

IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(OS) 1358/2006

HATHWAY CABLE & DATACOM PVT. LTD. Plaintiff
Through Mr. Sanjeev Sachdeva, Advocate

versus

BANJARA TELELINKS PVT. LTD. Defendant
Through Mr. Maninder Singh, Senior Advocate with Mr.
Arjun Natrajan, Mr. T.Singhdev, Mr. J.P. Karuna Karan,
Advocates

CORAM:
HON'BLE DR. JUSTICE S.MURALIDHAR

1. Whether reporters of the local news papers
be allowed to see the judgment? No
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported in the
Digest ? Yes

ORDER
30.07.2009

IA No. 13033/2006

1. This is an application filed by the Defendant Order VII Rule 11 of the Code of Civil Procedure 1908 ('CPC') seeking rejection of the plaint on the ground of maintainability in view of Sections 14 and 15 of the Telecom Regulatory Authority of India Act, 1997 ('TRAI Act').

2. The suit against the Defendant is for the recovery of Rs.1,12,31,517/- along with interest @ 18% per annum from the date of default together with costs. The

Plaintiff is stated to be a Cable TV Service Provider, as is known in the cable TV industry parlance as a Multi Systems Operator ('MSO'). The Plaintiff receives and distributes/redistributes satellite television, broadcast signals and other audio visual signals of cable TV channels to various end subscribers directly or through its distributors, franchisees, local cable operators etc. The Defendant is also engaged in the business of cable TV networks and is operating as an MSO in the twin cities of Hyderabad and Secunderabad. The Plaintiff was appointed as the Distributor for SET Discovery Private Limited Bouquet of Channels popularly known as Sony Bouquet of channels with effect from 1st January 2003 for the twin cities of Hyderabad and Secunderabad. As a result anyone desiring to transmit or retransmit the signals of the said Sony Bouquet of Channels in the twin cities of Hyderabad and Secunderabad were required to enter into an arrangement/understanding or agreement with the Plaintiff for such transmission/retransmission of the Sony Bouquet of channels. Likewise the Plaintiff was appointed with effect from 15th January 2003 as the Distributor for the Star (India) Private Limited for their bouquet of channels.

3. According to the Plaintiff the Defendant co approached it for transmission of Sony Bouquet of channels with effect from 1st January 2003 and for Star Bouquet of channels with effect from 15th January 2003. The Defendant agreed to pay to the Plaintiff, on a monthly basis, a sum of Rs.9,15,860/- for the Sony Bouquet of channels and Rs.12,21,210/- for the Star Bouquet of channels. According to the Plaintiff, it was agreed by the Defendant that in the event the latter failed to make payment as and when due it would pay interest @ 18% per annum from the date of

default till the date of realization. Various invoices were raised upon the Defendant by the Plaintiff for the signals provided to the Defendant with respect to the Star Bouquet and Sony Bouquet of Channels. When payments were not made despite a lawyer's notice being sent to the Defendant, the present suit was filed.

4. The Defendant filed the present application on 22nd November 2006 stating the in view of Sections 14 and 15 TRAI Act this Court does not have jurisdiction to entertain the suit. Inter alia it is contended by the Defendant that the present suit is a dispute between two service providers as contemplated under Section 14 TRAI Act and any dispute between two more service providers has to be adjudicated only by the Telecom Disputes Settlement and Appellate Tribunal ('TDSAT'). Further under Section 15 TRAI Act, no civil court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which the TDSAT is empowered to determine under the TRAI Act. It is pointed out that under Section 2 (1)(k) TRAI Act the expression "telecommunication service" has been defined to mean service of any description which is made available to users by means of any transmission or reception of signs, signals etc. but "shall not include broadcasting services." Further the proviso to Section 2(1)(k) states that the Central Government may notify any other service including broadcasting services to be a telecommunication service. In terms of the proviso a notification was issued by the Central Government on 9th January 2004 whereby all disputes pertaining to cable TV services have been included within the purview of the TRAI Act. This notification dated 9th January 2004 stands further amended on 4th September 2006. Consequently the services provided by the Plaintiff and the Defendant would also

be covered under the TRAI Act.

5. Mr. Sanjeev Sachdeva, learned counsel for the Plaintiff relies upon the order dated 31st August 2005 passed by the TDSAT in Petition No. 52 (C) of 2005 (***P.B. Enterprises v. World View***) to contend that the TDSAT had already formed an opinion in the said case that once the party ceased to be a service provider with reference to the claimant who may also be a service provider and then a dispute raised by one of them concerning recovery of monies would not come within the purview of Section 14 TRAI Act. He refers to the reply to lawyer's notice in which the stand taken by the Defendant was that there was no contractual relationship between the parties and therefore no amount was owing to the Plaintiff company by the Defendant company. It is submitted that inasmuch the Defendant has denied its contractual relationship with the Plaintiff, the TDSAT would not, consistent with its aforementioned decision, entertain the claim of the Plaintiff.

6. On behalf of Defendant Mr. Maninder Singh, learned Senior counsel refers to the decision of the Supreme Court in ***Cellular Operators Association of India v. Union of India (2003) 3 SCC 186*** and submits that all disputes between service providers should be adjudicated only by the TDSAT. He submits that Section 15 TRAI Act excludes completely the jurisdiction of the civil court in relation to disputes between two service providers. It is submitted that after the notification of the Central Government in terms of the proviso to Section 2(1)(k) TRAI Act there can be no manner of doubt that dispute raised in the present suit can be adjudicated only by the TDSAT. He then refers to the decision of the Supreme

Court in *Union of India v. Tata Teleservices (Maharashtra) Limited* (2007) 7 SCC 517. It is accordingly contended that the present plaint is not maintainable and it should be rejected on that ground.

7. It appears to this Court from perusal of the order dated 31st August 2005 passed by the TDSAT in the Petition No. 52 (C) of 2005 that notice was not taken of the decision in *Cellular Operators Association of India v. Union of India* where the Supreme Court held that (SCC, Page 204): “...the [power of the Appellate Tribunal is quite wide.” Further in *Union of India v. Tata Teleservices (Maharashtra) Limited* it has been observed as under (SCC, page 525):

“19. The thrust of the argument on behalf of the respondent before us was, in a case where a licence had not actually be issued to a party by the Central Government, the dispute could not be said to be one between a licensor and a licensee, contemplated by Sections 14(a)(i) or (ii) of the Act, it is submitted that only on the actual grant of a licence, would a person become a licensee under the Central Government and only a dispute arising after the grant of a licence would come within the purview of the Act. The wording of the definition of licensee is emphasized in support. Considering the purpose for which the Act is brought into force and TDSAT is created, we think that there is no warrant for accepting such a narrow approach or to adopt such a narrow construction. It will be appropriate to understand the scope of Section 14 (a)(i) of the Act and for that matter Section 14 (a) (ii) of the Act also, as including those to whom licences were intended to be issued and as taking in also disputes that commence on the tender or offer of a person being accepted. In other words, a dispute

commencing with the acceptance of a tender leading to the possible issue of a licence and **disputes arising out of the grant of licence even after the period has expired would all come within the purview of Section 14 (a) of the Act.** To put it differently Section 14 takes within its sweep disputes following the issue of a letter of intent, pre-grant of actual licence as also disputes arising out of a licence granted between a quondam licensee and the licensor.” (emphasis supplied)

8. It is accordingly held that notwithstanding the decision dated 31st August 2005 passed by the TDSAT in Petition No. 52 (C) of 2005, in view of the law explained by the Supreme Court in *Cellular Operators Association of India v. Union of India* and *Union of India v. Tata Teleservices (Maharashtra) Limited*, disputes between two service providers should be adjudicated in the first instance only by the TDSAT. It may be noticed that against the decision of the TDSAT, an appeal is maintainable as a matter of right to the Supreme Court of India in terms of Section 18 TRAI Act.

9. It is submitted by Mr. Sachdeva, learned counsel for the Plaintiff that even if the plaint is rejected this Court should record a finding that the Defendant does not deny the contractual relationship between the parties. He submits that the Defendant having raised an objection in this court as regards maintainability of the suit should not be permitted to deny the contractual relationship. This contention is opposed by Mr. Singh, learned Senior counsel for the Defendant who refers to the decision of the Supreme Court in *Abdulla Bin Ali v. Galappa AIR 1985 SC 577*. He contends that the question of jurisdiction cannot be decided with reference to

the plea taken by the Defendant in a written statement. The said plea has to be decided only in accordance with the contentions raised in the plaint. He further submits that under Section 14 TRAI Act any dispute between two service providers irrespective of any relationship between them should be adjudicated only by the TDSAT. He further submits that any defence that the Defendant might want to urge before the TDSAT including that there is no contractual relationship between it and the Plaintiff, can very well be raised by it before the TDSAT and it will be decided on merits by the TDSAT.

10. To this Court it appears that the case set up by the Plaintiff in the plaint has to be examined for the purpose of deciding jurisdiction. This is the settled position as explained by the Supreme Court in *Abdulla Bin Ali v. Galappa*. The Plaintiff has come to this Court claiming that monies are owing to it by the Defendant in terms of a contractual relationship between them. For the purpose deciding whether the suit is maintainable as such, this is what is relevant to be taken into the account. If according to the Plaintiff, the defendant is indeed a service provider then the dispute has to be adjudicated by the TDSAT. As explained by the Supreme Court in *Union of India v. Tata Teleservices (Maharashtra) Limited*, even if the contractual relationship has come to an end, that cannot take away the jurisdiction of the TDSAT as regards the dispute between two service providers. The stand of the defendant that there is no such subsisting relationship, and the effect thereof, can be decided by the TDSAT.

11. The question whether the Plaintiff can take advantage of Section 14 of the

Limitation Act 1963 to explain the delay in approaching the TDSAT can also be decided by the TDSAT itself. The TDSAT will while doing so also consider the plea that the Plaintiff has itself been filing recovery claims against other parties before the TDSAT. This might be a relevant factor for deciding whether the Plaintiff was bonafide pursuing the present suit in this Court for the purpose of Section 14 of the Act. This Court expresses no opinion on this issue.

12. For the aforesaid reasons, it is held that the suit is not maintainable and the plaint is liable to be rejected on that ground.

13. The application is allowed and disposed of in the above terms.

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14. In view of order passed today in IA No. 13033 of 2006, the plaint is rejected.

S.MURALIDHAR, J

JULY 30, 2009
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