

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 8th February, 2021

MA No.278/2020

in

B.P. No.221 of 2020 with E.A. No.9 of 2020

Sun Distribution Services Private Limited

.....Petitioner

Vs.

E-infrastructure And Entertainment India Pvt. Ltd. & Anr.

.....Respondents

BEFORE:

HON'BLE MR.JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON

For Petitioner

: Mr. Abhishek Malhotra, Advocate
Ms. Atmaja Tripathy, Advocate
Ms. Shilpa Gannani, Advocate

For Respondent(E-Infrastructure)

: Ms. Sneha Ravi Iyer, Advocate

For Respondent (Welworth)

: Mr. Rohit Sharma, Advocate
Mr. Rounak Nayak, Advocate

ORDER

By S.K. Singh, Chairperson – This order is being passed in the light of order of the Hon'ble High Court of Karnataka dated 07.01.2021 passed in Writ Petition No.14080/2020(GM-RES) at the instance of the writ petitioner, Mr.Sachin Narayan. The records disclose that the said writ petition was filed by Mr.Sachin Narayan against the order dated 20.11.2020 of this Tribunal passed in course of hearing of B.P. No.221/2020 along with various MAs and the Execution Application No.9/2020 filed therein. Some other connected matters such as B.Ps. Nos.621/2020 and 287/2020 were also being heard together with the aforesaid matter although these two petitions were of M/s Welworth Software Pvt. Ltd. in no way directed against Mr.Sachin Narayan.

2. The order of the Hon'ble Karnataka High Court dated 07.01.2021 notices the relevant facts in brief that it was in B.P. No.221/2020 filed by SUN Distribution that an order was passed on 20.07.2020 directing E-Infrastructure & Entertainment Pvt. Ltd. and Welworth Software Pvt. Ltd.(Respondents Nos.1 and 2, respectively) to pay a sum of Rs.22.20 crores to the petitioner SUN Distribution Services within a fixed time. Since the direction was not complied, in an application under Section 20 of the Telecom Regulatory Authority of India Act, 1997 (TRAI Act) this

Tribunal issued directions upon some respondents and granted further time to pay the amount found due to SUN Distribution Services. In the same order dated 20.11.2020 the following observations were made against which Sachin Narayan petitioned the Hon'ble Karnataka High Court:

"At this stage, it appears proper to record a prima facie finding that Mr. Sachin Narayan as a majority share holder, has purposely removed from scene Mr. P Kailasam who was negotiating for settlement and the act of fraudulently stripping Welworth of its assets if permitted will surely benefit the majority shareholder. Hence, notwithstanding the corporate veil, in this execution proceeding it appears necessary to pass interim order not only in respect of respondent no. 1 and respondent no. 2 but also in respect of Mr. Sachin Narayan whose full address and details shall be submitted by Sun Distribution at the earliest, preferably by Monday.

Till the next date the respondents are given one last opportunity to comply with the prayers (b) and (c) in EA No. 9 of 2020, as elaborated in the last order. Those directions and orders shall now also govern Mr. Sachin Narayan the majority share- holder upon whom a copy of this order be sent at the address to be furnished by the decree holder, as indicated above.

Till the next date, respondent nos. 1 and 2 and Mr. Sachin Narayan are restrained from alienating, transferring or

encumbering in any way their assets and properties without seeking leave from this Tribunal. They are also restrained from withdrawing any money from their bank accounts whose details they must furnish by the next date, without seeking leave of this Tribunal.”

3. On behalf of SUN Distribution Services, MA No.278/2020 was filed on 02.12.2020 seeking impleadment of Sachin Narayan as respondent No.3 and M/s Malnad Infotech Pvt. Ltd. as respondent No.4 and was taken up on the next date. By order dated 03.12.2020 this Tribunal accepted the *Vakalatnama* filed by learned counsel for Mr.Sachin Narayan and in absence of any objections raised, impleaded him as respondent No.3 and also granted liberty to reply to the facts alleged against him in MA No.278/2020.

4. It transpires from the order of the High Court that on behalf of SUN Distribution Services a plea was taken that on account of subsequent developments and impleadment of Mr.Sachin Narayan on 03.12.2020, this Tribunal would be fully empowered to hear Mr.Sachin Narayan and pass orders as per law. It was also contended that the order dated 03.12.2020 was not under challenge in the writ petition. The Hon'ble High Court looked at the order dated 03.12.2020 to find that MA No.278/2020 seeking impleadment of two persons was still alive and hence it

chose not to express any opinion on the submissions advanced on behalf of Mr.Sachin Narayan and observed that since the issue is at large before the Tribunal it would be at liberty to examine all the issues including the issue of maintainability as well as impleadment and pass order on MA No.278/2020 by considering the rival contentions. While observing that the issue of impleadment and of the jurisdiction of this Tribunal to proceed against Mr.Sachin Narayan would be open for adjudication by this Tribunal, the Hon'ble High Court stayed the order dated 20.11.2020 of this Tribunal, in so far as it concerns Sachin Narayan and clarified that the stay would continue till the disposal of MA No.278/2020. Time for reply by Mr.Sachin Narayan was indicated and this Tribunal was requested to dispose of MA No.278/2020 expeditiously without being influenced by its own subsequent observations and orders passed after 20.11.2020.

5. In the aforesaid background this Tribunal has heard the parties for deciding the issues raised against impleadment of Mr.Sachin Narayan and also his objection to jurisdiction on the ground that the respondent companies are service providers but not he himself.

6. Before advertng to the rival submissions on the issue of impleadment and jurisdiction, it is deemed necessary and useful to notice that the telecom sector

which later came to include broadcasting also, was deemed significant and of sufficient public importance to require regulation by a statutory authority for proper growth and development. The TRAI Act aims to achieve the same through establishment of the regulator – Telecom Regulatory Authority of India (TRAI) and this Appellate Tribunal. So far as this Tribunal is concerned it is empowered in its original jurisdiction to adjudicate upon any dispute between the licensor and a licensee; two or more service providers; and between a service provider and a group of consumers. It also has jurisdiction to hear and dispose of appeals against directions or orders of the regulator. The Tribunal is not bound by the procedure prescribed by the Code of Civil Procedure, 1908. It has the power to regulate its own procedure and is to be guided by the principles of natural justice. It has many powers which are vested in a civil court. Disputes lying within its jurisdiction cannot be decided by civil courts because of statutory prohibition. Its orders are executable as a decree of civil court. Section 19 of the TRAI Act gives power to the Tribunal to execute its own decrees for which it will have all the powers of a civil court.

7. The purpose of adjudication whether under a special law such as the TRAI Act or by the ordinary civil courts is to achieve justice by finding out the truth and providing relief to the party found entitled thereto. The powers of an executing

court are much more complex and have developed from time to time by various judicial pronouncements of the Apex Court and other high courts. The significance of delivering justice by the executing court through proper use of the powers available under the CPC has been very well enunciated by Hon'ble Delhi High Court in a judgment by Justice J.R. Midha dated 05.08.2020 in the case of **M/s Bhandari Engineers & Builders Vs. M/s Maharia Raj Joint Ventures & Ors.** Learned counsel for the petitioner, SUN Distributions Services has placed reliance, particularly on Paras 65 and 66. This Tribunal has found that judgment quite illuminating on the moral as well as legal aspects of why and how to aim for justice so as to provide fruits of adjudication expeditiously to the decree holder.

8. Adverting to the plea that the Tribunal does not have jurisdiction to proceed against Sachin Narayan, the objection is found to be without substance as it is based upon a misconception that the proceedings *qua* Sachin Narayan are under Sections 14 and 14A and not Section 19(1) of the TRAI Act. The petition by SUN Distribution Services under Sections 14 and 14A is admittedly between service providers. In this petition an order was passed on 20.07.2020 to provide interim relief to the petitioner. After hearing all the concerned parties including respondent No.1, EIEPL and respondent No.2, Wel'worth Software Pvt. Ltd., it was found that respondents Nos.1 and 2 were being managed by the same interests

represented by one Mr.Kailasam and “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.” Respondents Nos.1 and 2 were held jointly and severally liable to pay the entire lawful dues of SUN Distribution and were directed to pay the admitted amount of Rs.22.20 crores within one month. The order against Sachin Narayan was passed later while proceeding with an application for execution under Section 19(1) of the TRAI Act, whereunder all the powers of civil court for the purpose of execution are available to TDSAT.

9. The concerned party/parties tried but have so far failed to secure any relief against the said order from Hon'ble Delhi High Court or any other court. Review Application filed on behalf of respondent No.1 was also dismissed on 30.09.2020. The respondents sought time for paying the amount of Rs.22.20 crores and in spite of accommodation granted on more than one date, they failed to pay anything to the petitioner regardless of pendency of application for imposing penalty for disobedience.
10. Ultimately, Execution Application bearing No.9/2020 was filed on behalf of the petitioner on 10.11.2020. Respondent No.1 continued to make offers of settlement of the dues even on 11.11.2020 when the EA was considered for the first time and certain orders were passed to facilitate a settlement.
11. On 20.11.2020 this Tribunal passed the order under reconsideration to record a *prima facie* finding against Mr.Sachin Narayan as a majority shareholder in the light of submissions made by learned counsel for petitioner on the basis of facts recorded by Hon'ble Delhi High Court in its order dated 17.08.2020 and the law laid down in Delhi Development Authority Vs. Skipper Construction Co.(P) Ltd., (1996) 4 SCC 622 which was also noted by the High Court. The facts supported the submission that as a majority shareholder, Mr.Sachin Narayan

had purposely removed from the scene Mr.P. Kailasam who was negotiating for settlement and that if Welworth is also stripped of its assets, the loss to the petitioner will be a benefit for him as a majority shareholder. Hence, in view of findings in the earlier order of 20.07.2020 that take-over of assets of respondent No.1 was fraudulent and the likelihood of fraudulent stripping of Welworth also, this Tribunal on account of evident as well as imminent further fraud held that “Notwithstanding the corporate veil in this execution proceeding it appears necessary to pass interim order.....also in respect of Mr.Sachin Narayan.....”. Till the next date he was restrained from restructuring, alienating, transferring or recovering his assets and properties without seeking leave from this Tribunal. This was in addition to interim direction of similar nature against respondent Nos.1 and 2.

12. The aforesaid order was deemed necessary and actually proved useful because on 20.11.2020 it became evident, as recorded in that order, that respondents Nos.1 and 2 were disobeying the orders of this Tribunal by not disclosing their assets in spite of repeated opportunity and the CEO of Welworth Software, Mr. P. Kailasam who was also associated with respondent No.1 had stopped responding and had become *incommunicado* although on the earlier date the stand was that talks for settlement shall be pursued seriously.

13. Those reasons are apparent from the order passed on 20.11.2020 and are reiterated. It is clear that the order to proceed against Mr.Sachin Narayan was passed not in the proceeding under Section 14 or 14A which involves adjudication of disputes between service providers etc. but in the execution proceedings when it became imperative to ignore the corporate veil because of past fraud and likelihood of its being repeated further in respect of assets of Welworth Software also. In the jurisdiction under Section 19(1) as an executing court this Tribunal has all the powers of a civil court and therefore, it cannot be accepted that in exercise of this jurisdiction and when fraud is apparent, this Tribunal cannot proceed against the real person controlling the corporate entities, Mr.Sachin Narayan. The corporate veil cannot be permitted to continue in aid of fraud evident from circumstances and the attending facts. On removal of veil, Sachin Narayan emerges as the service provider in the cover of corporate veils.

14. The other objection advanced on behalf of Mr.Sachin Narayan is on the basis that there is no necessity in facts to ignore the corporate veil. The following four judgments have been cited to support the submission that corporate veil can be lifted only in extra-ordinary situation:

- (i) **Anirban Roy & Anr. Vs. Ram Kishan Gupta & Anr; SM(M) 559/2017**

- (ii) **V.K. Uppal Vs. M/s Akshay International Pvt. Ltd.; (2010) SCC Online Del 538.**
- (iii) **Space Enterprises Vs. Srinivasa Enterprises Ltd.; (1998) SCC Online Del 243; and**
- (iv) **Mukesh Hans Vs. Uma Bhasin; (2010) SCC Online Del 2776.**

It has also been submitted on the basis several judgments including that of the Hon'ble Supreme Court in the case of **Sneh Lata Goel Vs. Pushplata; (2019) 3 SCC 594**, that executing court cannot go behind the decree so as to realize money from any person other than the judgment debtor.

15. There is no quarrel with the aforesaid legal principles settled by a catena of judgments. However, there is a long line of cases in which the law has clearly evolved that fraud vitiates even the most solemn transactions. In the present case the extra-ordinary situation of practice of fraud on the creditors of respondent No.1 is writ large on the face of the record. The finding given by this Tribunal about fraudulent practice adopted to deprive the creditors of respondent No.1, EIEPL by pretending its take-over by respondent No.2 was challenged before the Delhi High Court but the challenge was found to be without any merits. The subsequent facts show that Welworth Software also stopped showing compliance to the orders of this Tribunal and it was not known to the concerned parties including the petitioner

as to whom to approach for seeking obedience or even for talks for settlements. It was only after his shareholding was noticed by Delhi High Court and notice to Mr.Sachin Narayan by this Tribunal after a *prima facie* finding against him, that another set of counsels were engaged and were given instructions leading to disclosure of assets and liabilities etc. by respondent No.1 and respondent No.2. There are sufficient materials now on record which clearly indicate that Welworth Software has also passed on the assets of respondent No.1, at least large number of STBs to other entities including M/s Malnad Infotech Pvt. Ltd.(100% shares with Sachin Narayan and his wife). This has happened in spite of interim restraint order passed by this Tribunal against the respondents and also Sachin Narayan. But orders against the latter are under stay till the present order is passed.

16. In his short reply to the MA, Mr.Sachin Narayan has made a bald submission that there is no justification to proceed against him personally for implementation/compliance with the interim decree dated 20.07.2020 which is under challenge with the Division Bench of the Delhi High Court. His other submission is that the apprehension of fraudulent transfer of assets by Welworth Software cannot subsist anymore because respondents Nos.1 and 2 have by now disclosed their financial position and this also shows compliance with the directions of this Tribunal issued from time to time. Lastly, he has made a

submission in the capacity of majority shareholder of Welworth Software Pvt. Ltd. that pursuant to the Asset Transfer Agreement dated 19.12.2019 between the respondents Nos.1 and 2, no assets of respondent No.1 were actually transferred to respondent No.2 and the latter has not divested or transferred his assets to any person or entity. This is contrary to the stand of respondents Nos.1 and 2 who strongly canvassed the Asset Transfer Agreement of 19.12.2019 as genuine.

17. In the rejoinder to the aforesaid reply, the petitioner has pointed out that Mr.Sachin Narayan has not even denied the basic facts on which this Tribunal found the Asset Transfer Agreement dated 19.12.2019 to be fraudulent. In the rejoinder it has been disclosed that Mr.Sachin Narayan along with his wife holds 100% share in Welworth but respondent No.2 has pleaded otherwise. It has been submitted that even in respondent No.2, EIEPL he holds together with his wife 93.06% share. In respect of Malnad Infotech Pvt. Ltd. also he is said to hold 100% share.

18. The facts pleaded by the petitioner/applicant in MA No.278/2020 for seeking impleadment of Mr.Sachin Narayan including financial transactions, shareholdings have not been subjected to any specific denial or reply. Some material facts were highlighted from Paras 3.9 and 3.10 of the application. The

financial transactions showing withdrawal and deposits of Mr.Sachin Narayan clearly indicate his total control over respondents Nos.1 and 2. Both the entities may have some officials to represent the management but they are all creatures of Mr.Sachin Narayan. He is the real face of respondents Nos.1 and 2. His presence is essential to understand the financial transactions and various aspects related to management of respondents Nos.1 and 2 including their assets and liabilities. Without his impleadment the decree holder may not get relief and justice. Hence, the prayer for impleadment of Mr.Sachin Narayan as respondent No.3 is allowed. The memo of parties be corrected accordingly. The earlier order passed against him so as to restrain him from alienating, transferring or encumbering in any way his assets and properties and also from withdrawing money from his bank accounts, without seeking leave from this Tribunal is reiterated and confirmed after having perused his reply and noted the submissions on his behalf. He must submit details of his bank account and all other assets and properties including a list of all business entities wherein he with his wife held/holds majority shares, including corporate or partnership businesses, and show the quantum and value of their shares with percentage vis-à-vis total shares in such entities/businesses.

19. Although some details relating to Mr.Sachin Narayan are available on record by way of papers relating to IT Return, he should disclose his relationship with all

his business ventures and their worth, as directed above, within two weeks from today by filing appropriate affidavit on the lines of respondents Nos.1 and 2.

20. At this stage it is not deemed necessary to implead M/s Mainad Infotech Pvt. Ltd. even if it is fully owned by Mr.Sachin Narayan. This prayer may be renewed in future if there are materials found to show that business of Mainad is also being run in a fraudulent manner so as to deprive the benefits of decree under execution passed in favour of the petitioner. The MA No.278/2020 is allowed to the aforesaid extent and disposed of accordingly.

21. For taking steps in the Execution Application and for considering any other relevant issue, post the matter under the head "for directions" on 09.03.2021.

.....
(S.K. Singh)
Chairperson

sks