***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **DATE OF DECISION: 28TH APRIL, 2017**

\+ **CS(OS) NO.320/2004**

PRASAR BHARATI ..... **Plaintiff**

Through: Mr. Rajeev Sharma & Ms. Radhalakshmi R., Advs.

Versus

STRACON (INDIA) PVT. LTD. ..... **Defendant**

Through: Mr. Anish Dayal & Mr. Siddharth Vaid, Advs.

CORAM:-
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has instituted this suit for recovery of Rs.5,80,05,000/- with interest and for rendition of accounts pleading i) that from time to time there have been dealings between the plaintiff and the defendant regarding procuring of broadcasting rights in respect of various sports events; ii) that on 24th March, 1998 an agreement (Consortium Agreement) was executed between the plaintiff, the defendant and M/s Creative Eye Ltd. for setting out specific terms for acquiring the rights in respect of sporting events and exclusive marketing thereof on Doordarshan Network; the other parties to the agreement constituted an alliance / consortium and were to provide the plaintiff with telecast rights of sporting events; the agreement acknowledged certain existing relationships between ESPN-Star Sports and the defendant

for cricketing rights; iii) that after execution of the Consortium Agreement, rights in respect of a number of sporting events were obtained by the defendant and were made available to the plaintiff for telecast on Doordarshan Network and in terms of the Consortium Agreement, the rights fee and other costs were paid by the defendant; iv) that one of the events for which rights were so obtained by the defendant at its cost and offered to the plaintiff was Coca Cola Cup which was played at Sharjah from 7th to 16th April, 1999 and in respect of which event an agreement dated 22nd January, 1999 was executed between the plaintiff and the defendant which *inter alia* provided that the defendant would pay the rights fee, production cost, uplink cost, opportunity cost, withholding tax and the balance revenue would be shared equally between the plaintiff and the defendant; v) that another cricketing event by the name of Pepsi Cup Triangular series between India, Sri Lanka and Pakistan was to be played in India from 19th March to 4th April, 1999; the rights in respect of the said event were held by ESPN-Star Sports who vide a letter dated 3rd February, 1999 offered the terrestrial rights for the same to the plaintiff; vi) that the defendant on coming to know of the said offer represented to the plaintiff that it had no objection to the plaintiff acquiring the rights for the said event directly from ESPN and that it would, as required by the plaintiff, pay either ESPN or the plaintiff, the license fee for the event; this proposal was also confirmed in writing by the defendant vide its letter dated 9th February, 1999 as under:

> "STRACON
>
> Stracon India Pvt. Ltd. A-1/120, Safdarjung Enclave
> New Delhi-110 020, INDIA
>
> Mr. Rakesh Bahadur
> Dy. Director General February 9, 1999
> Doordarshan
> Fax: 338-4279.
>
> RE: India – Pakistan – Sri Lanka Triangular Series.
>
> Dear Mr. Bahadur,
>
> Our discussion on the matter of license fee for the above series refers. As you are aware in the Agreement of 24th March, 1998, ESPN is named as exclusive relationship of Stracon. However, we have no objection to DD acquiring the rights for the series directly from ESPN as long as the credit for this license is given to Stracon towards its obligation for providing rights under the proviso of the Agreement of 24th March, 1998.
>
> We are also happy to confirm that we shall be paying either ESPN or DD as may be required by DD for this series license fee.
>
> We suggest following parameters for the deal:
>
> (a) Four preliminary round India matches + Final for live telecast.
> (b) One hour highlight for all 7 matches.
> (c) Commentary position in the live matches for DD.
> (d) Customized feed (cost for customisation to Stracon account)
> (e) One ENG position in field for live matches.
> (f) 20 VIP ticket in each venue + Car park.
>
> For the above, we believe a pro-rated license fee of US$ 1.25 million net of taxes shall be a fair price Doordarshan may like to charge ESPN for allowing them to use DD uplink license @ US$50000 per match day.

Best Regards
Sd/-
Siddhartha Ray"

vii) that further negotiations took place between the plaintiff and the defendant wherein the defendant undertook to provide the rights in respect of the Coca Cola Cup to be played at Sharjah in April, 1999 to Doordarshan Sports Channel free of cost conditional upon the Pepsi Cup event being marketed by it on the same terms and conditions as applicable to the Coca Cola Cup; the terms and conditions as agreed to by the defendant for the Coca Cola Cup were that it would pay the license fee, opportunity cost, withholding tax and technical cost and that the revenue generated would be shared in the ratio of 50:50; viii) that the aforesaid offer of the defendant was accepted by the plaintiff and a concluded contract came into existence between the parties; ix) that in confirmation of the above agreement, the defendant wrote a letter dated 19th March, 1999 as under:

"STRACON

Stracon India Pvt. Ltd. A-1/120, Safdarjung Enclave
New Delhi-110 020, INDIA

Controller of Sales March 19, 1999
Doordarshan
Mandi House
New Delhi
Fax: 338-8206.

RE: Pepsi Cup.

Dear Sir,

As per our discussion with CEO, Prasar Bharati through MIB's office, we have undertaken to provide for the rights of Coca Cola Cup, Sharjah for Doordarshan sports channel free of cost conditional upon Pepsi Cup event being marketed by us exclusively on the same terms and conditions as applicable for Sharjah event, as provided in the Agreement of 24th March, 1998 (The Consortium Agreement). The offer was accepted and Doordarshan made an on air announcement last night during the closing session of the launch ceremony about its showing Sharjah Cup on DD Sports Channel.

Pending finalization of the Agreement on the basis of our letter of 18th March, may we request you to issue an instruction to DDK, Delhi advising them that Stracon will be marketing the event exclusively and shall be carrying out commercial co-ordination with DDK for the event. The first highlight is tonight and first live match is on 22nd, Monday and we need to get the authorization at the earliest from your end.

We are prepared to sign the contract as soon as it is ready from your side.

May I request you to issue necessary instructions at the earliest.

Kind Regards
Sd/-
Siddhartha Ray
Managing Director

Copy: CEO, Prasar Bharati, DDG-Commercial & Sports
OSD to MIB"

x) that upon the aforesaid understanding / agreement, the plaintiff obtained the rights in respect of the Pepsi Cup directly from ESPN Star Sports for a consideration of US$ 1 million; xi) that the event took place from 19th March to 4th April, 1999 and was exclusively marketed by the defendant; commercial contracts dated 22nd March, 1999 and 1st April, 1999 were filed by the defendant for utilizing the commercial time and unlimited commercial time was provided by the plaintiff to the defendant; xii) that commercial time to the extent of 22200 seconds was marketed and utilized by the defendant; xiii) that all the proceeds from the commercial time sold by the defendant were collected by the defendant; xiv) that the plaintiff vide its letter dated 1st September, 1999 and other letters called upon the defendant to provide revenue generation figures but the defendant became dishonest and failed to provide the same; xv) that the plaintiff on 8th February, 2001 paid the license fee of US$ 1 million to ESPN; xvi) that the plaintiff called upon the defendant to pay US$ 1 million towards license fee and also to pay the withholding tax and technical cost as well as 50% share of the plaintiff in the revenue generated; xvii) that not only did the defendant fail to pay any of the aforesaid amount but also did not pay the license fee which it had undertaken to pay to the plaintiff; the defendant also did not pay the withholding tax and technical cost as also up-linking cost of US$ 2,50,000 at the cost of US$ 50,000 per match and only paid the opportunity cost amounting to Rs.51,62,000/-; xiv) that the balance sheet of the defendant for the year 1999-2000 acknowledged the liability of the defendant to pay the license fee, satellite up-linking fee amounting to US$ 55,000 and withholding tax thereon; the notes on account accompanying the audited balance sheet provided that contingent liability in respect of licence fee on account of India, Pakistan and Sri Lanka series, the amount of which was unascertainable and satellite up-linking fee amounting to US$ 55,000 in addition to withholding taxes thereon were not being provided in the contingent liability; xv) that similar acknowledgments have been made by the defendant in its balance sheets for the subsequent years. Hence, the suit for rendition of accounts with a direction to the defendant to produce revenue generation statement and furnish accounts for the Pepsi Cup Triangular series aforesaid and for recovery of the amount found due and for recovery of Rs.5,80,05,000/- with interest.

2. The suit was entertained and the defendant contested the suit by filing a written statement pleading a) that the suit instituted on 6th February, 2004 for Pepsi Cup Triangular series played from 19th March, to 4th April, 1999 was barred by time; b) that the accounts of the Pepsi Cup Triangular series stood settled in August, 1999 when the amount of Rs.51,62,000/- was paid by the defendant to the plaintiff; c) that even if the defendant is to be construed as an agent of the plaintiff, the said agency stood terminated on conclusion of the event on 4th April, 1999; d) that even if the plaintiff's contention is accepted, the Consortium Agreement contained an arbitration clause and the matter would have to be referred to arbitration as per Section 8 of the Arbitration & Conciliation Act, 1996; e) that the plaintiff

unilaterally terminated the Consortium Agreement also on 26th August, 1999 denying that ESPN-Star Sports had offered the terrestrial rights for the Pepsi Cup Triangular series to the plaintiff; f) denying that the defendant on coming to know of the alleged offer of terrestrial rights by ESPN-Star Sports to the plaintiff had given its no objection thereto; the no objection was given pursuant to the discussions of the plaintiff with the defendant in this regard; g) that the plaintiff never responded to the letter dated 9th February, 1999 of the defendant and kept silent; h) that the defendant, when the Pepsi Cup Triangular series was closed, approached the Ministry of Information & Broadcasting to get a response from the plaintiff to the offer contained in the defendant's letter dated 9th February, 1999; i) admitting that the defendant vide its letter dated 19th March, 1999 had agreed to provide for the rights of Coca Cola Cup to be played at Sharjah in April to the plaintiff for DD Sports Channel free of cost conditional upon the said series being marketed by the defendant on the same terms and conditions as applicable for Coca Cola Cup as provided in the Consortium Agreement; j) that the plaintiff however declined to execute any agreement for the Coca Cola Cup; k) that the defendant in its letter dated 19th March, 1999 supra had called upon the plaintiff to execute the agreement but the plaintiff neither sent the agreement for execution nor determined and / or informed the defendant of the specific commercial terms for telecasting the series which was mandatory under the Consortium Agreement, thereby breaching the Consortium Agreement; l) that as per the Consortium Agreement, specific commercial agreement was to be executed for each of the events as was executed for the Coca Cola Cup; the plaintiff did not execute any agreement for the Pepsi Cup Triangular series and thus the defendant is not liable for any cost, fee or to share the revenue thereof; m) that the plaintiff vide its letter dated 22nd March, 1999 i.e. the day when the match of the Pepsi Cup Triangular series was to be telecast live, gave a simple instruction to the defendant to sell airtime without specifying the commercial terms for the same; n) that since the defendant received the instructions from the plaintiff at the last minute, it had no time to go to the advertisers and book commercials or to fix any commercial terms with the advertisers; o) that in such circumstances, the normal commercial practice of plaintiff has been that the marketing agency is responsible for payment of the telecast charges as per Doordarshan rate card (opportunity cost); p) that this fact was admitted by the plaintiff vide its letter dated 20th July, 1999 where it acknowledged that "the Revenue Generated Statements for the event except for Sharjah Cup'99 has been received in this office duly accepted by the Chartered Accountants but the Sharjah Cup Statement duly certified by the Chartered Accountant has not been received in this office."; q) that the plaintiff having failed to fulfill the conditions laid down by the defendant in the letter dated 19th March, 1999 for providing rights of Coca Cola Cup free of cost, did not refute the claim for any cost fee in respect of Coca Cola Cup; the only claim was for carriage fee; r) that the plaintiff, even at the time of terminating the Consortium Agreement did not mention / claim any fee / cost or its revenue share for the Pepsi Cup Series; s) denying any liability to the plaintiff; t) denying that the defendant in its balance sheet has admitted any liability to the plaintiff; u) that the plaintiff in its letter dated 10th January, 2000 also did not make any claim against the defendant for the Pepsi Cup series.

3. The plaintiff, despite opportunity did not file Replication and which right was closed on 26th September, 2005.

4. On 3rd February, 2006, the following issues were framed in the suit:

> "(1) Whether the suit of the plaintiff is barred by time, as pleaded by the defendant in the preliminary objection A of the written statement? OPD
>
> (2) Whether there is a binding and subsisting arbitration agreement between the parties, as pleaded in the preliminary objection B of the written statement? If so, what is the effect? OPD

(3) Whether the plaintiff is entitled to a decree for rendition of accounts? OPP

(4) Whether the plaintiff is entitled to the decree for the amount claimed in the suit and whether the plaintiff is also entitled for the interest on the decretal amount? If so, to what rate of interest and for which period? OPP

(5) Relief."

and the suit put to trial.

5. The plaintiff, after availing repeated opportunities filed affidavit by way of examination-in-chief only of its Director (Sports); however the said witness also failed to appear on several dates and vide order dated 1st April, 2011 the evidence of the plaintiff was closed. On Chamber Appeal preferred by the plaintiff against the said order vide order dated 6th May, 2013, the plaintiff was permitted to examine the witness whose affidavit by way of examination-in-chief had been filed.

6. The statement of the witness of the plaintiff was recorded. Vide order dated 16th April, 2015 though opportunity was granted to the plaintiff to examine other witnesses but the plaintiff again failed to avail of the opportunity and vide order dated 2nd September, 2016, the evidence of the plaintiff was closed and the suit notified for evidence of the defendant. On the next date i.e. 14th December, 2016 the defendant, without leading any

evidence, closed its evidence and the suit was listed before this Court for final arguments. After taking adjournments, today the final arguments have been heard.

7. The counsel for plaintiff, besides reiterating what is pleaded in the plaint, has argued i) that the arrangement between the plaintiff and the defendant was that the defendant used to market the advertising time on the channels of the plaintiff and the monies so earned by the defendant used to be shared by the parties; ii) that though there is no written agreement qua the marketing by the defendant of the advertising time for the Pepsi Cup played between 19th March, 1999 and 4th April, 1999 and the original file of the said transaction has been lost from the office of the plaintiff but the plaintiff in the plaint itself has reproduced the letters dated 9th February, 1999 and 19th March, 1999 of the defendant to the plaintiff and which have not been controverted by the defendant in the written statement and wherefrom the agreement stands established; iii) that the defendant has marketed the advertisement time for the Pepsi Cup and earned monies therefor and is liable to furnish accounts thereof to the plaintiff and to share the revenues so earned with the plaintiff.

8. The counsel for the plaintiff, on being asked as to how the suit claim is within time, refers to Article-3 of the Schedule to the Limitation Act, 1963 which, for a suit by a principal against his agent for movable property received by the agent and not accounted for, provides limitation of three years commencing from the date when the account, during the continuance of the agency, is demanded and refused or, where no such demand is made, when the agency terminates. The counsel for the plaintiff, on being asked as to when did the agency terminate, states that the agency would continue till the entire accounts are rendered and payments found due made.

9. Per contra, the counsel for the defendant contended i) that the plaintiff has utterly failed to lead evidence in proof of its case; ii) that the sole witness examined by the plaintiff, though purported to exhibit some documents but exhibit marks thereon were put subject to the objection of the defendant and none of the documents save those admitted by the defendant stand admitted into evidence; iii) that the sole witness of the plaintiff also, in his cross-examination admitted that he had no personal knowledge about the transaction in question which took place in the year 1999 inasmuch as prior to July, 2004 he was never posted in the sports department of the plaintiff and that the statements in the affidavit were based on the available records

only; iv) that the plaintiff did not even file replication to the written statement despite opportunity; v) that the Consortium Agreement dated 24th March, 1998 was also terminated by the plaintiff on 26th August, 1999 and it is thus not open to the plaintiff to contend that the agency continued within the meaning of Article 3 of the Limitation Act; vi) that as per Clause 10 of the Consortium Agreement, specific commercial terms were to be decided on case to case basis and specific written agreements to be entered into between the plaintiff and the defendant as the member of the alliance / consortium; vii) that the plaintiff, vide letter dated 19th August, 1999 to the defendant and proved as Ex.D1 demanded the dues from the defendant to the plaintiff till then and as against Pepsi Cup Cricket – '99, demanded only the carriage fee of Rs.51,62,000/- and no other amounts; the carriage fee has been paid and the claim of the plaintiff for accounts of the advertising time earned by the defendant is as an afterthought; viii) that the plaintiff, inspite of letters dated 9th February, 1999 and 19th March, 1999 of the defendant reproduced in the plaint and calling upon the plaintiff to enter into agreement with the plaintiff qua Pepsi Cup, did not enter into the agreement and on the last date instructed the defendant to book advertisements; ix) that the defendant at such last minute was unable to book the advertisements and in such situation was liable to pay only the carriage fee and which has been paid; x) that the plaintiff has totally failed to prove its case; xi) that all the documents purported to be exhibited by the plaintiff in its evidence are photocopies and though the plaintiff filed an application under Section 65B of the Evidence Act, 1872 but withdrew the same.

10. The counsel for the plaintiff in rejoinder argued i) that even though the plaintiff was handicapped owing to the loss of file but the essential averments in the plaint have not been denied in the written statement and the plaintiff on that basis itself is entitled to a decree for accounts; ii) that the plaintiff has reproduced the terms settled in para no.10 of the plaint and which have also not been denied.

11. The counsel for the defendant drew attention to letter dated 20th July, 1999 of the plaintiff to the defendant and proved as Ex.D2 wherein the plaintiff has admitted receipt of Revenue Generated Statements for all the events except Sharjah Cup 1999 and has contended that the same also is indicative of the plaintiff, inspite of receipt of Revenue Generated Statement of Pepsi Cup, in the letter dated 19th August, 1999 Ex.D1 supra having not claimed the revenue share thereof.

12. I have perused the records and considered the contentions.

13. The first issue is with respect to limitation. The claim in the plaint is with respect to the share of the plaintiff of the advertising revenue earned from Pepsi Cup played between 22nd March, 1999 and 4th April, 1999. Though the counsel for the plaintiff during the hearing had drawn attention to Article 3 of the Schedule to the Limitation Act as the governing article for the suit but I have during the hearing drawn his attention to Article 24 prescribing the limitation, for a suit for money payable by the defendant to the plaintiff for money received by the defendant, of three years commencing from the day when the money is received by the defendant.

14. It being not in dispute that the dealings of the parties were in pursuance to the Consortium Agreement dated 24th March, 1998 and on which Ex.PW1/1 was put and to which the counsel for the defendant also during the hearing referred, I have perused the said agreement. The said agreement was between the plaintiff on the one hand, defendant of the second hand and M/s Creative Eye Ltd. on the third hand, for the parties to collectively acquire rights and exclusively market live sports on DD Network. The agreement was for a term of two years from 1st February,

1998. Clause 9 of the said agreement acknowledges the existing relationship between the defendant and ESPN Star Sports. Clause 10 of the said agreement titled "Commercial Terms" provides that specific commercial terms will be decided on case to case basis jointly by the plaintiff with the alliance of defendant and M/s Creative Eye Ltd., on mutually profitable basis and specific written agreement shall be entered into between DD Network and the concerned individual member of the alliance for that purpose.

15. The plaintiff has also filed before this Court photocopy of Memorandum of Understanding (MoU) dated 22nd January, 1999 between the plaintiff and the defendant and on which Ex.PW1/2 was put, with respect to Coca Cola Trophy in Sharjah during 7th to 16th April, 1999 where the revenue accrued from the sale of commercial time was agreed to be appropriated first towards opportunity cost for plaintiff of Rs.88.67 lacs, next US$ 5 million towards licence fee to the defendant, next US$ 0.75 million to defendant towards reimbursement of withholding tax, next US$ 0.11 million to the defendant towards reimbursement of up-linking cost and the balance revenue if any was agreed to be shared between the plaintiff and the defendant in the ratio of 50:50.

16. The defendant by its letter dated 9th February, 1999 (reproduced in the plaint) offered to the plaintiff rights for the Pepsi Cup. The defendant vide another letter dated 19th March, 1999 (also reproduced in the plaint) referred to the discussion with the plaintiff whereunder the defendant had undertaken to provide the plaintiff rights of Coca Cola Cup free of cost conditional upon Pepsi Cup event being marketed by the defendant on the same terms and conditions as applicable for Coca Cola Cup and as contained in the MoU dated 24th March, 1998 and requested the plaintiff to issue necessary instructions.

17. Even under the Consortium Agreement dated 24th March, 1998 or under the MoU dated 22nd January, 1999 with respect to Coca Cola Cup, the rendering of accounts is not provided.

18. Even applying Article 3 of the Schedule to the Limitation Act, I fail to see as to how the suit would be within time. Thereunder the period of three years commences to run when, during the continuance of the agency, accounts are demanded and refused or where no such demand is made, when the agency terminates. No merit is found in the contention of the counsel for the plaintiff that the agency would continue to run till the accounts are

rendered. The said question is not *res integra.* It was held in ***F. Gokal Chand Gian Chand & Co. Vs. The Punjab National Bank*** AIR 1961 Punjab 180 and ***Devji Shivji Vs. Mohanlal Odhabji Thacker*** AIR 1960 Patna 223 (DB) that i) when the entire purpose of agency is over, with nothing further to be done, the fact that mere accounts had to be rendered would not extend the period of agency; ii) and, that when agency comes to an end, any amount of demand thereafter for accounts, though coupled with refusal, would not provide any new starting point of limitation. Similarly, in ***NSKL Kulandayan Chettiar Vs. ARRM Omayal Achi*** AIR 1962 Madras 171, it was held that where agency is terminated and the agent fails to render accounts to the principal, the latter can maintain a suit against the former for rendition of accounts without being obliged to call upon to render accounts prior to the institution of the suit. I respectfully concur with such interpretation of Article 3 of the Schedule to Limitation Act. The contention of the counsel for the plaintiff is in fact repugnant to the text of Article 3.

19. The counsel for the plaintiff did not dispute that the Consortium Agreement dated 24th March, 1998 was terminated by the plaintiff on 26th August, 1999. The period of three years therefrom would expire on 26th August, 2002. The suit has been instituted on 6th February, 2004.

20. Issue no.(1) is thus decided against the plaintiff and in favour of the defendant and the suit is held to be barred by time.

21. The counsel for the defendant fairly stated that he is now not pressing issue no.(2).

22. The suit claim being barred by time, the plaintiff is not found entitled to a decree for rendition of account and resultantly the question of the plaintiff being entitled to any amount would not arise.

23. Issue nos.(3) & (4) are also thus decided in favour of the defendant and against the plaintiff.

24. Resultantly, the suit is dismissed. In the facts and circumstances of the case, no costs.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J.

APRIL 28, 2017
'gsr'
(Corrected & released on 31st May, 2017)