

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

Dated 15th February 2013

E.A. No. 1 of 2010

In

Petition No.137(C) of 2009

(M.A.Nos.92 & 234 of 2011, M.A.Nos. 217 & 315 of 2012)

Neo Sports Broadcasting Pvt. Ltd.

...Petitioner

Vs.

Channel 9 Digital

...Respondent

BEFORE:

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

For Petitioner/Decree Holder : Mr.Jaspreet Singh Kapur,Advocate
for Mr. Kunal Tandon, Advocate

For Respondent/Judgment Debtor : Mr.Anil Upadhyaya, Advocate

ORDER

M.A.No.315 of 2012

The present application has been filed by one Mr. Anil Upadhyaya/Judgment Debtor No. 2 against the decree order dated 7.4.2010 passed by this Tribunal in Petition No. 137(c) of 2009 for the recovery of outstanding of Rs. 13,89,487/- alongwith interest @ 12% per annum. The judgment debtor has prayed for setting aside the exparte order / judgment/ decree dated 7.4.2010 in Petition No. 137(c) of 2009 passed by this Tribunal and further requested for staying the operation of the said decree.

2. On 21.05.2009, the petitioner herein had filed a recovery petition

against the respondent with a prayer for recovery of Rs. 16,39,487/- alongwith interest @ 24% per annum from 5.5.2009 onwards. This Tribunal vide its order dated 30.11.2009 issued ex-parte order based on the pleadings and documents submitted by the petitioner as nobody appeared on behalf of the respondent. Later on decree was issued on 7.4.2010.

3. Judgment debtor No. 2, who is one of the partner of the respondent has filed this application on several grounds :

a. A murderous attack was made on him in the midnight of 12-13/12/2007 and he was thrown uncounscious on the railway track. He was rescued by local police and was hospitalised. Thereafter a major surgery was done on his skull and a portion of his skull was removed and also underwent operation of his right eye. He has submitted that he is still suffering from health problems due to this attack.

b. Other parteners did not inform the applicant about the points raised in the petition. He was briefed about other cases pending in the Hon'ble High Court of Delhi and before an Arbitrator from time to time.

c. The applicant has not entered into any agreement with the petitioner.

d. All agreeemnts and correspondences were done by another partner Mr. Yogesh Sharma and Mr. Alok Sharma, accountant of the

Channel 9 Digital.

e. His signatures on some papers were obtained when he was recovering from operation of his eye. Since other partners had already signed the documents, he also signed in good faith.

f. The applicant was mentally upset due to suicide by his mother on 28.02.2008 and father death on 11.03.2010 besides of other relatives of his wife during the intervening period. He was also under mental stress due to murderous attack, operation of skull bone and thereat to life from various sources.

4. In support of his plea, the applicant has submitted copies of the medical history, FIR, newspaper reports pertaining to alleged attack on his life. However, some of the papers are not legible.

5. In its reply, the petitioner has rejected the pleas taken by the applicant and has stated that it is an attempt to delay the proceedings of the execution application. It has also stated that in spite of large number of attempts made to serve the order / judgment on the respondent including by way of publication in newspapers, they did not make any attempt to come before this Tribunal.

6. In its rejoinder, the applicant has stated that he is only one partner

amongst the seven partners of the Channel 9 Digital firm. He is liable to pay only his share of the decretal amount. No court notice and summons regarding proceedings have been received by him. He has no knowledge of the publication and no interconnect agreement has been signed by him. He has only signed in a partnersheep died in good faith and he is not doing any cable business and does not deposit any Tax of cable business. He has further stated that Mr. Yogesh Sharma entered into the interconnection agreement with the petitioner and only he will be liable to pay the decretal amount to the petitioner.

7. It is noticed that proceedings have been instituted against the respondent i.e. Channel 9 Digital, a cable operator firm. The order issued by this Tribunal was based on the service of notice by way of alternative mode of service through paper publication. The applicant/ judgment debtor herein did not receive any notice from this Tribunal anytime and he was not aware of the various proceedings running in this Tribunal. As nobody appeared on behalf respondent, this Tribunal passed the said ex-parte order based on the submissions and evidence submitted by the petitioner.

8. From the record produced by the applicant, it is seen that the applicant was suffering from severe health problem due to attack on him at Lucknow. The agreement executed between the petitioner and the

respondent on 14.10.2008 bears the signatures of one Mr. Yogesh Sharma on behalf of the respondent. It is not known whether all the partners of the respondent firm have signed on behalf of the firm.

9. The applicant has further mentioned in his M.A. that property attached by the order of this Tribunal does not belong to him.

I am of the view that there is need to hear the applicant and there is need to implead all the partners. If an opportunity is given to the respondent and the applicant for hearing, no prejudice is going to be caused to the petitioner.

10. Therefore, in the interest of justice, the execution of the decree is stayed pending hearing in the main petition again.

11. The matter may be posted for further directions on 2nd April 2013.

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(P.K. Rastogi)
Member

/NC/

