

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

Dated 10 November, 2017

M.A. No. 98 of 2017
in
Broadcasting Petition No.154 of 2015

All Digital Network India Ltd. ...Petitioner

Vs.

Taj Television India Pvt. Ltd. ... Respondent

BEFORE:

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIPERSON
HON'BLE MR. B.B. SRIVASTAVA, MEMBER
HON'BLE MR. A.K. BHARGAVA, MEMBER

For Petitioner : Mr. Mayank Khirsagar, Advocate

For Respondent No.1 : Mr. Upender Thakur, Advocate
Mr. Kunal Vats, Advocate
Mr. Rohan Swarup, Advocate

For Respondent No.2 : Mr. Jayant K. Mehta, Advocate
Mr. Nasir Husain, Advocate

ORDER

M.A. No.98 of 2017

By S.K. Singh, Chairperson – Before adverting to the issues arising out of MA No.98 of 2017 filed by the decree holder, Taj Television, it is necessary

to take note of the relevant facts, at least in brief, which have given rise to the aforesaid MA under consideration. For the records, it is indicated that all the parties have been heard in detail.

2. B.P. No.154 of 2015 out of which the present matter arises was filed by All Digital Network in March 2015 against the respondent, Taj Television to challenge various notices threatening deactivation of signals of respondent's channels on account of non-payment of dues etc. Petitioner wanted a renewal of subscription agreement for the channels of Taj Television as well as Turner International and also some accommodation for paying the outstanding dues. The parties arrived at a settlement deed dated 07.08.2015 in course of the Mediation. That deed was incorporated in the order of the Tribunal dated 14.08.2015. As a result, the parties, particularly, All Digital Network, came under a legal obligation to pay the outstanding admitted dues to the respondent, Taj Television as per payment plan which was part of the settlement deed. All Digital avoided to discharge its payment obligations and that led Taj Television to file MA No.313 of 2015 seeking action against the petitioner, All Digital under Section 20 of TRAI Act. Immediately on such filing, both, All Digital and non-applicant No.2, GTPL Hathway Ltd. (GTPL) wrote letters to Taj Television on 19.12.2015 disclosing that All Digital and GTPL had entered into a strategic alliance w.e.f. 01.08.2015 and as a result all transactions from that date would be in favour of GTPL which shall make payments of all admitted

outstanding of Taj Television. Since neither All Digital nor GTPL paid any money to the applicant, the applicant Taj Television informed this Tribunal of their stand that neither of the non-applicants has discharged the liability requiring payments to the applicant. This Tribunal on 13.10.2015 permitted the applicant to impleaded GTPL. M.A. No.31 of 2016 seeking such impleadment was allowed on 19.01.2016. In the proceedings of MA No.313 of 2015, both the non-applicants confirmed their stand as communicated by them in their letter dated 19.09.2015. As appears from order passed on 23.02.2016, seven post-dated cheques were handed over to Taj Television by the Director of All Digital towards the payment of settled amount. It was also recorded that GTPL had taken over All Digital w.e.f. 01.08.2015 and hence, from that date onwards, the amounts falling due shall be paid by GTPL. On 04.03.2016, both the non-applicants jointly agreed to a schedule under which GTPL undertook to pay the dues of the applicant for the period 01.08.2015 to 31.03.2016. It is noted that in the orders dated 23.02.2016 and 04.03.2016, this Tribunal recorded that if payments were not actually made as per assurances given by them, they would be liable for contempt. M.A. No.31 of 2016 was disposed of on 04.03.2016.

3. After having accepted to pay the liabilities of All Digital Network as a representative/assignee from 01.08.2015 to 31.03.2016, GTPL sent a letter dated 29.03.2016 intimating that it had terminated its strategic alliance with All Digital and therefore, it is not bound by its earlier representation to meet the

liabilities from 01.08.2015. All Digital also did not keep its promise and did not clear the outstanding dues for the period upto 31.07.2015. Hence, the applicant filed MA No.112 of 2016 for initiation of contempt proceedings against both the non-applicants. The non-applicants were given opportunity of producing documents and thereafter this Tribunal vide order dated 01.01.2016 attached their respective bank accounts. When both the non-applicants were thus made liable by this Tribunal and subjected to attachment of their accounts, to get rid of such restraints, All Digital, as recorded in the order dated 03.06.2016, accepted its liability to pay the dues of the applicant and agreed to make the payment as per schedule earlier given on behalf of GTPL. On such acceptance and assurance, this Tribunal recalled the order attaching the bank accounts of the non-applicants.

4. All Digital did not honour its commitments which forced this Tribunal to pass orders for personal appearance of Managing Director as well as one Director of All Digital to be personally present. On behalf of Directors, on 01.09.2016, All Digital submitted a proposal for payment of Rs.9.5 crores through post-dated cheques so as to pay the agreed amount between 10.09.2016 and 31.03.2017. Sixteen post-dated cheques for Rs.50 lakhs each totalling Rs.8 crores were handed over to the applicant's counsel. Further, three cheques for Rs.50 lakhs each were agreed to be handed over to the applicant in Bangalore by 05.09.2016. On such assurance, the applicant agreed to reconnect the signals

to the network of All Digital and to negotiate the terms for fresh agreement. The aforesaid assurance and promise by All Digital was also brazenly flouted; it made no payments. The applicant, Taj Television, filed M.A. No.386 of 2016 for initiation of fresh contempt proceedings against both the non-applicants for violation of orders and directions of this Tribunal. Applicant alleged collusion between both the non-applicants. It alleged that by collusion they have managed to receive supply of signals of applicant's channels till the signals were deactivated on 17.09.2016. Applicant alleged that the non-applicants have played fraud upon all and have managed not to pay anything to the applicant in spite of assurances given on more than one occasion and even after issuing post-dated cheques and getting the same recorded in the orders of this Tribunal. The applicant through Annexure A-11(colly) to M.A.No.386 of 2016 brought before this Tribunal, CD recordings in support of its assertions that it had carried out recordings at premises of subscribers on 03.10.2016 and the recordings explicitly show that the logos of All Digital as well as GTPL were together displayed on the screen, proving that the non-applicants have made a mockery of proceedings before this Tribunal. The applicant had also prayed that DAS licence of both the non-applicants be ordered to be cancelled.

5. On 15.12.2016, this Tribunal took a strong view in the contempt matter and restricted the time for filing of show-cause. Thereafter, All Digital filed Writ Petition No.213 of 2017 in the High Court of Karnataka at Bangalore. The

High Court passed an interim order on 17.01.2017 staying only the contempt proceedings for a period of two weeks. In that order, it was made clear that the proceedings under the Negotiable Instruments Act and the recovery proceedings are not stayed. In view of aforesaid order of High Court, on 09.02.2017, this Tribunal gave liberty to the applicant, Taj Television to file application for recovery of its dues with regard to the settlement agreement. Pursuant to such liberty, Taj Television has filed M.A. No.98 of 2017. Parties have been heard, as already indicated earlier.

6. In M.A. No.98 of 2017, the applicant has made the following prayers:

“(a) Restitute the Respondent/Applicant thereby directing both M/s. All Digital Network and M/s. GTPL Hathway Pvt. Ltd. to make a payment of Rs.10,01,51,077/- immediately along with interest @24%;

(b) Impose exemplary fine on both M/s. All Digital Network and M/s. GTPL Hathway Pvt. Ltd. thereby directing both of them to compensate the Respondent/Applicant;

(c) Cancel/revoke the DAS License of both M/s All Digital Network and M/s. GTPL Hathway Pvt. Ltd. on account of resort to the misuse and abuse of the process of law;

(d) Initiate the perjury proceedings against both M/s. All Digital Network and M/s. GTPL Hathway Pvt. Ltd. as per the provisions of Section 195(1)(b) read with 340 Cr.PC;

(e) Pass such other or further order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

7. The reply of All Digital raises some technical objections with respect to use of the term 'restitution' on the basis of Section 144 of the CPC which limits an application for restitution only when there is reversal of a decree or an order. Further, it has put entire onus and blame on GTPL by alleging that it had entered into a Management Outsourcing Agreement with GTPL dated 19.09.2015 whereunder GTPL undertook to clear and pay the liability to the extent of Rs.11 crores to the respondent (applicant). It has been alleged that in fact GTPL took over the management of entire business of All Digital. A copy of the above agreement has been made available as Annexure R-1. Further, stand of All Digital is that after handing over the management of its business to GTPL, All Digital itself became only a local cable operator and in that capacity signed agreement with GTPL as the MSO. Copy of this Interconnect Agreement dated 19.09.2015 has been brought on record as Annexure R-2. Further, it entered into a Non-compete Agreement and also a Hypothecation Agreement with GTPL. Copies of those agreements have also been annexed as Annexures R-3 and R-4. On account of dispute over demand for security by GTPL, the latter filed an application under Section 9 of the Arbitration and Conciliation Act 1996 against All Digital in the City Civil Court, Ahmedabad. Copy of that petition is Annexure R-5. That dispute of April, 2016 soon got settled between the parties as appears from order dated 04.08.2016 passed by

Special Judge, Commercial Court, Ahmedabad. The order records that GTPL did not press the application against All Digital on account of a settlement out of court without any written agreement.

8. All Digital has averred that it has paid Rs.17,86,01,845/- to GTPL for clearing the dues of the applicant and others. It is highlighted that GTPL never got various agreements with All Digital cancelled or set-aside and the proceedings under Section 9 of the Arbitration Act were ultimately withdrawn as settled, vide order dated 19.10.2016. It is also pleaded that after handing over its business to GTPL, All Digital had no money or resources to pay the applicant.

9. On behalf of GTPL also reply has been filed, first taking a technical objection to the maintainability of restitution application on the ground that CPC is not applicable to a proceeding before this Tribunal. Further stand of GTPL is to the following effect:-

The arrangement *inter se* between the non-applicants could not work out and ultimately it was settled amicably out of court as recorded in the order dated 04.08.2016 in the arbitration proceeding. Even before this order, All Digital had accepted before this Tribunal its sole liability to pay the dues of the applicant. Some orders passed earlier whereunder GTPL had agreed to pay on behalf of All Digital, got modified or subsumed in the later orders culminating into the

order dated 01.09.2016 when All Digital, after settling its dispute with GTPL on 04.08.2016, handed over post-dated cheques along with a proposal and time schedule for payment of the dues of Rs.9.5 crores.

10. In course of arguments, learned counsel for the applicant, Taj Television has advanced forceful submission in respect of prayer (a) of M.A.No.98 of 2017 and has pressed that not only All Digital in whose name the agreement stood but also GTPL should be directed to pay the dues of the applicant standing at Rs.10,01,51,077/- along with interest @ 24%. Written notes of arguments have also been filed wherein further pleas have been raised for imposing fine under contempt jurisdiction and to initiate perjury proceedings against both the non-applicants on the ground that they are acting in collusion and have played fraud upon the applicant as well as this Tribunal with a view to cause unlawful injury to the applicant.

11. Although technical pleas have been raised but the main issue is not about the maintainability of the application described as a 'restitution application'. The provisions of CPC do not strictly apply to this Tribunal. It has only to act in a transparent and fair manner so as to advance the cause of justice with due regard to principles of natural justice. This Tribunal has adjudicatory powers to the exclusion of Civil Courts as well as powers to carry out execution for implementation of its orders. When a party gains some advantage on account of

orders of this Tribunal such as an order enabling continuance of signals, but does not pay the dues as per law, this Tribunal permits restitution proceedings on the same lines as an execution proceeding so that no party suffers injury on account of orders of this Tribunal. Same situation can arise if one party alone or in collusion with another plays fraud and continues to enjoy signals on the basis of promises and assurances which are subsequently not honoured. The facts of this case fall in the aforesaid category and hence, there is no lack of power or jurisdiction in this Tribunal to entertain the present application to ensure that rightful dues of respondent/applicant, namely Taj Television as per determination through mediation or as per orders based upon consent and admissions, are made available to it by invoking principles of restitution and by carrying out execution.

12. The most ticklish and significant issue is whether the restitution/execution should proceed only against the party to the agreement, i.e., the applicant, All Digital Network, the original respondent, or it should also proceed against GTPL on account of various facts and agreements brought on record in the reply filed by All Digital with a clear stand that it has parted with the management of its business on account of agreements which have neither been cancelled or set-aside, nor specifically refuted before this Tribunal.

13. We have been taken through the Management Outsourcing Agreement dated 19.09.2015. GTPL is the first party and All Digital is one of the second

parties to that agreement. Clause 2, particularly, clauses 2.2 and 2.3 support the case of All Digital and clearly record that as a term and condition of the agreement, GTPL had agreed to take over the business of All Digital as well as the entire outstanding amount of Rs.12.68 crores of the second parties, as on 31.07.2015 towards the broadcasters. GTPL had also undertaken to manage and take over all matters relating to broadcasters including payments and incomes from them on behalf of second parties from the effective date of the agreement i.e., 01.08.2015. The other agreements also support the case of All Digital against GTPL.

14. The stand of GTPL is that All Digital absolved GTPL by admitting before this Tribunal in course of recording of order dated 03.06.2016, that it shall pay the dues of Taj Television as per schedule earlier given on behalf of GTPL. This conduct of All Digital is *prima facie* in favour of GTPL's case but on a closure scrutiny and particularly on a careful reading of Annexure R-6 to the reply of All Digital to MA No.98 of 2017, it transpires that on 03.06.2016 at 10:32 am, an email was sent by All Digital to all concerned including representative of GTPL giving details of the cheques issued to Taj Television. The email is contemporaneous and records that the cheques were issued as per direction by GTPL and on the understanding that suitable funds for those cheques will be supported and provided by GTPL. It is notable that there is no rebuttal to paragraphs 9 and 10 in the reply of All Digital in support of the

aforesaid documents nor the documents have been rebutted or explained by GTPL.

15. On behalf of All Digital reliance has been placed upon Section 47(3) and Section 146 of the Code of Civil Procedure with a view to persuade us to follow the principles in the larger interest of justice. Sections 47 and 146 of CPC are extracted herein below for ready reference:-

“47. Questions to be determined by the Court executing decree.-

(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(2) [***]

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the court

[Explanation I: For the purposes of this section, a plaintiff whose Suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II: (a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the degree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.]

State Amendment – (Uttar Pradesh).– In Section 47 of the principal Act, Explanation II inserted by the U.P. Act (24 of 1954), has been omitted by U.P. Act (57 of 1976), S. 3. (w.e.f. 1.1.1977).

146. Proceedings by or against representatives. - Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against any person then the proceeding may be taken or the application may be made by or against any person claiming under him.”

16. We agree with the submission that in exercise of its power to execute its decrees, this Tribunal is required and empowered to decide the question whether any person (or entity) is or is not the representative of a party.

17. On a careful consideration of entire facts and circumstances and the documents brought on record by the parties, we are in agreement with the contention advanced on behalf of Taj Television and All Digital that GTPL agreed to and claimed benefits under All Digital Network in respect of business of All Digital to which the demand of Taj Television relates. It has avoided to challenge the agreements made with All Digital and in fact even after accepting the liability in terms of those agreements before this Tribunal, sought to avoid the same by behind the scene manipulations in collusion with All Digital.

These two parties settled their differences outside the court in the proceedings under the Arbitration & Conciliation Act but without bringing on record the terms of such settlement. The settlement was arrived at after the present proceedings had progressed considerably before this Tribunal. But the orders dated 04.08.2016 recording the factum of settlement and dated 19.10.2016 withdrawing the said proceeding do not disclose the terms of the settlement. This also suggests that both the parties were in collusion with a view to deprive the applicant, Taj Television, of its rightful dues. This conclusion is also supported by undisputed assertion made by the applicant that even on 03.10.2016, the CD recordings show that logos of All Digital and GTPL were being displayed together on the screen.

18. In the light of aforesaid discussion and findings, the plea on behalf of GTPL that it cannot be held liable for the lawful dues of All Digital is found fit to be rejected.

19. On behalf of Taj Television reliance was placed on judgement of Privy Council in the case of **Parmeshari Din Vs. Ram Charan & Ors. – AIR 1937 PC 260** in support of the proposition that if a party took the concerned property from a party to the litigation, he must be treated as representative in interest of such party in a proceeding for execution of a decree against his predecessor-in-interest. For the same purpose, reliance has been placed upon a Full Bench judgment of Lahore High Court in the case of **Bhiku Mal Vs. Firm Ram**

Chandar Babu Lal & Anr. – AIR 1946 Lah 134 and on a recent judgment of Allahabad High Court in the case of **Sabbir Ahmed & Ors. Vs. Additional District Judge & Ors. – (2011) SCC OnLine All 217.**

20. In support of proposition noticed above, learned counsel for All Digital has placed reliance upon a Division Bench judgment of Karnataka High Court in the case of **Ramachandra Vs. Laxmana Rao – AIR 2000 Kant 298.** This judgment also helps the case of applicant as well as All Digital. In paragraph 12 of this judgment, views of a Division Bench of Lahore High Court have been quoted with approval and it has been affirmed that an assignee from a judgment debtor of property belonging to him and affected by the decree is a representative of the judgment debtor within the meaning of Section 47 of the CPC.

21. On the other hand, learned counsel for the GTPL has placed reliance on judgment in the case of **Khardah Co. Ltd. Vs. Raymon & Co. – AIR 1962 SC 1810.** As per this judgment which has been followed in several later cases also, a distinction has been drawn between assignment of rights and assignment of obligations under a contract. It has been explained that as a rule, obligations under a contract cannot be assigned except with the consent of the promisee. It has also been explained that when such consent is given, it amounts to a novation resulting in substitution of liabilities. Assignment of rights available under the contract stands on a different footing. The law as explained above

cannot be disputed. The clear purpose is to avoid a situation where the person bound by obligations may seek to play a fraud by assigning the obligations to a person incapable of fulfilling such obligations. Hence, to protect the corresponding rights of the party having rights to such obligations, the law required that assignment of obligations cannot be enforced without the consent of the promisee. However, in the present case as the facts narrated earlier show, as a promisee, Taj Television agreed to receive payments from GTPL and to that effect an order was passed by this Tribunal recording the schedule of payments promised by GTPL. Hence, on this technical ground that the assignment is unenforceable in absence of consent of the promisee, GTPL cannot succeed in the facts of the present case.

22. As a result, prayer made on behalf of applicant, Taj Television, to allow its claim by directing both M/s All Digital Network and M/s GTPL Hathway Pvt. Ltd. to pay initially the admitted outstanding dues of Rs.9.5 crores is allowed. Although, in the MA under consideration, the claim is for Rs.10,01,51,077/-, it is open for the applicant Taj Television to file a separate MA for the dues above Rs.9.5 crores by submitting supporting documents etc. Claim for such amount shall be considered in accordance with law and shall be payable in terms of this very order by both the non-applicants to the extent such claim will be found acceptable.

23. So far as the claim for interest is concerned, the same is allowed, but in the interest of justice only @ 8%. Such interest will be payable from the date of Mediation settlement in respect of amount covered by that settlement and in respect of further amounts from subsequent date(s) as and when they became payable under the terms of the agreement. The entire amount of dues indicated above and interest should be paid by non-applicants to the applicant Taj Television within two weeks.

24. We also allow cost of Rs.1 lakh in favour of the applicant and against the non-applicants. The cost shall also be payable by the non-applicants jointly and severally within two weeks failing which the same shall also carry interest @ 8% per annum.

25. It is made clear that both the non-applicants are held jointly and severally liable to discharge the obligations of paying the entire dues of the applicant as per this order. Since both the non-applicants have been found to be in collusion and they have fraudulently delayed the payments due to the applicant, we direct for immediate attachment of their bank accounts as per particulars available in the records. Communication of such attachment to the concerned bank be made by the Registry at once. Until attachment is lifted or varied, the non-applicants can transfer money from the attached accounts only to the applicant Taj Television to satisfy this order.

26. The prayer of the applicant for punishing the non-applicants for contempt and perjury shall be considered only after the matter pending in High Court of Karnataka at Bangalore vide Writ Petition No.213 of 2017 is disposed of by the High Court.

M.A.No.98 of 2017 is disposed of in aforesaid terms.

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(S.K. Singh, J)
Chairperson

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(B.B. Srivastava)
Member

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(A.K. Bhargava)
Member

