

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 03rd October, 2018

M.A. No. 364 of 2018
in
Broadcasting Petition No.304 of 2018

Star India Limited ... Petitioner

Vs.

Noida Software Technology Park Ltd. ... Respondent

BEFORE:

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON
HON'BLE MR. A.K. BHARGAVA, MEMBER

For Petitioner : Mr. Rajsekhar Rao, Advocate
Mr. Rajnish Ranjan, Advocate
Mr. Saurabh Srivastava, Advocate
Mr. Ranjeet Singh, Advocate
Mr. Raghav Kacker, Advocate
Ms. Kruttika Vijay, Advocate
Mr. Vaarish Sawlani, Advocate

For Respondent : Ms. Ruchira Goel, Advocate
Ms. Pracheta Kar, Advocate

ORDER

By S.K. Singh, Chairperson – The petitioner is a broadcaster. It has filed this petition against respondent for recovery of licence/subscription fees

under three categories totalling Rs.5.11 crores approximately. The first two categories comprise of subscription fees upto 30.09.2015 chargeable as per the Interconnection Agreement dated 08.08.2014 and also interest upon such dues. The third category is described as compensation which is in lieu of subscription fee for the period 01.10.2015 to 31.03.2016 when the respondent availed signals of petitioner's TV channels on account of protective interim orders of this Tribunal. The amount claimed under this category is Rs.3.42 crores approximately.

2. This petition was admitted with order for issue of notice. However, since the respondent had appeared through counsel, actual notice was not issued.

3. The respondent raised the issue of maintainability of the petition. This preliminary objection was considered in respect of the three categories of reliefs for recovery and ultimately the petition was held to be maintainable. Order on interim reliefs numbered as (a) and (d) was deferred on the ground that those interim reliefs will be considered when more particulars are available with respect to assets belonging to the respondent company and after considering the objections to the three categories of claims, all for recovery of money, in the light of reply/pleadings coming on record. At this stage it is useful to note that a Broadcasting Petition bearing No.314 of 2015 filed by the respondent against a notice of disconnection dated 18.06.2015 is still pending because the respondent in that petition has sought a declaration that the demand raised by

Star India is illegal and there is a need for reconciliation of accounts. Only for that reason that petition is surviving although as per Star India that petition has become infructuous. These facts appear from the order dated 31.11.2017 in that petition wherein it has also been noted that the present respondent failed to comply with the directions of this Tribunal for making certain payments towards the admitted arrears and hence disconnection was ultimately effected on 01.04.2006. No new agreement could be signed because of continuing default. The present respondent ultimately did not seek any new agreement and has chosen to remain in default of the interim directions of this Tribunal. Ultimately it is no longer in the business as a HITS Distribution Platform.

4. In spite of observations that interim reliefs prayed as (a) and (d) shall be considered in the light of pleadings when they come on record, the respondent did not file any reply within the time granted. Then the petitioner has filed the present MA under consideration bearing No.364 of 2018 with the following reliefs:

- (a) Direct the Respondent to disclose the complete list of assets owned by it along with the bank account details and sources of income, if any;
- (b) Direct the Respondent to disclose copies of all its bank statements for the duration 01.04.2014 till date.
- (c) Direct the Directors of the Respondent to also make a full and true disclosure of all their assets and to make a true disclosure

of their bank statements for the period commencing 01.04.2014 till date;

- (d) Pass any other and further orders in favour of the Petitioner, as this Hon'ble Tribunal may deem fit and proper.

5. Learned counsel for the petitioner has relied upon the facts noted above as to the default in payment of even admitted part of earlier dues in spite of orders of this Tribunal to support his claim that petitioner has a *prima facie* case. He has also relied upon the facts that as per books of accounts available in public domain, between 01.04.2013 to 31.03.2014, the respondent company advanced huge sum of money to a related party while choosing not to pay even the admitted dues of the petitioner for which this Tribunal had issued interim orders. It was pointed out that the respondent even asked for extension of time to make the payment and still chose to remain in default. It was also submitted that for the period after 2013-14 the respondent's books of accounts have not been made public and therefore, the prayers made in the MA for disclosure of respondent's assets need to be allowed.

6. Learned counsel for the respondent submitted at the outset that no reply has been filed to the main petition nor the respondent wants to file any reply to the MA under consideration. It may be noted that this stand in respect of MA has been taken long back on 06.09.2018 and on 13.09.2018, respondent prayed for an adjournment so as to file a reply to the main petition within ten days.

That prayer was allowed but admittedly no reply has been filed even to the main petition.

7. Learned counsel for the respondent has raised objection to the prayer made in the MA on several technical grounds based upon Order 38 Rule 5 of the Code of Civil Procedure (CPC) which provides for attachment of property of a defendant even before judgment in certain situation. Submissions have been advanced even after accepting that as per provisions of Telecom Regulatory Authority of India (TRAI) Act, CPC does not apply to this Tribunal. She, however, insisted that by applying the principles, the prayer in the MA should be rejected because the petitioner has not been able to make out a *prima facie* case for recovery of any money from the defendant nor has it been able to prove that defendant is about to dispose of its property or remove the same from the local limits of this Tribunal with intent to obstruct or delay a possible decree against it. Learned counsel has also placed reliance upon two judgments of Hon'ble Supreme Court in the **Raman Tech and Process Engg. Co. Vs. Solanki Traders, (2008) 2 SCC 302** and the other of Calcutta High Court in the case of **Premraj Mundra Vs. Md. Maneck Gazi and Ors., AIR 1951 Cal 156.**

8. The principles of law noticed above are supported by the above two judgments and have to be accepted but the defense of the respondent is not fit to

be accepted on facts. Further, at present the petitioner/applicant has not prayed for attachment.

9. In spite of opportunities the respondent has obstructed passing of interim orders by not filing reply to the main petition so far nor has it chosen to file any reply to the MA. The pleadings of the petitioner remain unrebutted and they do make out a *prima facie* case. There are several cases pending against the respondent and from the entire factual background it is clear that respondent is trying to hide the necessary details relating to its assets and is also reluctant to make its books of accounts public after the year 2013-2014. All these go to support the contention advanced on behalf of the petitioner and in such factual situation, even keeping the principles of Order 38 Rule 5 in mind, we are of the considered view that the prayer made in the MA need to be allowed in the larger interest of justice. We order accordingly. *sk*

10. The MA stands disposed of.

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(S.K. Singh, J)
Chairperson

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(A.K. Bhargava)
Member