant shall within a period of four weeks from today deposit an amount of Rs 14,53,327.23p. with the Special Court which amount shall be retained in deposit by the Special Court. The Court may invest the amount in an interest bearing account with any scheduled bank. The amount shall be available to be disbursed subject to final decision in the cases by the Special Court. Failing compliance with the abovesaid direction, the decrees passed by the Special Court shall stand, and these appeals shall be deemed to have been dismissed."

13. In the present case, it seems from the record and the cross-examination that the petitioner was not aware of the proceedings of

this Tribunal. Further, the applicant asserts that he has stopped cable business after 31.03.2007 and the agreement of interconnection is forged one. Therefore, it is necessary to go into these aspects for doing justice to both the parties.

14. In view of the aforementioned reasons, we set aside the ex-parte decree passed by TDSAT on 15.02.2011, subject to the condition that 10% of the decreed amount should be deposited with the Tribunal within 2 weeks.

15. This M.A. is disposed of in terms of above order.

16. Put up the main matter for further orders on 22.02.2012.

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

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(P.K.Rastogi)
Member

/NC/