

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

Dated 20th July, 2017

M.A. No. 209 of 2016

In

Broadcasting Petition No. 233 of 2015

Sun Distribution Services Pvt. Ltd. Petitioner

Versus

All Digital Network India Ltd. & Ors. Respondents

BEFORE:

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

For Petitioner : Mr. Abhishek Malhotra, Advocate

For Respondent No. 1 : Mr. Navin Chawla, Advocate
Mr. Sharath Sampath, Advocate
Mr. Manikya Khanna, Advocate

For Respondent No. 3 : Mr. Tushar Singh, Advocate

ORDER

This M.A. has been filed by the applicant petitioner praying for issuance of a decree for an amount of Rs. 13,24,79,663/- in favour of the petitioner and against the respondent no. 1 on the basis of being an admitted outstanding subscription charge due as on June 24, 2016; and payable by the respondent no. 1.

It is the contention of the petitioner that a petition was filed originally seeking interalia recovery of a sum of Rs. 9,15,07,077/-, the outstanding

subscription charge due and payable by the respondent in terms of the subscription agreement entered into between the parties along with interest @ 18% p.a. for the period of delay.

The petitioner Sun Distribution Services Pvt. Ltd. is a Broadcaster, a company incorporated under Companies Act, 1956. The respondent no. 1, All Digital Network India Limited, respondent no. 2 Kaizen Digital Cable Services Pvt. Ltd. and the respondent no. 3 Canara Star Communications Pvt. Ltd. are all Multi System Operators (MSOs). The respondent no. 1 was receiving signals of the petitioner in terms of subscription agreement dated July 23, 2014 for the period of 1.4.2014 to 31.3.2015 and subscription agreement dated 24.2.2015 for the period 1.2.2015 to 31.3.2015 (respondent no. 1). Similarly respondent no.2 Kaizen Digital Cable Services Pvt. Ltd. also entered into an agreement with the petitioner dated 21.10.2013, subscription agreement dated 23.12.2014 (1.8.2014 to 31.3.2015); and a supplementary agreement dated 23.12.2014. The respondent no. 3 Canara Star Communications Pvt. Ltd. had also entered subscription agreement with the petitioner dated 20.8.2014 for the period 1.8.2014 to 31.3.2015.

After admission; the matter was referred to the court of learned Deputy Registrar for completion of pleadings, framing of issues and taking evidences on

affidavit. The record of proceedings dated 06.01.2016 reveals that after completion of pleadings the issues were framed in the matter. The petitioner at this stage preferred to file this M.A. No. 209 of 2016 praying as mentioned above.

The sole contention of the petitioner is a Memorandum of Understanding (MOU) entered between E –Infrastructure and Entertainment India Pvt. Ltd. (EIEIPL), All Digital Network India Limited (All DIGITAL) respondent no. 1 and Sun Distribution Services Pvt. Ltd. (SDSPL) the petitioner on 14.04.2016. The terms of Memorandum of Understanding (MOU), as per Annexure A to the M.A. are as under: -

1. Mr. Somasekhar of E Infrastructure and Entertainment India Pvt. Ltd., hereinafter referred as ("**EIEIPL**") has informed Sun Distribution Services Pvt. Ltd. ("**SDSPL**") that the is taking over the network of Messrs. All Digital Network India Ltd., situated at B-89, 3rd Floor, 5th Main, Rajajinagar Industrial Estate, Rajajinagar 6th Block, Bangalore – 560 010.
2. Messrs. All Digital Network India Ltd., hereinafter referred as ("**All Digital**") owes an outstanding amount due of Rs. 15,81,97,110/- (Rupees Fifteen Crores Eighty One Lakhs Ninety Seven Thousand One Hundred and Ten only) as on 31st March, 2016 to "**SDSPL**". The statement of Account of "**All Digital**" in enclosed along with this MOU as Annexure "A".
3. Mr. Somasekhar of "**EIEIPL**" has undertaken to clear the entire outstanding amount due of Rs. 15,81,97,110/- (Rupees Fifteen Crores Eighty One Lakhs Ninety Seven Thousand One Hundred and Ten Only) of Messrs. All Digital Network India Limited.
4. Mr. Kariappa and Mr. Raju of "**All Digital**" have confirmed the

above and have no objection whatsoever for the payments made by “EIEIPL” and taking over of “All Digital” network by Mr. Somasekhar of “EIEIPL”.

5. The following payment plan to clear the above outstanding amount due has been agreed and the same has been tabulated as under:

PAYMENT SCHEDULE		
S.No.	Payable by	Amount Payable
1.	Payable vide Cheque No. 617182 dt. 14.04.2016 drawn on Corporation Bank and will be banked and cleared by 18 th April, 2016.	Rs. 3,50,00,000/-
2.	Payable vide cheque No.617183 dt. 25.04.2016 drawn on Corporation Bank and will be naked and cleared by 25.04.2016.	Rs. 1,00,00,000/-
3.	Payable vide Cheque No. 617184 dt. 29.04.2016 drawn on Corporation Bank and will be naked and cleared by 29.04.2016.	Rs. 2,50,00,000/-
4.	Will be cleared within 45 days from the date of this MOU.	Rs. 8,81,97,110/-
	TOTAL OUTSTANDING DUE	RS. 15,81,97,110/-

6. Basis this above commitment, Mr. Somasekhar of “EIEIPL” has requested “SDSPL” to restore the signals of SUN channels of “ALL DIGITAL” immediately.
7. “SDSPL” agreed to restore the signals, without prejudice to our rights and contentions on disconnection notice issued. This is subject to realization as per the payment schedule tabulated above.

8. However for any reason whatsoever, if the above payment schedule is not adhered or remain unfulfilled, then **"SDSPL"** will immediately resort to disconnection of SUN channel services. All payment made under this MOU is against the outstanding amount payable by **"ALL DIGITAL"** to **"SDSPL"** of Rs.15,81,97,100/-, which is understood by all parties signing this MOU.
9. Mr. Somasekhar of **"EIEPL"** has agreed to execute fresh subscription agreement on 18th April, 2016 for the services availed by the combined entity of **"EIEPL"** and **"ALL DIGITAL"**. This is subject to clearance of the First payment of Rs.3,50,00,000/- as mentioned above.

The petitioner applicant submits that after taking into account certain payments by the respondent no. 1 the outstanding stands at Rs. 13,24,79,663/- as on 24.06.2016. It is the contention of the petitioner that in terms of Memorandum of Understanding (MOU) this is an amount admitted by the petitioner; and hence a decree as prayed for should be passed against the respondent and in faovur of the petitioner under order 12 rule 6 of the Code of Civil Procedure (CPC), 1908.

The reply of the respondent no. 1 is on record; and the respondent no. 1 has vehemently and strongly denied that this amount is admitted by it in terms of the Memorandum of Understanding (MOU). It is the contention of the respondent no. 1 that the Memorandum of Understanding (MOU) was singed on

the basis that EIEIPL was “taking over” the network of the respondent no. 1. It is also being contended by the respondent o. 1 that on the basis of such Memorandum of Understanding (MOU) no claim can be adjudicated in the present petition as the same may give rise to fresh cause of action not pleaded in the petition. It is also being contended that any adjudication in the absence of EIEIPL, should it be liable to pay the said amount under the Memorandum of Understanding (MOU), will not be proper and legal. Respondent no. 1 has contended that the petitioner applicant had the liberty to disconnect in the event of nonpayment of outstanding amount and this right has also been exercised by the petitioner. It also contends that the outstanding amount also includes amounts payable by the respondent no. 2 and respondent no. 3 in the main petition. It has been submitted that the respondent no. 1 in its reply to the main petition clearly stated that it has not taken over the liabilities and/or IRD boxes and VC cards issued by the petitioner to respondent no. 2 and respondent no. 3. On these grounds it has been submitted on behalf of the respondent that the prayer of petitioner applicant for issuance of decree against the respondent no. 1 and in favour of the petitioner is not maintainable.

The learned counsel for both the parties were heard at length on this issue and the arguments were essentially on the line of pleadings in the application and

the reply.

While the learned counsel for the petitioner essentially dwelt upon the fact that the respondent no. 1 was a party to the Memorandum of Understanding (MOU) and a signatory also; hence it cannot resile from its commitment in the event that EIEIPL has not paid and it is clearly evident from the Memorandum of Understanding (MOU) that this amount is due and payable by respondent no. 1. Learned counsel for the respondent no. 1 however, submitted that although the existence of Memorandum of Understanding (MOU) is not denied, it is also a fact that EIEIPL informed the petitioner that he is **taking over the network of All Digital Network India Ltd., situated at B-89, 3rd Floor, 5th Main, Rajajinagar Industrial Estate, Rajajinagar 6th Block, Bangalore – 560 010 (emphasis added).** However, since this purported “takeover” never materialized; hence any commitment on the part of EIEIPL cannot be held out against the respondent no. 1. He also brought to the notice of the Tribunal the fact that there are two more respondents in the petition and the liabilities on their part also is being clubbed in the amount for which the decree has been prayed for. On this basis he submitted that the issue of “admission” is not clear; whereas the cardinal principal of order 12 rule 6 is that the admission of dues must be clear and unambiguous.

Now I examine the contents of the pleadings and submissions made at the time of hearing. It is obvious that in this petition there are three respondents and the petitioner in this petition has sought recovery from all three of them. However, in the M.A. while the two respondents i.e. respondent no. 2 and respondent no. 3 are not mentioned the total amount increases from the amount mentioned in the original petition and the entire amount has been projected as “admitted amount” by the respondent no. 1. Clearly this requires determination through adjudication as to which of the respondent is liable to pay what amount by way of subscription charges to the petitioner or whether any amount is payable at all. Secondly a plain reading of Memorandum of Understanding (MOU) “Annexure A” (M.A. No. 209 of 2016) clearly reveals that EIEIPL informed the petitioner that “he is taking over the network of M/s. All Digital Network India Ltd.” but it has not in any way been pleaded by the petitioner whether this “takeover” materialized or not. The entire commitment for payment of the alleged amount in the Memorandum of Understanding (MOU) has been on behalf of the EIEIPL. In para 4 of the Memorandum of Understanding (MOU) only the representatives of All Digital Network India Ltd. have confirmed the facts mentioned in para 1, 2 and 3 of the Memorandum of Understanding (MOU) and also that they have no objection whatsoever for the payments made by EIEIPL and

taking over of All Digital Network India Ltd. by EIEIPL. It is also worth mentioning that the matter is at the stage where the parties to the petition are to file their evidences on affidavit and lead oral evidences if, need be. In view of so many grey areas as pointed above interest of justice would be sub served only if parties are permitted to file evidences on affidavit and lead oral evidences as required.

In view of the above the prayer in the M.A. No. 209 of 2016 is disallowed.

The parties are directed to file their evidences on affidavit in the court of learned Deputy Registrar. In case any of the parties wishes to lead oral evidences, it may file appropriate application in this regard which shall be listed before the Tribunal for orders.

Put up the matter before Registrar's court as already fixed i.e. 21.7.2017.

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(B.B. Srivastava)
Member

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