

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

Dated 15th July, 2021

Broadcasting Petition No. 516 of 2020

Discovery Communications (India) Pvt. Ltd.Petitioner

Versus

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

BEFORE:

HON'BLE MR.JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON

For Petitioner : Ms. Payal Kakra, Advocate
For Respondent No.1 : Ms.Sneha Ravi Iyer, Advocate
For Respondent No.2 : Mr.Rohit Sharma, Advocate
Mr. Raunak Nayak, Advocate

ORDER

By S.K. Singh, Chairperson – Parties were heard in detail on the prayer of the petitioner for an interim decree on the basis of admission appearing from letters and correspondences of respondent and order was reserved on such prayer on 13.04.2021. In view of liberty granted, parties have also filed written notes of submission. Thereafter some delay has occurred because of re-emergence of the COVID pandemic causing disruption in normal working.

2. Discovery Communications (India) Pvt. Ltd. filed this petition in August, 2020 for a decree for Rs.9,22,14,987/- on account of outstanding subscription dues claimed to be payable as on 31.05.2020 along with interest @ 18% per annum. An interim prayer which is under consideration is in the following words:

“Pass an ad interim ex parte order directing the Respondents herein to pay the admitted amount in terms of the abovesaid Cheques/ “promissory notes” issued by the Respondent No.1 and in terms of unequivocal admission vide its letter undertaking dated 12.12.2019 towards its liability, in tune to Rs.8,24,52,545/- (Rupees Eight Crores Twenty Four Lakhs Fifty Two Thousand Five Hundred and Forty Five Only) which the Respondents are jointly and severally liable to pay to the Petitioner as the Cheques have been got dishonoured for “Insufficient Funds”.

3. Large time was consumed in filing the reply. Thereafter rejoinder was filed and parties were heard in respect of the interim relief.

4. The petitioner company is engaged in the business of distribution of various television channels and falls in the category of broadcaster. The respondents are Multi-System Operators (MSOs) involved in the business of re-transmission of television channels/programmes received from various broadcasters in the territory specified in the interconnection agreements executed. Longstanding business relationship between the parties is not under dispute. The subscription agreements [Annexure P/3(colly.)] with both respondents were originally for the period upto 31.12.2019 but were extended vide letters dated 31.01.2020 and 30.03.2020 for a period upto May 2020, as per submissions, whereafter disconnection of supply of signals took place on account of non-payment of outstanding subscription dues by respondent No.1. Petitioner has claimed that for the period concerned respondents received the signals of the petitioner and as per requirement of TRAI Regulations, it has been issuing Monthly Subscription Reports(MSRs). In support of the outstanding dues claimed, petitioner has annexed copies of invoices raised on respondent No.1 along with statement of account as Annexure P/5(colly.).

5. To meet its liability and for partial payment of the dues, respondent No.1 issued six post-dated cheques bearing the date 31.12.2018, each for an amount of Rs.25 lakhs. The details of the cheques are mentioned. On presentation, these cheques got dishonoured and were returned with the remarks “funds insufficient”. Copies of the cheques with Bank Return Memo dated 06.02.2019 are **Annexure P/6(colly.)**. Petitioner sent a legal notice dated 20.02.2019 in respect of bounced cheques under the Negotiable Instruments Act, 1881 followed by a Complaint under the said Act. The legal notice and its tracking reports are **Annexure P/7** and **Annexure P/8**.

6. Along with a detailed statement of account showing an outstanding of Rs.6,66,27,387/- towards subscription fees for the billing upto 31.05.2019 and the invoices, petitioner sent the letter dated 11.06.2019 to respondent No.1. Its copy is **Annexure P/9**. Ultimately respondent No.1 sent a letter dated 12.12.2019 (**Annexure P/10**). This letter is important. Petitioner has claimed this letter to be the unequivocal admission of respondent No.1 for seeking the interim relief. A perusal of this letter discloses that it refers to subscription dues of petitioner till 30.11.2019 as Rs.8,24,52,545/-. The earlier references noted are: disconnection notice of 20.11.2019 and discussion of 11.12.2019. The letter mentions that after

discussion, respondent No.1 agreed to clear the outstanding dues as per payment schedule indicated. The letter acknowledges that all invoices pertaining to the above outstanding dues had been received by the respondent. The payment schedules offered by the respondent show that starting from 25.12.2019 the respondent No.1 proposed to clear the entire outstanding arrears of Rs.8.24 crores by 20.02.2020 and also agreed to clear by then the billing for December, 2019. On the basis of such promise and undertaking, respondent No.1 requested the petitioner to withdraw the disconnection notice of 20.11.2019. It is further case of the petitioner that to avoid disconnection, respondent No.1 made further false assurance to pay the outstanding liability and issued another set of three post-dated cheques. One cheque was dated 31.10.2019 for Rs.50 lakhs and two others were dated 31.12.2019 for Rs.1.30 crores and Rs.2.00 crores respectively. These cheques issued for part-payment of admitted liability, were also dishonoured and the return memos issued by the bank in December 2019 and January, 2020 indicated the reason to be “funds insufficient”. In spite of requests, respondent No.1 did not make good the payment towards the dishonoured cheques also and hence an advocate’s notice dated 21.02.2020 under Section 138 of Negotiable Instruments Act, 1881 was issued. A copy of the same with proof of dispatch is **Annexure P/12(colly.)** and tracking reports are **Annexure P/13(colly.)**. Petitioner issued a further disconnection notice dated 25.01.2020

(**Annexure P/14**) in which the up-to-date outstanding was shown to be Rs.8,14,52,545/- and time for payment was given till 15.02.2020. As per Email of petitioner dated 12.03.2020 (**Annexure P/15**) the arrears had increased to more than Rs.8.89 crores. Due to COVID pandemic, supply of signals was continued for some time on account of Ministry of Information & Broadcasting(MIB) advisories of March and April, 2020, but ultimately due to non-payment of the outstanding dues, as per submissions, disconnection of signals was effected by end of March, 2020.

7. In the short reply filed on behalf of respondent No.1 on 05.02.2021 defence against interim relief has been raised on the ground that the letter dated 12.12.2019 (**Annexure P/10**) does not contain clear admission of dues and it was issued on behalf of respondent No.1 by one Mr.Somasekhar, an employee of respondent No.1 because he was in connivance with the petitioner. In respect of cheques issued and which got dishonoured the defence is that those were issued prior to letter of 12.12.2019 and for a lesser amount than the sum of Rs.8,24,52,545/- which has been claimed to be the admitted dues. It is further defence of respondent No.1 that after the final disconnection notice dated 25.01.2020 a reply was sent by letter dated 05.03.2020(**Annexure R-1**) taking a stand that there had been a management change and therefore, cheques issued by the old management have become null and

void. That annexure does not deny the earlier correspondence but the stand was that the outstanding claimed in the disconnection notice of 21.02.2020 “needs to be reworked in terms of the support extended in placing all your channels apart from the substantial discount claimed by us from time to time”. In a nutshell respondent No.1 subsequently claims to have raised disputes and on that basis its defence is that the earlier admission does not have any significance. A plea has also been taken that the subscription agreement was initially only upto 01.12.2019 and the invoices for that period are only for an amount of Rs.4.09 crores approximately and payments made during that period have been disclosed to be Rs.85 lakhs. However, no copy of accounts for the relevant period maintained in usual course of business, has been brought on record by way of defence that the amount admitted in **Annexure P/10** suffered from any error. Nor there is any material against Mr.Somasekhar.

8. Before advertng to the case of the petitioner against respondent No.2, Welworth Software Pvt. Ltd. (Welworth), it is convenient to first decide the claim of the petitioner for interim relief against respondent No.1. Admittedly, the dues which are said to be admitted are in respect of supply of signals to respondent no.1 for which parties had interconnect agreements since a long time and the last agreement was initially till 31.12.2019. The same was extended and the extension was accepted and enjoyed by respondent No.1 as is clear from its conduct and even

from **Annexure R-1** dated 24.04.2020 which shows that it was enjoying the signals from the petitioner as per understanding between the parties even after the onset of COVID pandemic. The plea based on agreement being only till 31.12.2019 and other grounds for denying the contents of letter dated 12.12.2019 are found to be without any substance. Change of management leading to departure of Mr.Somasekhar with all honour and dignity, as disclosed in the rejoinder do not support the defence of respondent No.1. There is absolutely no material to indicate that the invoices and correspondences till the issuance of the final disconnection notice were challenged by respondent No.1 through any contemporaneous correspondence. The admission made by the respondent company through authorized representative coupled by its actions of issuing cheques which all got dishonoured and then respondent No.1 sought further time through letter dated 12.12.2019, leave no room for the defence that the admission was not clear or that it was unauthorized. Such defences are absolutely frivolous as is clear even from the tone and tenor of **Annexures R-1 and R-2**, the two documents brought on record with the reply.

9. In respect of **Annexure R-1** dated 05.03.2020, in its rejoinder the petitioner has alleged that letter to be fabricated for purpose of defence at a later stage and therefore, it was not sent through Email nor it is mentioned in subsequent

correspondence/letters. It was received by petitioner on 01.10.2020 and the same was replied vide Email dated 21.10.2020 but the Email is said to have bounced and the reply by speed-post also came back with a remark that the “consignee has shifted”. But the petitioner has not denied that although the amount admitted was Rs.8.24 crores approximately at an earlier time but in the subsequent legal notice dated 21.02.2020 the outstanding amount till 30.11.2019(subsequent date) was only Rs.8,14,52,545/-. Hence the earlier admitted amount, as per subsequent legal notice had come down to Rs.8,14,52,545/- only. Hence, the outstanding which the petitioner can claim on account of admission cannot be more than the amount disclosed in the later legal notice of 21.02.2020 (**Annexure P/12**). The interim relief claimed by the petitioner against respondent No.1 is allowed to that extent by award of an interim decree for Rs.8,14,52,545/- in favour of petitioner and against respondent No.1.

10. Adverting to the case against respondent No.2, it is noted that the petitioner has pleaded in the petition that he has learnt from reliable sources and information gathered from public domain that respondent No.1 and respondent No.2 are in connivance with each other. Being hand-in-glove with each other, they are involved in causing and alienating subscribers of respondent No.1 to other networks including

that of respondent No.2. Petitioner has also pleaded that respondent No.1 in order to evade its liability towards the petitioner has alienated its subscriber base to the network of respondent No.2 and respondent No.2 has also indulged in unlawful handing over petitioner's IRD-VC Boxes to other networks in violation of the subscription agreement and the Regulations. The subscriber base of respondent No.2 had undergone shocking inflation and the same suggests that respondent No.1 has illegally transferred IRD-VC Boxes of the petitioner to respondent No.2. The common control of respondents Nos.1 and 2 through one Mr.Kailasam as CEO of respondent No.2 and Chief Advisory Officer of respondent No.1 has been demonstrated. In support of the same petitioner has relied upon **Annexure P/18** dated 07.05.2020. That letter mentions that the addressee Mr.Kailasam had been given full powers to manage respondent No.1 in place of Mr.Somasekhar whose Directorship was to end and due to which he was to be given a farewell to which all the staff was invited.

11. Petitioner has also pleaded that in similar situation in B.P. No.221/2020 filed by another broadcaster – SUN Distribution Services Pvt. Ltd. against the same respondents, this Tribunal has passed an order 20.07.2020 (**Annexure P/19**) holding that the respondents Nos.1 and 2 had devised means to defraud the creditors of

respondent No.1, EEIPL.....“using and equipping Welworth to become its *alter ego* and take-over of 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”. In fact after referring to that order in Para 10 of the petition entire Paras 7 to 12 of that order in the case of SUN Distribution passed against respondents Nos.1 and 2 in similar situation have been extracted. The part extracted above is part of Para 8 of the order dated 20.07.2020. The petitioner by a letter dated 23.07.2020 (**Annexure P/20**) gave a notice to Welworth and other Directors including Mr.Kailasam highlighting that business and assets of respondent No.1 had been illegally taken-over by respondent No.2 and that it should desist from doing illegal acts and if the dues are not paid, supply of signals shall be stopped.

12. In the prayer, both interim and final, petitioner has prayed for a decree of the entire due amount against both the respondents, holding them as jointly and severally liable to pay the dues to the petitioner. The large-scale take-over of the subscribers of respondent No.1 by respondent No.2 has been defended by respondent No.2 by pointing out that the findings of this Tribunal in the order dated 20.07.2020 passed in B.P. No.221/2020, is under challenge in LPA No.256/2020 but there is no denial that there was massive surge in the number of subscribers of respondent No.2 as a

result of their shifting from the system of respondent No.1 who closed its business for all practical purposes in favour of respondent No.2 without any visible consideration and evidently with a view to leave the unpaid broadcasters helpless.

13. Learned counsel for respondent No.2 has raised technical plea that for proving of fraud a trial is necessary. He has cited a judgment of Hon'ble Supreme Court in the case of **Nagin Das** reported in **(1974) 1 SCC 242** and submitted that pleading should be given more importance than admission in documents.

14. In the facts of the case the above defence of respondent No.2 is found to be lacking in merits. This Tribunal has tried the relevant issues relating to collusion and fraud between respondent No.1 and respondent No.2 on the basis of affidavit evidence as well as documentary evidence. Only because delay suits the respondents, the finding already arrived on this relevant issue cannot be ignored when the basic factual situation relating to issue of collusion and fraud by respondent No.1 and respondent No.2 remains the same.

15. The fact that part of dues against SUN Distribution had been admitted by the subsequent management under Mr.Kailasam but that has not been done in the case

of petitioner, does not adversely affect the clear admission of the dues as per finding already recorded earlier in this order. So far as order dated 20.07.2020 passed by this Tribunal in B.P. No.221/2020 is concerned, the same was followed and fully applied to the case filed by another broadcaster, ZEE Entertainment Enterprise Pvt. Ltd. against the same respondents through B.P. No.256/2020. The challenge to the order dated 20.07.2020 could not succeed before the learned Single Judge of Hon'ble Delhi High Court and there is nothing on record to show that the order of 20.07.2020 has been stayed by any higher court. Hence, this Tribunal has no hesitation in following the order dated 20.07.2020 and hold respondent No.2 also jointly and severally liable to pay the admitted amount found payable in favour of petitioner and against respondent No.1. As a result, the interim relief claimed by the petitioner is allowed by award of an interim decree of Rs.8,14,52,545/- along with *pendente lite* and future interest @ 9% per annum in favour of petitioner and against respondent No.1 and also respondent No.2 starting from September 2019 till the date of realization. In other words, both the respondents shall be jointly and severally liable to satisfy the interim decree. They are directed to make the payment within four weeks from today failing which the petitioner will be entitled to realize the amount covered by the interim decree through an Execution Proceeding against both the respondents.

16. The Registry is directed to prepare the interim decree for the amount as ordered above along with *pendente lite* and future interest @ 9% per annum starting from September 2019 till the date of realization, at an early date preferable within four weeks.

Sd/-

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

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