

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

**Dated 19 February, 2018**

**E.A No. 8 of 2016**

**In**

**Broadcasting Petition No.299 of 2015**

**(M.A. Nos. 441 of 2016 & 362 of 2017)**

MSM Discovery Pvt. Ltd.

... Petitioner

Vs.

Bareilly City Cable Network

... Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON**

**HON'BLE MR. B.B. SRIVASTAVA, MEMBER**

**HON'BLE MR. A.K. BHARGAVA, MEMBER**

For Petitioner

: Mr. Kunal Tandon, Advocate  
Mr. Shashank Sekhar, Advocate  
Ms. Ria Anand, Advocate

For Respondent/Judgment  
Debtor

: Mr. Nittin Bhatia, Advocate

**ORDER**

Heard learned counsel for the parties in respect of M.A.No.362 of 2017 filed  
in B.P.No.299 of 2015. It contains the following substantial prayers:-

“ a.) Set aside ax-parte Judgment and Decree dated 10/03/2016 passed by this Hon’ble Tribunal in the present petition and to allow the Respondent to contest the present petition on its merits;

b.) Implead M/s Technobile Systems as Respondent to the present petition while permitting the present Respondent to file an appropriate application seeking its deletion;

c.) Stay the execution proceedings filed by the Petitioner in terms of the ex-parte judgment and decree dated 10/03/2016; ..”

2. The petition was filed on 3.7.2015 seeking recovery of an amount of Rs.1,69,00,261/- from the respondent towards the outstanding dues of monthly subscription charges in term of an affiliation agreement for supply of signals of the petitioner’s channels within Bareilly town. The agreement has been signed by the respondent judgment debtor/applicant as a proprietor of Bareilly City Cable Network. Its term was from 1.12.2013 to 31.12.2014. The agreement also contains a Supplementary Validation Form indicating the fees payable by the Affiliate (Applicant) for different bouquets. This Form bears a date 26.3.2014 and is effective from 1.2.2014 to 31.12.2014.

3. After being satisfied that in spite of service of notice upon the respondent, i.e. Bareilly City Cable Network and also its proprietor (the applicant) and that the respondent had failed to appear even after notice, the petition was ordered to be heard *ex parte*. By an judgment and order dated 10.3.2016 the petitioner was granted an *ex parte* decree for an amount of Rs.1,51,68,963/-. Petitioner filed E.A.No.8 of 2016 on 8.8.2016 seeking execution of the aforesaid decree against the respondent. The notice of Execution Case at the given address came back unserved and hence permission was granted to serve the respondent at an alternate address. On 4.1.2017 it was observed that notice has been served on the alternate address of the respondent and affidavit of service has also been filed but there was no appearance from the respondent. The details of properties of the respondent were furnished for the purpose of attachment. On 16.3.2017 two properties – one being the business address and the other residential address of the respondent were attached on 16.3.2017. The attachment order was sent to the District Judge, Bareilly (U.P.) by the office through Speed Post. Since no reply was received, again on 19.7.2017 a request was made to the District Judge, Civil Court, Bareilly (U.P.) to complete the process of attachment as per law and submit a report. The report of District Judge dated 22.8.2017 was received to the effect that the office property could not be attached because it could not be verified as to which specific part was under occupation or control of the respondent. But the residential

property of the respondent was formally attached on 19.8.2017, as per report. When this report was being considered on 20.9.2017, the respondent appeared through a counsel and informed that he proposed to file an application for setting aside the *ex parte* judgment under execution.

4. The present M.A. was filed on 12.10.2017 i.e., beyond 30 days even from attachment on 19.8.2017 with a defense that the petition has been filed fraudulently by mentioning only business address of the respondent. However, the applicant has failed to show that he had furnished any other address except the business address mentioned in the Affiliation Agreement. The other defense of the applicant is that petition should have been filed against M/s Technobile Systems Pvt. Ltd. because respondent had transferred its network to that entity in February 2014 and informed the petitioner through email dated 18.2.2014 followed by a letter of same date and another email dated 20.3.2014. The applicant has also alleged that the petitioner has shown fraudulent service of summons of the present petition to obtain an *ex parte* decree and has misled the Tribunal by stating incorrect facts on affidavit. The applicant has claimed that for the first time it came to know of the *ex parte* judgment dated 10.3.2016 when a copy of order dated 19.7.2017 was pasted at his premises.

5. In order to enable the applicant to substantiate its case for impleadment and that it has actually transferred, sold, conveyed and assigned its right, title and interest to M/s Technobile Systems Pvt. Ltd. in February 2014, an opportunity was given on 23.1.2018 to file supplementary affidavit and to bring on record all the documents to show such transfer. The supplementary affidavit filed on 7.2.2018 contains various documents but none is related to the alleged transfer and there is not a chit of paper from M/s Technobile Systems Pvt. Ltd. that it had ever acquired the assets or liabilities of the respondent under the Affiliation Agreement existing between the petitioner and the respondent. It has been shown by learned counsel for the petitioner that the agreement contains clause 10 which governs Assignment of the agreement by Affiliate. The clause reads as under:-

“Assignment. – This Agreement may not be assigned by Affiliate without the prior written consent of Distributor. Any assignment in violation of the foregoing sentence shall be null and void and without effect. In the event Affiliate intends to sell or otherwise transfer any System, Affiliate shall provide Distributor with prior written notice of such sale or transfer and obtain its consent. At the request of Distributor, Affiliate shall cause the transferee to assume in writing this Agreement, and to be jointly and severally bound hereby as to such systems. Distributor may assign this Agreement in its sole and absolute discretion; provided, however, that Distributor shall cause the assignee to assume in writing this Agreement, including, without limitation, all of Distributor’s obligations to Affiliate, and, in which

event, Distributor shall be released from any and all liability under this Agreement to Affiliate.”

6. It has been shown on behalf of the petitioner that no prior or even later communication of consent by petitioner (Distributor) was ever obtained by the respondent and hence the claim of Assignment is totally contrary to the clear stipulation in the Agreement. It was also pointed out that clearly the respondent did not intend to make a valid Assignment otherwise it would not have signed the Supplementary Validation Form as a part of the Agreement, on 26.3.2014. According to learned counsel for the petitioner, the entire plea of the respondent is without any foundation in law or on facts.

7. Learned counsel for the petitioner has drawn our attention to the fact that although an attempt has been made by the respondent to claim that it had ceased to have any connection with the office address after February 2014 and especially after lodging an FIR against him in December, 2014 by some of the office bearers of M/s Technobile Systems Pvt. Ltd. but the respondent has failed to aver or prove that he ever resigned as a Director from Balashri Entertainment Network Pvt. Ltd. in which he claims to have become a Director and which had allegedly acquired 49% holding in another company Netvision Ben Network Pvt. Ltd., wherein M/s Technobile Systems Pvt. Ltd. also has 51% holding. In the supplementary

affidavit respondent has admitted that M/s Technobile Systems Pvt. Ltd. is its Joint Venture partner and Distributor in the area of Bareilly. The documents in Annexure-I (colly) reveal that in Netvision Ben Network Pvt. Ltd. the respondent's name is at the top of the list of Directors beginning from 11.6.2014 and his tenure had not ended even when the print out was obtained on 14.9.2017. That document also shows the registered address of its company as the business address of the respondent at which notices had gone and were reported to be served. The date of last AGM is shown to be 30.9.2016 when respondent was a Director along with four others.

8 On going through the records relating to service of notice it is found that as averred by the petitioner, the notices sent in the name of the firm as well as in the name of proprietor of the respondent were at the correct address given in the agreement and they were validly served as per the Speed Post tracking record. Additionally, as per affidavit of service dated 28.9.2015, *dasti* summons were served but the respondent refused to acknowledge the receipt of summons. The materials brought on record by the applicant in support of its pleas that he never knew about the proceedings or the *ex parte* judgment and decree till a copy of the order of the Tribunal dated 19.7.2017 was pasted at his premises, is not supported by any reliable material or even circumstances. He has vaguely made such an

assertion and evaded to specifically contradict the service reports or the affidavits showing service of notice/summons. The respondent has also made no rebuttal or mention of the notice issued and served at an alternate address in the execution proceeding itself.

9. In the light of facts noted and discussions made above, we find no good reason to accept the case of the applicant or to allow any of the prayers made in M.A.No.362 of 2017.

10. Since we have found that notices were validly served on the respondent before the petition was directed to be heard *ex parte*, the M.A. for setting aside the *ex parte* decree dated 10.3.2016 is barred by limitation because it has been filed on 12.10.2017, whereas Article 123 of the Limitation Act grants only 30 days from the date of decree or knowledge of decree, if summons are found to be not duly served. There is no prayer to condone any delay.

11. For all the reasons indicated hereinabove, we find no merit in M.A.No.362 of 2017. The same is accordingly dismissed.

12. Let the execution application be placed for further consideration on 12.3.2018.