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

Dated 10 March, 2016

**MA No.19 of 2016 in
E.A. No. 10 of 2015in
Broadcasting Petition No. 464 of 2013**

Media Pro Enterprise India Pvt. Ltd. ... Petitioner

Vs.

Digicable Network ... Respondent

BEFORE:

**HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON
HON'BLE DR. KULDIP SINGH, MEMBER
HON'BLE MR. BIPIN BIHARI SRIVASTAVA, MEMBER**

For Petitioner : Mr. Diggaj Pathak, Advocate
For (Media Pro) : Mr. Tejveer Singh Bhatia, Advocate
Mr. Upender Thakur, Advocate
Mr. Kunal Vats, Advocate
Mr. Rohan Swarup, Advocate

ORDER

By Aftab Alam, Chairperson – M/s Digicable Network (India) Pvt. Ltd.
is the judgement debtor in the execution proceedings. It has filed this

application (MA No.19 of 2016) for staying the execution proceedings under Order XXI Rule 29 of the Code of Civil Procedure.

Media Pro filed six petitions¹ before the Tribunal for recovery of its subscription dues from Digicable and its group companies. All the six cases were referred to the Tribunal's Mediation Centre in order to facilitate the resolution of the disputes through the process of mediation. Before the Mediation Centre, the parties were able to come to terms; a mediation settlement was drawn-up on 28.10.2014 and it was signed by the lawyers and the representatives of both sides. In terms of the settlement, Digicable agreed to pay to Media Pro Rs.9.52 crores, as against the claim of Rs.13 crores (computed up to 31.02.2014), by the latter and to give post-dated cheques towards payment of the aforesaid amount as per the schedule stated in the settlement. The terms of the settlement are as under:

"1. That the Respondent in all the aforesaid petitions has agreed to make a payment of Rs.9.52 crores as against the total claim of Rs.13.00 crores (approx.) upto 31.03.2014, raised by the petitioner by means of aforesaid six petitions. The said payment of Rs.9.52 crores have been agreed by the respondent to be paid in the time bound manner by handing over post dated cheques (in advance) as follows:

- (a) Rupees 2.38 crores on or before 31.12.2014.
- (b) Rupees 1.14 crores on or before 31.03.2015
- (c) Rupees 2.00 crores on or before 30.06.2015
- (d) Rupees 2.00 crores on or before 30.09.2015
- (e) Rupees 2.00 crores on or before 30.12.2015

2. Both the parties shall not make any claim in respect of the present Petition/Claim in any Court of Law or Tribunal except for remedies available to the parties in case of breach of the above mentioned agreements.

¹ Petitions Nos. 453(C)/2013, 454(C)/2013, 464(C)/2013, 467(C) of 2013, 2(C)/2014 and 3(C)/2014.

3. That the above settlement has been arrived at between the parties out of their own free will and volition and without any coercion or pressure from the other.

4. That both the parties undertake to remain bound by the terms and condition of this settlement.”

The mediation settlement was put up before the Tribunal and on 03.11.2014 all the six petitions were disposed of in terms of that settlement.

Digicable as well as the group companies failed to honour the settlement and no payment was made to Media Pro on their behalf. In those circumstances, Media Pro filed Execution Application No.10 of 2015 on 28.08.2015.

Before the Execution Petition was filed by Media Pro, Digicable filed Petition No.234(C)/2015 against it, also impleading Telecom Regulatory Authority of India as respondent no.2. This petition is based on the allegation that compared to other distributors of channels, Media Pro charged much higher rates of subscription fee from the petitioner in the interconnect agreement executed between the two sides. It is the case of the petitioner that the rates charged by Media Pro were discriminatory and hence, in violation of the Interconnect Regulations. In this petition it has sought the following reliefs:

“(a) Declare that the act of the Respondent No.1 in charging excessive and exorbitant subscription fee from the Petitioner as compared to its affiliates, as illegal, unfair and discriminatory;

(b) Direct the Respondent No.1 to pay/refund to the Petitioner an amount of Rs.10,05,73,265.79 (Rupees Ten Crores Five Lakhs Seventy Three Thousand Two Hundred and Sixty Five and Sevety Nine Paise Only) being the excess amount paid to the Petitioner;

(c) Direct the Respondent to render details about its agreements (Subscription & Carriage) with its affiliates namely Siti Cable Network and Den Network Limited for the DAS territory of Kolkara for the period 01.11.2012 to 31.03.2014;

(d) Direct the Respondent No.2 to produce before tribunal the agreements (Subscription & Carriage) of the Respondent No.1 with its affiliates namely Siti Cable Network and Den Network Limited for the DAS territory of Kolkata of the period 01.11.2012 to 31.03.2014”

It has also sought some interim reliefs that are materially the same as the main reliefs as quoted above.

In this petition, though there is no averment that Digicable was induced to enter into the mediation settlement under some misrepresentation and there is no prayer for setting aside the mediation settlement.

Earlier in course of hearing in the execution proceedings it was explained to Mr. Pathak that the payments in terms of the mediation settlement could not be made to wait and depend upon the final result of the later petition filed by Digicable.

Digicable then filed yet another petition being Petition No.264(C) of 2015 seeking a declaration that the mediation agreement dated 28.10.2014 was null and void. The declaration is sought on the plea that at the time of execution of the mediation settlement, Digicable was not aware that it was being charged much higher rates by Media Pro than some other distributors of TV channels.

And now, this petition is filed under Order XXI of Rule 29 of the CPC to stay the execution proceedings until the final decision in the two petitions filed by Digicable.

We have heard Mr. Diggaj Pathak in support of the petition and in our considered view it is fit to be rejected as devoid of any merit or substance.

On the one hand, there is a concluded money decree in terms of which Digicable agreed to pay Rs.9.52 crores to Media Pro against its claim of Rs.13 crores and on the other hand, there is the allegation by Digicable, yet to be adjudicated upon, that it was charged much higher rates by Media Pro than some other distributors. Any adjudication on the allegation obviously involves issues of facts and can only be decided after allowing parties to lead evidences in support of their case. At this stage, the petition filed by Digicable appears to be a shot in the dark for it does not even indicate the allegedly lower rates charged by Media Pro from the other distributors but merely makes the allegation and makes the prayer that Media Pro should be directed to disclose the rates at which it supplied signals to some other distributors.

It is indeed true that the Tribunal has held more than once that parity and non-discrimination are the essence of interconnection in the broadcasting sector but whether or not a given case of interconnection suffered from non-discrimination and want of parity is a pure question of fact that can be decided only in light of evidences produced before the Tribunal. It is thus evident that Digicable has a long way to go before it can succeed in the other two petitions.

This is a strong reason for not staying the proceedings in the execution case that stems from a mediation settlement based on an agreement between the parties.

It needs further to be borne in mind that Order XXI Rule 29 makes a clear distinction between a money decree and other kinds of decrees. In course of submissions when Mr. Pathak was asked what should be the security in terms of the proviso to the Rule, Mr. Pathak had none to offer.

Mr. Pathak, in course of the submissions, placed strong reliance on a decision² by a single judge of the Karnataka High Court. The paragraphs relied upon by Mr. Pathak indeed contain certain formulations that are expressed in rather wide terms but it cannot be overlooked that in that case the court was considering a decree of eviction followed by a suit by the tenant in which, he claimed that a fresh lease was drawn up between the parties after the decree by the Lok Adalat.

The aforesaid decision has no application to the facts of this case.

Thus on careful consideration of the entire matter, we are satisfied that the application under Order XXI Rule 29 of the CPC is completely without any merits.

We may note here that since the institution of the Execution case, Digicable seems determined to stall its proceedings on one pretext or the other.

The present application is yet another attempt to somehow not pay the amount

² CRP No.253 of 2011 decided on 19.09.2011 - U. Sadanand Udupa Vs. T. Kusum Shedthi : ILR 2013 KARNATAKA 3885

that it admitted to owe to Media Pro and that forms the basis of the mediation settlement between the two sides.

The application under Order XXI Rule 29 is accordingly dismissed with costs quantified at Rs.50,000/- payable to the TDSAT Employees Welfare Society.

Put up for further orders on 21.03.2015.

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Chairperson

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(Kuldip Singh)

Member

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(B.B. Srivastava)
Member

sks

