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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: August 10, 2009

Date of Order: August 20, 2009

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20.08.2009

World Media Ltd.

...Petitioner

Through: Mr. T.K. Ganju, Sr. Adv. with Mr. Sanjeev Malhorta, Advocates

Versus

Prasar Bharti

...Respondent

Through: Mr. Rajeev Sharma, Advocate

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

1. By this petition, the petitioner has assailed an interim award passed by learned arbitrator based on the admissions of petitioner as available on record.

2. The claim of respondent and the counter claim of petitioner are subject matter of arbitration before the arbitrator. During arbitration proceedings, respondent prayed for an interim award on the basis of letter dated 8th March 2001 wherein the petitioner had categorically admitted its liability of Rs.83,83,157/- to respondent under the contract in response to a demand of balance due amount by respondent which was much higher than Rs.83,83,157/-. Despite admitting this liability, the petitioner neither paid this amount nor paid other amount and thus disputes arose between the parties and referred to the arbitrator.

3. It is submitted by counsel for petitioner that the learned arbitrator wrongly passed an interim award presuming that there was an arbitration agreement. There was no arbitration agreement between the parties. The other objection taken by the petitioner is that even if it is believed that there was an arbitration agreement, the matter referred to the arbitrator was beyond the scope and ambit of arbitration agreement as the contract in question was not covered by the arbitration agreement. It is also submitted that grant of 18% interest by the arbitrator was quite exorbitant and such an exorbitant rate of interest could not have been allowed.

4. In nutshell, the facts relevant for the purpose of deciding this petition are that the petitioner was an accredited agent listed with the respondent which entitled the petitioner to 15% commission on advertisements and other related bills and also entitled the petitioner to have 45 days credit i.e. to make payment after 45 days of raising the bill. Respondent runs several TV Channels such as DD1, DD2 and DD Sports etc. Respondent entered into an MOU with Living Media India Limited (LMIL), a sister concern of petitioner for telecast of daily current affairs programme in Hindi titling 'Aajtak' on DD2 Channel. The respondent gave an option to LMIL either to enter into a direct contract with it or to enter into the contract through accredited agent for telecast of the programme on sponsorship basis. The LMIL did not enter into direct contract and rather asked the petitioner to enter into the contract with respondent since the petitioner was an accredited agent and was entitled to a credit of 45 days and a commission of 15% of the telecast charges. The agreement in respect of accredited agent categorically provides that the accredited agent shall be jointly and severally liable for telecast charges of the programme and in case of non-payment of telecast charges, it would be

liable to pay 18% interest per annum on delayed payment.

5. The programme was telecasted under the contract entered into between petitioner and respondent on sponsored basis. However, the schedule of telecast was varied during continuation of the contract which gave rise to a dispute. While the petitioner claimed that due to variation in the schedule, the petitioner was not liable to pay full contracted amount, the respondent claimed the telecasting charges according to the contract. A correspondence ensued and vide letter dated 8th March 2001, the petitioner admitted that it was liable to pay Rs.83,83,157/- only as against the claim of respondent and assured payment of this amount. Vide another letter dated 26th March 2001, the petitioner again admitted its liability as per its books of account to the tune of Rs.83,83,157/-. It is this amount for which the learned arbitrator passed the interim award and allowed interest @ 18% per annum.

6. The contention of petitioner about the arbitration clause not being there has been considered by the learned arbitrator in detail even in the interim award and turned down. Similarly, the other contentions that the subject matter was not covered under the arbitration clause have also been turned down by the learned arbitrator.

7. Learned counsel for petitioner argued that under the Accreditation Agreement, parties covered only advertising. The letter and spirit of agreement pertained to advertisements procured by the agent for respondent and the agreement was not applicable in respect of Serials telecasted on the Channels. The petitioner acted only as an accredited agent of LMIL and the principal liability to pay the amount was only of LMIL. Learned counsel for

petitioner, however, during arguments failed to point out a single clause from the entire contract wherein the petitioner had been described as an Agent of LMIL. The contract entered into between petitioner and respondent was a contract independent of LMIL. The petitioner has nowhere been described as an agent of LMIL. When the terms of the contract are in writing, this Court cannot read a clause in the contract which is actually not there. The correspondence ensued between respondent and LMIL was prior to entering into the contract with the petitioner. The petitioner being the sister concern of LMIL was very well aware of the MOU and could have refused to sign the contract if it was not recorded in the contract that the petitioner was an agent of LMIL. Moreover, in the contract entered with the petitioner, there was no reference of LMIL or the MoA. Nor the contract with the petitioner has made subject of MoA between respondent and LMIL. I, therefore, consider that the plea of the petitioner that he was only an agent of LMIL must fail.

8. The other plea that the Accreditation Agreement covered only advertisement is also baseless. All sponsored programmes telecasted on TV channels are in the nature of advertisements. These days, sponsored news appear in newspapers, sponsored programmes in TV Channels and sponsored events take place. Sponsored news items, sponsored TV Serials and sponsored events are nothing but advertisements and they cannot be treated anything else other than advertisement. In every sponsored programme, the responsibility is of the sponsor to meet all expenditures of the programme. Only those companies sponsor programmes who want their brand names to be publicized when people watch the programmes. The sponsoring programme is another mode of advertising the brand names and sponsored programme are to be treated as advertisement only.

9. The interest of 18% awarded by arbitrator is also justified in view of the fact that petitioner has availed 15% commission on the amount apart from credit facility.

10. In view of my above discussion, the objections raised by the petitioner against the interim award are hereby dismissed.

11. The petition stands dismissed.

August 20, 2009
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SHIV NARAYAN DHINGRA J.