

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

DATED 25th SEPTEMBER, 2012

Petition No.664 (c) of 2012

ESPN Software India Pvt. Ltd. ...Petitioner

Vs.

Prasar Bharati ...Respondent

BEFORE:

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

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

For Petitioner : Mr. N. Ganpathy, Advocate

For Respondent : Mr. Mohan Parasaran, ASG
Mr. Rajeev Sharma, Advocate
Mr. Alok Prasanna Kumar, Advocate
Mr. N. Meyyappan, Advocate

ORDER

The disputes and differences between the parties hereto center round the interpretation of Section 3 of the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007 and the rules framed thereunder known as Sports Broadcast Signals (Mandatory Sharing with Prasar Bharati) Rules, 2007.

Section 3 of the said Act and Rule 4 (4) of the Rules read as under:-

3. (1) *No content rights owner or holder and no television or radio broadcasting service provider shall carry a live television broadcast on any cable or Direct-to- Home network or radio commentary broadcast in India of sporting events of national importance, unless it simultaneously shares the live broadcasting signal, without its advertisements, with the Prasar Bharati to enable them to re-transmit the same on its terrestrial networks and Direct-to- Home networks in such manner and on such terms and conditions as may be specified.*

(2) *The terms and conditions under sub-section (1) shall also provide that the advertisement revenue sharing between the content rights owner or holder and the Prasar Bharati shall be in the ratio of not less than 75: 25 in case of television coverage and 50: 50 in case of radio coverage.*

(3) *The Central Government may specify a percentage of the revenue received by the Prasar Bharati under sub-section (2), which shall be utilised by the Prasar Bharati for broadcasting other sporting events.*

“Rule 4 *Sharing of advertisement revenue and Marketing of commercial time –*

(4) *The party getting the marketing rights shall give a bank guarantee to the other party for an amount equal*

to the other party's share of guaranteed revenue which shall be valid for a period of six months from the first day of the month succeeding the month in which the sporting event comes to an end."

2. Indisputably in terms of the provisions of the said Act and the Rules framed thereunder, the Petitioner in the fact of the present case is to share 75 per cent of its bid amount, namely, Rs.20.00 crores with the Petitioner herein wherefor it has to furnish a bank guarantee.

3. Mr. Parasaran, learned Additional Solicitor General appearing on behalf of the Respondent would, however, submit that in this case, the Petitioner and/or the International Cricket Council (ICC) have violated the spirit of the provisions of the Act and the Rules framed thereunder in so far as ICC would continue to give its advertisements and its logo which would be violative of the underlying spirit of the Act. It is not in dispute that in terms of the provisions of the Act as also the Rules framed thereunder the parties have to share the revenue. However, in the event, the Petitioner makes its advertisement; the revenue is not required to be shared.

4. Mr. Ganpathy, learned counsel appearing on behalf of the Petitioner would contend that in terms of the Rule 6 of the Rules, the earlier notification dated 3.10.2007 which was valid for a period of 4 years expired on 2.10.2011. It is only on 23.8.2012 a new Notification has been issued but despite the same, having been called upon to

make its offer, the Petitioner has made its offer on 22.8.2012, i.e. before the new notification was issued. It has further been pointed out that the Respondent has been given notice about commercial enhancement by the ICC on 11.9.2012 whereafter only the Respondent has made its bid on 13.9.2012.

5. The learned counsel in our opinion is right in pointing out that prima-facie the Petitioner is entitled for getting the bank guarantee in terms of the provisions of the Act and the Rules.

6. However, keeping in view the fact that a substantial issue is required to be gone into at the hearing of the petition, we direct that the Respondent furnishes the bank guarantee in terms of the provisions of the aforementioned Acts and the Rules in favour of the Petitioner subject however to the condition that the Petitioner may not encash the same without the leave of this Tribunal.

7. Hearing of the matter is directed to be expedited.

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(S.B. Sinha)
Chairperson

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(P.K. Rastogi)
Member

HKC/