

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL  
NEW DELHI

<sup>14/15</sup>  
Dated June, 2016

E.A. No. 1 of 2014

In

Broadcasting Petition No. 491 of 2012

Den Networks Ltd. ... Petitioner  
Versus  
M/s Mahuaa Media Pvt. Ltd. ... Respondent

Along with

EA No.1 of 2015

In

Broadcasting Petition No.23 of 2012  
(with M.A No,466 of 2015)

DigiCablecomm Services Pvt. Ltd. ... Petitioner  
Vs.  
Mahuaa Media Pvt. Ltd. ... Respondent

E.A.No.6 of 2015

In

Broadcasting Petition No.67 of 2012

Hathway Cable & Datacom Ltd. ... Petitioner  
Vs.  
Pragya Vision Pvt. Ltd. ... Respondent

E.A.No. 8 of 2015

in

Broadcasting Petition No. 107 of 2013  
(M.A.No.467 OF 2015)

Tata Sky Limited .... Petitioner  
Vs.  
Mahua Media Pvt. Ltd. .... Respondent

**E.A. No. 16 of 2014**

**In**

**Broadcasting Petition No. 246 of 2012**

Wire and Wireless (India) Ltd.

...Petitioner

Vs.

Mahua Media Pvt. Ltd

...Respondent

**E.A. No. 17 of 2014**

**In**

**Broadcasting Petition No. 247 of 2012**

Indian Cable Net Company Ltd.

...Petitioner

Vs.

Mahua Media Pvt. Ltd

...Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON**

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

- For Petitioner[in P.No.491(C) of 2012] : Mr.VibhavSrivastava, Advocate  
Mr.GauravKaushik, Advocate
- For Petitioner[in P.No.246(C) & 247(C):  
of 2012] : Mr.Tejveer Singh Bhatia, Advocate  
Mr.Upender Thakur, Advocate  
Mr.Kunal Vats, Advocate  
Mr.RohanSwarup, Advocate  
Mr.V.S.Dhillon,Advocate
- For Petitioner[in P. No.23(C) of 2012]: Mr.DiggajPathak, Advocate  
Mrs.Shweta Sharma, Advocate
- For Petitioner[in P.No. 67(C)of 2012]: \* Mr.Nasir Husain, Advocate
- For Petitioner[in Petition No. 107(C) of  
2012] : Mr.Chetan Sharma,Sr. Advocate  
Mr. Nikhil Rohatgi, Advocate  
Mr.ChaitanyaSafaya, Advocate  
Mr.RaghavPandey, Advocate  
Ms.ShrutiGarg, Advocate  
Mr.MohitKhubchandani, Advocate

For Respondent

: Mr.RamjiSrinivasan, Sr. Advocate  
Mr.VineetBhagat, Advocate  
Mr.Vivek, Advocate  
Mr.D.Gupta, Advocate  
Ms.Radhika Gupta, Advocate  
Mr.Puneet Jain, Advocate

### ORDER

By AftabAlam, Chairperson –Mahua Media Pvt. Ltd. (Mahua), a broadcaster of TV channels is faced with execution proceedings in respect of five decrees in favour of different distributors of TV channels. Leaving aside interests, the principal amounts alone in the five decrees add up to the sum of Rs.33,44,50,344/-. A brief description of the decree holders and their respective decrees is given below in the form of a table:

S.No	Name of the decree-holder	Petition No.	Date of decree	Decretal amount	Appeal, if any, against the judgment & decree and its status	Date of filing of the Execution Application
1	DigiCablecomm Service Pvt. Ltd.	23(C)/2012	20.11.2012	Rs.2,42,44,373/-	-	15.01.2015
2	Wire & Wireless India Ltd.	246(C)/2012	22.11.2013	Rs.4,30,87,335/- with interest @ 12% per annum from 30.9.2011 till the date of payment	Civil Appeal No.17162/2014. Admitted, no stay.	02.04.2016
3	Indian Cable Net Co.	247(C)/2012	22.11.2013	Rs.5,26,50,797/- with interest @ 12% p.a. from 30.9.2011 till the date of payment	Civil Appeal No.8125-8126/2014. Admitted, no stay.	02.04.2014
4	DEN Networks	491(C)/2012	29.11.2013	Rs.4,18,40,173/- with interest @ 12% p.a. from 31.03.2012 till the date of payment.	Civil Appeal No.17157/2014. Dismissed on 15.07.2014	15.01.2014

5	Tata Sky	107(C)2013	15.05.2015	Rs.17,26,27,666/- with interest @ 10% p.a. from 7.3.2013 till payment and cost of Rs.25,000/-	Civil Appeal No.41981 of 2015. Dismissed on 8.4.2016	07.08.2015
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As may be noticed from the above table, the execution proceedings against Mahua commenced with the filing of the Execution Application on behalf of DEN on 15 January 2014. Later on, the other four decree holders joined in the proceedings with their respective execution applications filed on different dates, leading to a consolidated proceeding against Mahua on behalf of all the five decree holders.

Mr. P.K. Tiwari, the Managing Director of Mahua, after his release from custody on the basis of an order passed by the Bombay High Court<sup>1</sup>, first appeared in person before the Tribunal in connection with the present proceedings on 19 March 2015. Since then, he has filed several affidavits undertaking to pay the decretal amounts to the five decree holders following highly deferred schemes of payment. No payment, however, has been made to any decree holder in terms of the undertakings given by Mr. Tiwari. In hindsight it appears that the affidavits were filed with a view to delude the Tribunal and to somehow delay the discharge of the decrees; there was no intention to make any payments to the decree holders even at the time of filing the affidavits. Mr. Tiwari has not only persistently

<sup>1</sup>See order dated 2 February 2015 passed by TDSAT

breached the undertaking on oath but from the different affidavits filed by him it appears(as is noted in the orders passed from time to time) that Mr. Tiwari made deliberate misrepresentation of facts and tried to suppress some relevant facts from the Tribunal as regards the bank accounts of Mahua and the money received on its behalf from advertisements and other sources even during the current proceedings. Even while denying any payment to the decree holders Mr. Tiwari has been spending money for running the TV channel broadcast by Mahua and this fact he successfully withheld from the Tribunal all this while.

It was in these circumstances that in course of hearing on 30 May 2016, the Tribunal expressed the view that though the breach of undertakings submitted on oath and the other acts of omission and commission by Mr. Tiwari as evidenced from the affidavits filed by him clearly brought the case under clause (c) of section 51 of the Code of Civil Procedure (CPC), the arrest and detention of Mr. Tewari in prison for three months would serve no purpose other than giving the decree holders some retributory satisfaction. Taking, therefore, a positive rather than a negative course, the Tribunal proposed to proceed in terms of clause (d) of section 51 of the CPC that might help in the discharge of the decrees, even if partially. The Tribunal expressed the intent to appoint a receiver in regard to all the tangible and intangible assets of Mahua in the form of a committee comprising one representative from each the decree holders. The decree holders accepted the

Tribunal's suggestion without demur. Mr. Srinivasan, learned senior counsel appearing on behalf of Mahua also gave unqualified consent to the arrangement in presence of Mr. Tiwari who was personally present in the court room. The Tribunal then adjourned the matter for the following day asking the two sides to submit a scheme of management for the committee.

On 1 June 2016, a scheme of management was submitted on behalf of the five decree holders, a copy of which was given to the counsel for Mahua for their response. On that date the Tribunal indicated that on further consideration it was of the view that including Mr. Tiwari too as a member of the committee would greatly facilitate the working of the committee. The suggestion was accepted by the decree holders and indeed, with alacrity, by Mahua. The matter was then once again adjourned for the following day to enable the counsel for the two sides to submit a joint scheme of management for the committee. On the following day (2 June 2016), on behalf of the decree holders, a note was submitted under the caption "Proposal for establishment of a committee". Mahua, it seems, had certain reservations in regard to some of the provisions in the note submitted on behalf the decree holders. On behalf of Mahua a separate note was submitted with certain modifications in some of the clauses in the scheme of management submitted on behalf of the decree holders.

As the decree holders and the judgment debtor are not able to submit a fully agreed upon scheme of management for the committee, the directions in that regard are made by the Tribunal.

It is made clear that the decision regarding formation of the committee as receiver of all the assets and liabilities of Mahua and its running business and the composition of the committee is made with the express consent of all the decree holders, on the one side and the judgment debtor on the other. The directions concerning the scheme of management for the committee are passed by the Tribunal.

In light of the above discussions, the following directions are made:

- (i) A committee is constituted consisting of a representative from each of the five decree holders, namely, DEN, Digi Cable, Wire & Wireless India Ltd, Indian Cable Net Co, Tata Sky and Mr. P.K. Tiwari as representative of Mahua, the judgment debtor.
- (ii) The committee is appointed Receiver in terms of section 51(d) of the CPC.
- (iii) The committee is constituted and it shall act with the sole purpose of improving and strengthening the affairs of Mahua and to promote its

finances so as to enable it to gradually and in a time-bound manner fully satisfy the five decrees against it.

- (iv) The committee shall hold its first meeting within 15 days from the date of this order. The convenor for the first meeting shall be the representative of Tata Sky, the decretal amount in whose favour far exceeds the decrees in favour of the other creditors. The convenor shall fix the date, time and the venue of the meeting taking into account the convenience of all concerned.
- (v) In the first meeting of the committee, Mr. P.K. Tiwari shall make a full and complete disclosure of all the immovable, movable, tangible and intangible assets of Mahua, all its bank accounts [other than account nos.0109102000036810 (IDBI Bank), 11921900000231 (DCB Bank) and 200999454000 (IndusInd Bank)], all the details relating to its business, all the sources of its revenue, its liabilities and the expenses being incurred by it. In case Mahua has or gets any receipts in cash (as evidenced from its three bank accounts), Mr. Tiwari shall make full disclosure of the same to the committee and the committee shall take control of the cash receipts which shall be appropriated for no purpose other than the legitimate business interests of Mahua.

- (vi) The committee shall then take full and effective and physical control of the office(s) and records of Mahua, all its immovable, movable, tangible and intangible assets including its business as a broadcaster of TV channels subject to any orders passed by a court or any lawful authority in respect of the Mahua assets or its running business.
- (vii) All the decisions by the committee shall be taken by majority vote with every member, including Mr. Tiwari entitled to one vote. The committee shall maintain a minute book of its meetings. The committee in its first meeting shall also frame the rules of procedure for exercise of authority of management over the affairs of Mahua as directed above, keeping in mind its object and purpose.
- (viii) In furtherance of its object and purpose, the committee shall take decisions and do all acts aimed at improving the business of Mahua and enhancing its finances. The committee shall take all administrative as well as business decisions concerning the affairs of Mahua. For removal of any doubt, it is made clear that the committee is fully authorized to negotiate with third parties, enter into business arrangements with third parties and execute agreements on behalf of Mahua with any third parties. It shall also be open to the committee to

act through smaller sub-committees with appropriate delegation of its powers as per the rules of procedure framed by it.

- (ix) The committee may, if it so decides, appoint a chartered accountant/auditor to audit the financial affairs of Mahua including all its transactions with 'related/sister companies', e.g. Pragma Vision Pvt. Ltd. for the past three years with a specific mandate and view to take note of and report on monies that might have been defalcated/misappropriated/siphoned off by the Directors of Mahua either by themselves or in concert or collusion with Directors/Stakeholders in related companies not excluding Pragma Vision.
- (x) The committee shall not act, directly or indirectly, in derogation of or contrary to any order concerning Mahua made by a court or any lawful authority.
- (xi) The committee shall not alienate or encumber any immovable or movable properties of Mahua without the prior permission of the Tribunal.
- (xii) Any cheques on behalf of Mahua shall continue to be issued under the signature of Mr. P.K. Tiwari but from this date no cheque will be signed by Mr. Tiwari unless it has the sanction in any special or

general decision by the committee. Any cheque signed by Mr. Tiwari from this date without the sanction of the committee's decision would be invalid and make Mr. Tiwari liable for the consequences, including the breach of this order.

- (xiii) The committee shall submit a financial report before the Tribunal by the fifteenth day of the expiry of each financial quarter.
- (xiv) It will be open to the committee to approach the Tribunal for any clarification or permission or instructions or directions on any specific issue.
- (xv) Any challenge to the decision of the committee by any third party or any dispute arising from any agreement executed by the committee on behalf of Mahua with any third party shall be an action against Mahua or a dispute between Mahua and the concerned third party and shall be defended/prosecuted on behalf of Mahua by the committee and all expenses in that connection shall be debited from Mahua's accounts.
- (xvi) The formation of the committee and its appointment as Receiver does not in any way discharge the five decrees in question and the rights of the decree holders against Mahua under their respective decrees shall remain subsisting until the decrees are fully satisfied in accordance with law.

Put up for orders on 22.8.2016.

.....  
(AftabAlam)  
Chairperson

...  
(B.B.Srivastava)  
Member

Certified to be  
a True Copy

D. P. Chamoli  
Desk Officer  
T.D.S.A.T.  
New Delhi