

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 31st October, 2017

Broadcasting Petition No. 158 of 2015

Star India Pvt. Ltd. ... Petitioner
Versus
Canara Star Communications Pvt. Ltd. &Anr. ...Respondents

ALONG WITH

Broadcasting Petition No.47 of 2015

Canara Star Communications Pvt. Ltd., Karnataka ...Petitioner
Versus
Star India Pvt. Ltd., Mumbai ...Respondent

Broadcasting Petition No.48 of 2015
(M.A. No. 74 of 2015)

Canara Star Communications Pvt. Ltd., Karnataka ...Petitioner
Versus
Star India Pvt. Ltd., Mumbai ...Respondent

BEFORE:

HON'BLE MR. BIPIN BIHARI SRIVASTAVA, MEMBER
HON'BLE MR. A.K.BHARGAVA, MEMBER

For Petitioner : Mr. Arjun Natarajan, Advocate
[in B.P. No.158/2015 and for
respondent in B.P. Nos. 47 and
48 of 2015)

For petitioner in B.P. Nos. 47 & : Mr. Sachin Datta, Sr. Advocate
48 of 2015 and, for respondent : Mr. Tushar Singh, Advocate
No.1 in B.P.No.158/2015]

For Respondent No.2 [In : Mr. Sharath Sampath, Advocate
B.P.No.158/2015]

ORDER

The petitioner is a broadcaster while respondent no. 1 and respondent no. 2 are MSOs. The relief sought is *inter alia* recovery of an amount of Rs 3,13,70,138 from respondent no. 1 and/or 2 and Rs. 34,58,202 from respondent no. 2. There are also number of interim reliefs sought against the respondents. The petition was filed on 25-3-2015. Initially the matter was in mediation center for some time which did not bear any result, and was referred back to the Tribunal. While hearing the case on 18-12-2015, this Tribunal made the following observation

"Mr. Mehta counsel appearing for the respondent, after having made some brief submissions on merits of the case, on the basis of instructions received by Mr. Tushar Singh, requested for a brief adjournment to enable the respondent to make yet another endeavour to settle the disputes with the petitioner.

As requested, put up under the same head on 14.1.2016.

In the meanwhile, it will be open to the respondent to approach the petitioner and try to resolve its disputes with it. In case, however, no final settlement is arrived at by the next date, the respondent shall produce its bank statements and any other materials to show payments made by it on the basis of the SMS reports for the months of April 2014 to January 2015 submitted by the respondent itself to the petitioner, copies of which have already been furnished to the counsel for the respondent.

Apart from the bank statement and other materials showing payments, respondent no. 1 will also produce before the Tribunal the Deed of assignment under which it transferred its establishment to respondent no. 2."

On the next hearing on 14-1-2016, the Tribunal recorded that

"On the previous date after hearing counsel for the respondent in detail, the petition was adjourned to enable it to make yet another endeavour to settle its disputes with the petitioner. It was, however, made clear that in case no settlement was arrived at by the next date, the respondent must produce its bank statement and other materials to show payments made by it to the petitioner.

Evidently, no settlement has been arrived at between the parties and the respondent has chosen to simply flout the Tribunal's directions to produce its bank statement and materials to show payments made by it to the petitioner.

From the way the case is proceeding, it appears that the respondent is deliberately disobeying the Tribunal's directions.

We, accordingly direct the Managing Director of the respondent to remain personally present before the Tribunal on the next date fixed in the case."

Since then, the matter took many twists and turns. There was attempt for settlement but without success. Subsequently, some affidavits have been filed. Order dated 20-12-2016 summarizes the situation

"This matter was listed today to enable Respondent no. 1 in B.P. No. 158 of 2015 to file its compliance affidavit pursuant to Tribunal's order dated 18.12.2015 as directed on 25.10.2016 also. It is seen that the affidavit which have been filed by the Respondent No. 1, i.e. Canara Star Communications Pvt. Ltd. is not prima facie in conformity with the directions given by the Tribunal on 18.12.2015. In addition, an affidavit was filed by Respondent No. 1 pursuant to direction of the Tribunal purportedly dated 9.3.2016 but in fact it is in respect of direction of the Tribunal dated 15.3.2016 and which was relied to by the respondent also on 23.3.2016.

Be that as it may, the issue relating to the direction of the Tribunal dated 18.12.2015 needs to be resolved and the respondent no. 1 is given one more opportunity to reply to the affidavit of the petitioner dated 23.3.2016 within a week from today.

The petitioner, if so desired, may also respond to the affidavit filed by the respondent no. 1."

The matter was finally heard on 8-2-2017.

From the order dated 18-12-2015 it is evident that the respondent was to produce its bank statement and materials to show payments made by it to the petitioner which was not done and the Tribunal's observations on 14-1-2016 in this regard are very clear. Finally, in this regard, vide affidavit dated 29-11-2017, the respondent has taken the following position

"some of the employees of the Respondent No. 1, who were aware of the subject matter of the orders passed by this Hon'ble Tribunal have left the organization. That due to the aforementioned unfortunate and unforeseen circumstances, the Respondent No. 1 is unable to trace out the documents sought by this Hon'ble Tribunal.

That due to the circumstances beyond the control of the Respondent No. 1, it is unable to produce the documents sought for by this Hon'ble Tribunal and the same is without any fault of the Respondent No. 1. It is most respectfully submitted that the Respondent No. 1 is trying to locate the aforementioned documents and will place the same on record as and when the same are located by the Respondent No. 1. "

While we are not entirely convinced with this explanation, we feel that not much purpose will be served by pursuing the respondent further for this purpose. This is basically a recovery petition and justice will be better served if proceedings are quickly completed and the matter is finally heard. Having said that, we further observe that this position, though not in compliance with the directions dated 18-12-2015 as mentioned above, has been taken on affidavit as late

as 29-11-2017. In view of this, we impose a penalty of Rs. One Lakh under Section 20 of TRAI Act, to be paid by respondent no. 1 within 3 weeks to the TDSAT Employees Welfare Fund.

Let the matter be prepared for final hearing. For this propose, put up before Learned Dy. Registrar on 24th Nov. 2017

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(B.B. Srivastava)
Member



(A.K. Bhargava)
Member