

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

**Dated 20<sup>th</sup> July, 2020**

**MA No.102 of 2020**  
**in**  
**Broadcasting Petition No.221 of 2020**  
**(With MA Nos.95 and 98 of 2020)**

SUN Distribution Services Pvt. Ltd. ....Petitioner

Versus

E-Infrastructure & Entertainment India Pvt. Ltd. & Anr. ....Respondents

**Along with**

**Broadcasting Petition No.287 of 2020**

Welworth Software Pvt. Ltd. ....Petitioner

Versus

SUN Distribution Services Pvt. Ltd. ....Respondent

**BEFORE:****HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON****In B.P. No.221 of 2020**

For Petitioner : Mr. Amit Sibal, Senior Advocate  
Mr. Abhishek Malhotra, Advcoate

For Respondent No.1 : Mr. Jayant K. Mehta, Advocate  
Mr. Jayant Pawar, Advocate

For Respondent No.2 : Mr. Rajshekhar Rao, Advocate  
Mr. Manikya Khanna, Advocate

**In B.P. No.287 of 2020**

For Petitioner : Mr. Rajshekhar Rao, Advocate  
Mr. Manikya Khanna, Advocate

For Respondent : Mr. Amit Sibal, Senior Advocate  
Mr. Abhishek Malhotra, Advcoate

**ORDER**

**By S.K. Singh, Chairperson** – These two petitions which have been heard together for the purposes of interim relief relate to the same subject matter i.e., the business of an MSO, E-Infrastructure & Entertainment India Pvt. Ltd.(EEIPL) and its outstanding dues payable to SUN Distribution Services Pvt. Ltd. (SUN Distribution). The other interested party is Welworth Software Pvt.

Ltd.(Welworth) which is respondent No.2 in B.P. No.221/2020 preferred by SUN Distribution to claim a decree for Rs.32.03 crores approximately from EEIPL with a further order to restrain respondent No.1 from alienating or migrating the customers of its network or its network itself to any other entity including Welworth and also to restrain the latter from taking over the subscribers/network of EEIPL. The petitioner SUN Distribution has also prayed for interim relief which includes a direction to EEIPL to pay the admitted outstanding amount of Rs.22.20 crores and to furnish a bank guarantee for the balance amount. The other petition, B.P. No.287/2020 has been preferred by Welworth against a disconnection notice dated 04.06.2020 served by SUN Distribution for taking over and connecting the subscribers of EEIPL in violation of provisions of the agreement and a written instruction to that effect dated 01.06.2020. The notice mentions that the signals distributed through IRD boxes of Welworth have been found displaying on the screen the watermark of EEIPL. The notice for disconnection is thus on the ground of illegal and unauthorized retransmission of channels of SUN Distribution to the EEIPL subscribers.

2. After filing B.P. No.221 of 2020 on 02.06.2020, with the permission of this Tribunal, further facts were brought on record through MA No.95/2020. It was disclosed that SUN Distribution had subsequently come to know of an Asset

Transfer Agreement dated 19.12.2019 executed between the respondents which reveals that Welworth has acquired the assets of EEIPL including the Digital Headend and Set Top Boxes(STBs) w.e.f. 01.04.2019. On 04.06.2020 this Tribunal, on the basis of above disclosure did not issue interim restraint order because of the impression that respondent No.2 had been running the business of respondent No.1 on the basis of some arrangement since 01.04.2019 and the claim for money was against EEIPL, respondent No.1. Time was granted for reply. SUN Distribution was dissatisfied and for seeking interim relief approached the Hon'ble High Court of Delhi which noted the contentions but desired that the matter be considered by this Tribunal only, but if possible, urgently. Hence, instead of 06.07.2020, the date fixed earlier, hearing of the interim relief was preponed to 01.07.2020 on the basis of prayer to that effect made in MA No.102/2020 filed by SUN Distribution. It may be noted that SUN Distribution had filed MA No.98/2020 on 05.06.2020 seeking a prayer to hold the respondents jointly and severally liable to make payment of the entire dues claimed by SUN Distribution amounting to Rs.32.03 crores approximately along with interest. It also sought restraint order against respondent No.2 from carrying out unauthorized retransmission of petitioner's signals to the subscribers of EEIPL or allow the petitioner to disconnect supply of signals to Welworth.

3. In MA No.102/2020 a copy of order of Hon'ble Delhi High Court dated 09.06.2020 was annexed. The order shows that on behalf of SUN Distribution, the petitioner, it was contended that EEIPL is depleting its assets by transferring the same to Welworth. It was also contended that both the entities are under common control and the transfer of assets by them was in breach of clauses 5(11) and 27 of their respective licence agreements made with SUN Distribution. It was contended that one Mr. Somashekhar, an ex-Director, EEIPL had informed the petitioner about the agreement for assets transfer and that 100% business of EEIPL is to be taken over by Welworth, in breach of the relevant clauses of the agreement noted above. The stand of Welworth was that it is not providing link to the LCOs or other subscribers of EEIPL but only to its own subscribers. It also claimed that subscribers have the freedom to choose their cable operator and Welworth is maintaining a proper record of all subscribers including those who may have migrated from other LCOs and would furnish the same to SUN Distribution.

4. Before the High Court both the respondents undertook to serve a copy of their respective reply by 13.06.2020 and to file the same before this Tribunal on 15.06.2020 so that TDSAT may hear the matter urgently.

5. Replies/short replies were filed by both the respondents in B.P. No.221/2020 on 15.06.2020. With its reply EEIPL has not annexed any document relating to the merits of money claim made by SUN Distribution on the basis of invoices and statement of accounts. Only bald plea of denial of petitioner's claim has been made along with allegation of collusion on part of one Mr.Somashekhar, an ex-Director of EEIPL and denial of alleged Asset Transfer Agreement dated 19.12.2019 (**Annexure P-17**) as incorrect. Opportunity has been sought for filing detailed reply and for reconciliation of accounts.

6. The reply on behalf of Welworth, respondent No.2, is on similar lines. The stand of respondent No.2 is that the purported Asset Transfer Agreement dated 19.12.2019 is a false and fabricated document for which Mr.Somashekhar may be responsible; it was not executed with stamps of the company and it was only a draft circulated between respondent No.1 and respondent No.2 but never executed between the parties. The copy of the executed Asset Transfer Agreement also dated 19.12.2019 was not furnished to the other side and not made a part of the reply on the ground that it contains commercially sensitive information. A copy of the same in a sealed cover has been subsequently furnished to this Tribunal. That agreement dated 19.12.2019 is shown to have come into effect from 01.04.2020 and not 01.04.2019. A careful perusal of the said agreement discloses that by way

of consideration nothing has changed hands between EEIPL and Welworth, while practically all assets, without any exception have changed hands and allegedly taken over by Welworth for zero consideration and the liabilities assumed are only of Rs.7.39 crores approximately which includes payment to vendors and to banks against term loan, housing loan and overdraft facility etc.

7. On a careful perusal of the various documents brought on record by SUN Distribution which includes copy of the agreement with the respondents, copies of invoices against EEIPL and communications through letters/emails, it appears that Mr.Somashekhar had made required communications on various occasions as Managing Director seeking facilities for respondent No.1 of paying the outstanding through post-dated cheques between July 2018 to March 2019. The confirmation of balance in December 2019 showed an outstanding of Rs.25.99 crores supported by statement of accounts. On 13.01.2020 respondent No.1 assured to clear all the outstanding Rs.28.07 crores before 31.03.2020 and issued a cheque for that amount. The communications from Mr.P. Kailasam on behalf of EEIPL dated 05.02.2020 and 27.02.2020 show that pursuant to the agreement of asset transfer, the CEO of Welworth, Mr.Kailasam had taken control of business of respondent No.1 EEIPL also and against a total claim of Rs.29.0034 crores for the period prior to February 2020, he agreed to pay Rs.22.20 crores by 31.03.2020 and only for the

balance he raised the plea of reconciliation with an offer to pay the balance on reconciliation after 31.03.2020. A letter from SUN Distribution dated 23.04.2020 to Mr.Kailasam reveals that Rs.31.31 crores stood as outstanding as on 31.03.2020. The letter alleged that Mr.Kailasam had let down the petitioner very badly. Thereafter on 28.04.2020 several allegations and claims came up for the first time. Mr.Kailasam on behalf of respondent No.1 raised these but without corroboration through past correspondence/invoices or materials. This was apparently a ploy to create a defence against the admitted dues of at least Rs.22.20 crores and it lacks merits. SUN Distribution issued a disconnection notice dated 04.05.2020 for the dues amounting to Rs.31.31 crores outstanding as on 31.03.2020, granting time till 12.05.2020 to make the payment. By a reply dated 25.05.2020, EEIPL through Mr.Kailasam accepted to suffer disconnection by making a request to effect disconnection from 27.05.2020. He also took the plea that since the earlier agreement had expired on 31.01.2020 respondent No.1 will not be liable to make any payments for signals received thereafter and the dues of the earlier periods shall be paid only if found due on reconciliation of accounts.

**8.** On a careful reading of the pleadings and particularly the documentary evidence on record it is found that respondent No.1 and respondent No.2 in B.P. No.221/2020 are being managed by the same interests represented by

Mr.Kailasam. They have devised means to defraud the creditors of respondent No.1, EEIPL which has/had a large business claimed to be nearing a lakh of STBs by using and equipping Welworth to become its *alter ego* and take over all its business and assets without paying anything so that unsecured creditors like SUN Distribution may have no means to realize their money, even the admitted dues. Such arrangement and transactions cannot be protected only because respondent Nos.1 and 2 are juristic persons having corporate veil. This cannot help to sanctify or legalise a fraudulent and sham transaction of transfer of assets apparently for no consideration. Suddenly respondent No.2 Welworth which earlier had a business of 1000 STBs has acquired huge business and assets of respondent No.1 in a manner so as to render EEIPL an empty shell. Such machinations and designs are clearly products of fraud and cannot have any legal sanctity. The matter would have been different had Welworth accepted the liabilities of EEIPL but during the course of arguments also it has not offered to do so. Its plea that SUN Distribution wants to take over the entire business clandestinely is not worthy of any consideration, moreso when SUN Distribution has, for the present agreed not to effect disconnection of supply of signals to Welworth if it fully discloses its total consumer base including that acquired from EEIPL and pays for the same. On such understanding only an interim order in favour of Welworth has already been passed recording in brief that SUN Distribution has agreed to not give effect to the

notice for disconnection without seeking leave of this Tribunal. For the present that arrangement is permitted to continue in B.P. No.287/2020 without at present deciding the plea of SUN Distribution that redistribution of its channels by Welworth to consumers of EEIPL violates the terms of agreement.

**9.** However, interim order are urgently required to be passed in favour of the petitioner in B.P. No.221/2020, in order to prevent fraudulent acts to succeed and for protecting the interest of justice. On the basis of all the materials and discussions, respondent Nos.1 and 2, EEIPL and Welworth are held jointly and severally liable to pay the entire lawful dues of SUN Distribution as may be found payable. Further, they are held jointly and severally liable to pay the admitted amount of Rs.22.20 crores to SUN Distribution within one month from today failing which SUN Distribution shall be entitled to take all legal steps for recovery of that amount by filing proper applications before this Tribunal including application for disobedience of this order. Prayer for security for the balance of claimed amount shall be considered separately at a later stage.

**10.** The payment of Rs.22.20 crores shall be treated as payment 'on-account' and the rights and liabilities of the parties may be adjusted on final adjudication of claim made in B.P. No.221/2020.

**11.** Detailed reply, if required, may be filed by the respondents in both the petitions within four weeks from today. Rejoinder, if any, may be filed within three weeks thereafter. After the pleadings are completed, the parties will be at liberty to mention the matters for fixing an early date of hearing.

**12.** It is recorded that MA Nos.95, 98 and 102 of 2020 in B.P. No.221/2020 stand disposed of/allowed in above terms.

**sd/-**

**.....J**  
**(S.K. Singh)**  
**Chairperson**

sks