

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**

**NEW DELHI**

**Dated : January 4, 2012**

**MA No.308 of 2011 in Petition Nos.248(C) of 2010**

STAR DEN Media Services Private Limited

...Petitioner

Vs.

Television Eighteen India Ltd. & Ors.

...Respondent

**BEFORE:**

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

For Petitioner

: Mr. Amit Chadha, Sr. Adv. With Mr. Arjun  
Natarajan, Advocate

For Respondents 1 & 2 (TV: Mr.Kunal Tandon, Advocate  
18 Broadcast Ltd.)

For Respondent No.3 (SUN: Mr. Sharath Sampath, Advocate  
18 Media Services North Pvt.  
Ltd.)

For Respondent No.4: Mr. R.S. Mittal & Mr.Indranil Bannerjee,  
(Network 18 Media and Advocate  
Investments Ltd.)

## **ORDER**

### **MA No. 308 of 2011**

This application has been filed by the Respondent No.1 herein praying for amendment of its reply to the petition by inserting the following paragraphs after paragraph 12 thereof, which read as under:

“12A. It is stated that subsequent to the filing of the present petition, with effect from 1.7.2011, the Petitioner, with effect from 1.7.2011, the Petitioner has ceased to continue the business of distribution of TV Channels and all the channels as were being distributed by the Petitioner as on 30.06.2011, are being distributed by a new entity in the name and style of `Media Pro Enterprise Private Limited' with effect from 1.7.2011.

12B. It is stated that for the very same reason that the Petitioner is not distributing television channels, the Petitioner is not capable of performing its obligations under the Deal Memo dated 01.04.2008 as as such, the question of the Petitioner having suffered or suffering any damage or maintaining any action for damage under the Deal Memo cannot and does not arise. Indeed, the substratum of the Deal Memo dated 1.4.2008 does not survive. For that reason also, the question of maintaining an action for damages under the said Deal Memo does not arise.”

The Respondent herein is a `Broadcaster' within the meaning of the provisions of the Telecommunication (Broadcasting & Cable Services) Interconnection Regulation, 2004 (13 of 2004) as amended from time to time (The Regulations). It had entered into an agreement with the Petitioner herein, which was a content aggregator. The

Respondent-applicant had terminated the agreement dated 11.2.2009 by reason of a notice dated 13.6.2010.

It filed Petition No.222(C) of 2010 praying, inter alia, for the following reliefs:

- (a) Declare the purported termination notice dated 13.07.2010 as illegal, bad in law and null & void;
- (b) Declare that the Deal Memo dated 01.04.2008 is subsisting and binding on the Parties and that the Petitioner has exclusive rights to distribute Network 18 channels during the Term of the Deal Memo dated 01.04.2008;
- (c) Permanently restrain the Respondents and their servants, officers, agents, assigns or agents in interest, or any other persons acting for and on their behalf, for directly or indirectly, distributing Network 18 channels or interfering with the distribution of the said channels by the Petitioner under the Deal Memo dated 01.04.2008; and"

The petitioner herein has filed Petition No.240(C), inter alia, praying for a declaration that the termination notice dated 13.7.2010 is illegal and the deal memo 1.4.2008 is still subsisting.

The parties to the said agreement, however, have filed applications for amendment of their respective petitions.

By reason of an application for amendment to the petition, the Petitioner herein has, inter alia, prayed for damages for a sum of Rs.259.54 crores together with interest at the rate of 18% per annum as summarized in Annexure P/19 appended thereto.

Two applications for amendment of petition were filed by Applicant herein in the said Petition No.222(C) of 2010.

The first application for amendment was filed on 14.9.2010 which was allowed by an order dated 27.10.2010.

The second application for amendment was filed on 16.7.2010 which has also been allowed by an order dated 9.5.2011.

By reason of the said order this Tribunal while noticing a decision of the Allahabad High Court in Fertilizer Corporation of India Ltd. vs. Prabha Kirana Stores AIR 2004 Allahabad 82 directed as under:

“Keeping in view the principles contained in Order VII Rule 17 of the Code, we are of the opinion that this Tribunal should take into consideration the subsequent events.

We are furthermore of the opinion that the respondent shall not be prejudiced in any manner whatsoever, if the application for amendment of the petition is allowed subject to certain terms.

We, therefore allow this application for amendment of the petition subject to the following conditions:

1. The petitioner would pay a sum of Rs.25,000/- by way of costs to the respondent.
2. Such costs be deposited within one week from date.
3. The petitioner must file the amended petition within one week from date.
4. The respondent may file a reply thereto within two weeks thereafter.”

It may also be placed on record that the amended petition was filed on or about 16.12.2010 to which a reply has been filed by the Applicant herein in January, 2011.

It is not in controversy that the Petitioner-Star Den Media Services Pvt. Ltd. which was the content aggregator of channels of several broadcasters including the Broadcaster of Star Group of channels had entered into an agreement with Media Pro Enterprises Pvt. Ltd. with effect from 1.7.2011 whereby and whereunder the latter became the distributor of the channels of the Star Group of Broadcasters.

Similar arrangement has been entered into by and between Media Pro Enterprises Pvt. Ltd. and M/s Zee Turner Ltd.

This Tribunal having regard to the pleadings of the parties framed issues/additional issues on 4.7.2011 and 19.8.2011. The petitioner, however, filed an application for impleadment of one 'Network 18 Media and Investment Ltd.', (hereinafter called and referred to for the sake of brevity as Respondent No.4) inter alia, on the premise that from various documents it would appear that the Respondent Nos.1 and 2 which have since been merged in one entity namely Television 18 India Ltd. hived off the business to their own associate company namely Network 18 Media Service Ltd and on the same date entered into an affiliate agreement with Sun 18 Networks

Ltd. (respondent No.3 herein) through their own entity, the Respondent No.4 herein.

The said application for impleadment was allowed by an order dated 14.10.2011.

The impleaded respondent (respondent No.4) filed its reply on or about 14.11.2011.

The issues are thus required to be reframed keeping in view the reply of the said impleaded respondent.

This application for amendment has been filed on 24.11.2011. The Petitioner has filed its reply to the said application for amendment of reply inter alia, contending :-

1. The petition is not maintainable being barred under the proviso appended to Order VI Rule 17 of the Code of Civil Procedure.
2. The application for amendment of reply has been filed by way of a counter blast after the reply of respondent No.4 was filed.

Mr. Tandon Learned counsel appearing on behalf of the Applicant would contend that the application for amendment of the reply being related to a subsequent event, the same should be allowed.

Mr. Amit Chadha learned senior counsel appearing on behalf of the Petitioner would oppose the said prayer.

Order VI Rule 17 of the CPC reads as under:

“Order VI Rule 17. Amendment of pleadings— The Court may at any stage of the proceedings allow

either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

Mr. Chadha in support of his contention that the date of framing of issues is the first hearing of the petitioner and, thus, the proviso appended to order VI Rule 17 of the CPC shall stand as a bar to allowing the said application for amendment would strongly rely upon a judgment of the Supreme Court of India in *Vidyabai & Ors. vs. Padamlatha & Anr.* 2009 (2) SCC 409.

In *Vidya Bai*, the Supreme Court of India upon taking notice of the purpose and object of the CPC Amendment Act, 2002, opined:

"19. It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order VI, Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint.

20. In Salem Advocate Bar Assn. (supra), this Court has upheld the validity of the said proviso. In any event, the constitutionality of the said provision is not in question before us nor we in this appeal are required to go into the said question. Furthermore, the judgment of the High Court does not satisfy the test of judicial review. It has not been found that the learned Trial Judge exceeded its jurisdiction in passing the order impugned before it. It has also not been found that any error of law has been committed by it. The High Court did not deal with the contentions raised before it. It has not applied its mind on the jurisdictional issue. The impugned judgment, therefore, cannot be sustained, which is set aside accordingly."

In this case the quantum of damages claimed by both parties against each other is in issue.

A subsequent event has arisen, namely, on and from 1.7.2011 Media Pro Enterprises Ltd. had taken over the business of distribution of Star Group of Channels which is not in dispute.

It is also not in controversy that a subsequent event, even otherwise, can be taken into consideration for the purpose of determination of the issues between the parties.

If that be so, it is difficult to agree with the submission of Mr. Chadha that the question as to whether the Applicant herein is entitled to bring the said fact on record of this petition is not necessary for the purpose of determining the quantum of damages, which in our opinion would be a relevant fact.



The original deal memo was said to be valid for a period of five years. The Damages have been claimed by the Petitioner on that basis and in that view of the matter, the subsequent event arising in this case would be relevant for determination on the quantum of damages.

What would be the ultimate decision of this Tribunal is not required to be taken into consideration at this stage.

The Reply has been filed by the impleaded respondent, as indicated heretobefore, only on 14.10.2011.

This application having been filed on 24.11.2011, it cannot be said that the application for amendment has been filed after a long delay.

Moreover, the issues between the parties keeping in view the contents of the reply of respondent No.4 is required to be reframed and, thus, the proviso appended to Order VI Rule 17 of the Code would have no application in this case.

Mr. Chadha would submit that the Applicant has already served copies of the affidavits of its witness. However, Mr. Tandon informs us that the said affidavits have not yet been filed keeping in view the pendency of the application for amendment of the reply.

We, therefore, are of the opinion that in the interest of justice the application for amendment of the reply should be allowed.

The Applicant may file an amended memo of reply within one week from date.

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

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

**January 4, 2011**  
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