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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: March 14, 2016

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FAO(OS) 532/2014

M/S STRACON INDIA LIMITED

..... Appellant

Represented by: Mr.Anish Dayal, Advocate with
Mr.Siddharth Vaid and
Mr.Ishwar Mohanty, Advocates

Versus

PRASAR BHARTI (BROADCASTING
CORPORATION OF INDIA)

..... Respondent

Represented by: Mr.Rajeev Sharma, Advocate with
Ms.Radhalakshmi R. And Mr.Sahil
Bhalaik, Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG,J. (Oral)

1. If the learned Arbitrator who authored the award dated March 14, 2014 or the learned Single Judge who has pronounced the decision dated October 01, 2014, had been clear in their reasoning, a simple issue would not have seen so complicated.
2. On June 05, 1997, the appellant and Prasar Bharti entered into an agreement as per which the appellant became the accredited agent for Prasar

Bharti concerning Doordarshan Commercial Service. The appellant was to be paid commission of 15%. It had a credit facility of between 45 days to 60 days. Indo-Pak one day test series was to be held between April 07 and April 16, 1999 in Sharjah, popularly known as the Sharjah Cup. In May of the same year the World Cup had to be held. Pertaining to the Sharjah Cup an agreement dated January 22, 1999, having therein an arbitration clause, was executed between the parties. Concerning the World Cup, a company named Nimbus obtained an order in its favour from the Bombay High Court. By said date certain amounts realized by the appellant concerning the World Cup from advertisers had been credited in an account maintained with Canara Bank, the benefit whereof was taken by the respondent together with the liabilities concerning the amounts. Amounts realized by the appellant from the Sharjah Cup and expenses incurred were credited and debited in the same account. In other words, pertaining to the World Cup and the Sharjah Cup amounts received were credited in the same account and amounts paid out were debited in the same account.

3. But since the arbitration clause was incorporated in the agreement between the parties concerning the Sharjah Cup, it is apparent that the dispute concerning claim by the respondent in sum of ₹7,52,44,234/- (Rupees Seven Crore Fifty Two Lacs Forty Four Thousand Two Hundred Thirty Four only) as the licence fee, towards withholding tax in sum of ₹3,33,50,000/-, (Rupees Three Crore Thirty Three Lacs Fifty Thousand only), towards revenue sharing in sum of ₹3,48,16,159/- (Rupees Three Crore Forty Eight Lacs Sixteen Thousand One Hundred Fifty Nine only), and towards opportunity cost in sum of ₹3,56,01,813/- (Rupees Three Crore Fifty Six Lac One Thousand Eight Hundred Thirteen only) had to relate to

the Sharjah Cup.

4. The award has rejected the later three claims on account of no proof. The first claim has been allowed in sum of ₹7,31,00,000/- (Rupees Seven Crore Thirty One Lac only) and thus we concentrate on the facts concerning said claim.

5. After noting the backdrop facts till page 21 of the award which runs into 32 pages, the learned Arbitrator has noted the pleadings in paragraphs 13 to 19 of the Statement of Claim, and without discussing anything further has held that claim No.1 was established.

6. The learned Single Judge has noted judgments concerning power of a Court under Section 34 of the Arbitration and Conciliation Act, 1996, but without discussing anything further, has dismissed the objections.

7. Learned counsel for the respondent concedes that any claim pertaining to the World Cup could not be the subject matter of the arbitration proceedings and thus our job is to see whether the award by the learned Arbitrator concerning claim No.1 in sum of ₹7,31,00,000/- (Rupees Seven Crore Thirty One Lac only) concerns the amount relating to Sharjah Cup.

8. Since the bank account in which payments received were credited and from which outgoing payments were debited is a singular account, the same has to be bifurcated.

9. The summary of the account maintained by Canara Bank is concededly as under:-

Date	Receipts (₹)	Expenses	Balance (₹)
29.01.99	1,38,84,750		1,38,84,750
01.02.99	5,00,97,750		6,39,82,500

18.02.99	3,00,00,000		9,39,82,500
03.03.99	1,38,84,750		10,78,67,250
04.03.99	31,23,750		11,09,91,000
09.03.99	2,06,16,750		13,16,07,750
09.03.99	57,26,875		13,73,34,625
12.03.99		10,82,99,100	2,90,35,525
16.03.99		1,92,37,500	95,98,025
20.03.99	2,83,64,37		1,24,61,462
25.03.99	1,03,08,375		2,27,69,837
30.03.99	13,8,84,750		3,66,54,587
06.04.99	5,90,00,000	4,80,975	9,51,73,612
06.04.99		7,27,60,000	2,24,13,612
07.03.99		500	2,24,13,112
08.04.99	28,23,950		2,52,37,062
12.03.99	3,33,00,000		5,85,37,062
12.04.99		3,42,00,500	2,43,36,562
17.04.99		(-) 33,000	2,43,69,562
21.04.99	82,29,870		3,25,99,432
10.05.99		10,78,43,666	-7,52,44,234
Total Expenditure	26,75,45,007	34,27,89,241	

10. Learned counsel for the parties do not dispute the correctness of the above statement of account which shows that ₹26,75,45,007/- (Rupees Twenty Six Crore Seventy Five Lacs Forty Five Thousand and rupees Seven only) was realized by the appellant from third parties. The expenses

are admittedly ₹34,27,89,241/- (Rupees Thirty Four Crore Twenty Seven Lacs Eighty Nine Thousand Two Hundred Forty One only). Since the arbitral dispute could only relate to the Sharjah event, one has to simply bifurcate the amounts concerning the World Cup and the Sharjah Cup and ignore the amounts concerning the World Cup and focus only on the amounts concerning the Sharjah Cup.

11. As per the respondent with respect to the deposits ₹12,54,00,000/- (Rupees Twelve Crore Fifty Four Lacs only) was for the World Cup and thus for the Sharjah event the amount would be ₹26,75,45,007/- (Rupees Twenty Six Crore Seventy Five Lacs Forty Five Thousand and rupees seven only) minus ₹12,54,00,000/- (Rupees Twelve Crores Fifty Four Lacs only) = ₹14,21,45,007/- (Rupees Fourteen Crore Twenty One Lac Forty Five Thousand and rupees Seven only). The outgoing for the Sharjah event was ₹21,52,52,641/- (Rupees Twenty One Crore Fifty Two Lac Fifty Two Thousand Six Hundred Forty One only) and this would mean the amount payable to it is sum of ₹21,52,52,641/- (Rupees Twenty One Crore Fifty Two Lacs Fifty Two Thousand Six Hundred Forty One only) minus ₹14,21,45,007/- (Rupees Fourteen Crore Twenty One Lac Forty Five Thousand and rupees Seven only) = ₹7,31,07,634/- Rupees Seven Crore Thirty One Lac Seven Thousand Six Hundred Thirty Four only). We note that the learned Arbitrator had awarded ₹7.31 crores.

12. It is trite, that of various kinds of admissions made by a party, the strongest admission against a party is the one made in a pleading.

13. This takes us to the pleadings of the parties before the learned Arbitrator.

14. There are two paragraphs 11 and two paragraphs 15 in the Statement

of Claim. We need to note both as also paras 13 and 14. They read as under:-

“11. That starting from January, 1999 from time to time the respondent remitted certain amounts in respect of the World Cup, 1999 and or Sharjah Event, 1999 for being deposited in the said designated account. Over a period of time a total sum of ₹26,75,45,007/- (Rupees Twenty Six Crore Seventy Five Lakh Forty Five Thousand and Seven only) was deposited by the respondent in the said account in respect of the two events.

11. That in so far as World Cup, 1999 is concerned, the license fee had to be paid by the respondent. For paying license fee, the respondent took advances from certain advertisers to the tune of ₹12.54 crores. The amounts by the respondent were inclusive of the said advances obtained by it from advertisers/advertising agencies.

x x x x x

13. That on account of a litigation initiated by M/s Nimbus, certain orders came to be passed by the Bombay High Court, as a consequence whereof the marketing rights in respect of World Cup, 1999 came to be withdrawn from the respondent and were awarded to M/s Nimbus. As already stated above, out of the total amount of ₹26,75,45,007/- (Rupees Twenty Six Crore Seventy Five Lakh Forty Five Thousand and Seven only) deposited by the respondent in the said account, an amount of ₹12.54 crores had been deposited by the respondent by taking advances from a number of advertisers/advertising agencies such as HTA, Pepsi, O&N etc.

14. That after the rights stood transferred to M/s Numbus, it was agreed that the amount deposited by the respondent after taking advances from advertisers would vest in the claimant along with all attached liabilities i.e. the claimant would be liable to provide commercial time to the said advertisers. This arrangement was assented to by the respondent as well as by

the concerned advertisers.

15. That in so far as Sharjah Event is concerned, on the instructions of the claimant, Canara Bank remitted ₹7,27,60,000/- (Rupees Seven Crore Twenty Seven Lakh and Sixty Thousand Lakh, equivalent to 1.7 million dollars) and ₹3,42,00,500/- (Rupees Three Crore Forty Two Lakh and Five Hundred only, equivalent to 0.8 million dollars) on 6.4.1999 and 12.4.1999. Thereafter on instructions of the claimant, Canara Bank opened a letter of credit in the sum of ₹10,78,43,666/- (Rupees Ten Crore Seventy Eight Lakh Forty Three Thousand Six Hundred and Sixty Six only, equivalent to 2.8 million dollars) in favour of WorldTel. The said letter of credit was encashed by WorldTel on 1.5.1999. The charges for establishing the letter of credit came to ₹4,80,975/- (Rupees Four Lakh Eighty Thousand Nine Hundred and Seventy Five) and an adjustment of ₹33,000 (Rupees Thirty Three Thousand) was given on account of conversion of US dollars. Thus the total outgoing from the special account in Canara Bank in respect of the Sharjah Event was ₹21,52,52,641 (Rupees Twenty One Crore Fifty Two Lakh Fifty Two Thousand Six Hundred and Forty One only)

15. That the total amount deposited by the respondent whether for the World Cup or Sharjah Event was ₹26,75,45,007/- (Rupees Twenty Six Crore Seventy Five Lakh Forty Five Thousand and Seven only). On the other hand, outgoings amounted to ₹34,27,89,241/- (Rupees Thirty Four Crore Twenty Seven Lakh Eighty Nine Thousand Two Hundred Forty One only) thereby leaving a debit balance of ₹7,52,44,234/- (Rupees Seven Crore Fifty Two Lakh Forty Four Thousand Two Hundred Thirty Four only).”

16. A perusal of the first paragraph 11 of the Statement of Claim would show that the case of the respondent was that for the World Cup and the Sharjah Cup ₹26,75,45,007/- (Rupees Twenty Six Crore Seventy Five Lacs Forty Five Thousand and rupees Seven only) was credited. A perusal of the

second paragraph 11 would show that the case of the respondent was that concerning the World Cup the amount in the credit was ₹12.54 crores.

17. In the reply to the two paragraphs 11, the appellant pleaded as under:-

“11. That the contents of paragraph no.11 are matters of record. The respondent craves leave to reply upon the submission made above in the factual matrix in reply. That the contents of the second paragraph no.11 are denied. The facts relating to this have already been placed above. It is submitted that the monies credited to the account were common from which the claimant as the sole signatory chose to pay whatever amount it did to the licensors. The liability of the respondent was finally only to the extent of its participation is either even and based upon agreement between the parties.

18. There is a clear admission of the pleadings in first paragraph 11 of the Statement of Claim. As regards the second paragraph the denial is vague and has to be treated as an admission because we do not find anything in the preliminary submissions wherefrom it can be deduced that as per the appellant it denied the bifurcation as pleaded by the respondent in the second paragraph numbered as 11 in the Statement of Claim.

19. This admission is fortified if we look at pleading in paragraph 13 of the Statement of Claim and its corresponding reply filed by the appellant. Para 13 of the Statement of Claim has already been noted by us hereinabove. Reply to para 13 by the appellant reads as under:-

“13. That the contents of paragraph no.13 are denied save and except what are matters of record. The facts relating to this have already been placed above. The litigation which arose in the World Cup matter was because of illegal acts to terminate the agreement by the claimant, by which the

exclusive rights had been given to the respondent. The respondent craves to substantiate on any issue relating to the World Cup if raised by the claimant. It is however not a subject matter of this claim and dispute. It is submitted that the monies credited to the account were common and not demarcated from which the claimant as the sole signatory chose to pay whatever amount it did to the licensors, since initially both the events were being done by the respondent. The liability of the respondent was finally only to the extent of its participation in only the Sharjah event and based upon agreement between the parties.”

20. Thus, it is apparent that there is an admission of ₹14,21,45,007/- (Rupees Fourteen Crore Twenty One Lac Forty Five Thousand and rupees Seven only) being towards the Sharjah event.

21. Concerning the outgoing, pleadings in paragraph 14 and 15 in the Statement of Claim have already been noted by us hereinabove and thus we note the reply to the said two paragraphs by the appellant. They read as under:-

“14. That the contents of paragraph no.14 are denied save and except what are matters of record. The fact relating to this have already been placed above. The reconciliation regarding the World Cup dues are not a subject matter of this Arbitration and not within the purview of this adjudication.

15. That the contents of paragraph no.15 are matters of record.”

22. The evasive denial means as admission of the fact pleaded in para 15 of the Statement of Claim that the total outgoing for the Sharjah event was ₹21,52,52,641/-(Rupees Twenty One Crore Fifty Two Lacs Fifty Two Thousand Six Hundred Forty One only). If this be so, the destination is

apparent. Deduct ₹14,21,45,007/- (Rupees Fourteen Crore Twenty One Lac Forty Five Thousand and rupees Seven only) from said amount and we have the figure ₹7,31,07,634/- (Rupees Seven Crore Thirty One Lac Seven Thousand Six Hundred Thirty Four only).

23. If only the learned Arbitrator had done the aforesaid simple analysis of the pleadings and not have left the award with the pleadings being simply noted. In this context it assumes importance that the appellant had issued cheque No.945977 on May 20, 1999 in sum of ₹7.31 crores which was dishonoured when the respondent presented the same for realization.

24. We need not look the other evidence, apparently not discussed by the learned Arbitrator, for the reason the signature tune of the award is an admission in the pleadings. The learned Arbitrator has noted the pleadings but has not brought out the admission with clarity and thus we have laboured as above.

25. On the subject of limitation, we concur with the view taken by the learned Arbitrator that as long as the parties discussed the issue and till when a clear denial of the liability came from the mouth of the appellant limitation would not commence.

26. The appeal is dismissed.

27. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

MARCH 14, 2016/skb