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

% ***Date of decision 08.11.2017***

\+ CS(COMM) 267/2016

PRASAR BHARATI ..... Petitioner

Through Mr.Rajeev Sharma, Ms.Radhalakshmi and Mr.T.Rajat Krishna, Advs.

versus

NIMBUS COMMUNICATION PVT. LTD. ..... Respondent

Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. This suit is filed by the plaintiff seeking a decree for rendition of accounts and to direct defendant to render accounts in respect of revenues released from the sharing of the signals of the India-Australia ODI Cricket Series, 2010 and a decree for a sum of Rs.1,32,82,500/- inclusive of principal amount of Rs.86,25,000/- and interest thereon @ 18% per annum from 15.1.2011 to 13.1.2014.

2. In exercise of the power conferred by Section 7 of the Act, the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Rules 2007 were promulgated. Sub-rule 2 of Rule 4 whereof required a sealed bid procedure to be adopted inter-se the rights owner or holder and Prasar Bharati concerning marketing of commercial time generated by the re-transmission on the Prasar Bharati's channel. Needless to state the higher

bidder was entitled to undertake the marketing of commercial time. The bid amount was the minimum guaranteed amount. The party obtaining the marketing rights was to give a bank guarantee to the other party for an amount equal to the other party's share of guaranteed revenue. The said party was to receive all payments from third parties which was to be deposited in a designated escrow account. The said party was obliged to submit to the other party accounts of revenue earnings, duly audited by a chartered accountant, and within 75 days of the first day of the month succeeding the month in which sporting event came to an end was to pay the minimum guaranteed amount along with, if payable, further sum; depending upon the revenue generated.

2. It is the case of the plaintiff that in October 2010 the Australian Cricket Team visited India to play a cricket series. The tour was to comprise of three one day internationals which were to be played on 17^{th}, 20^{th} and 24^{th} October, 2010. The series being a sporting event of national importance as per Notification dated 31.10.2007 the live signals of the series were to be shared by the defendant with the plaintiff.

3. In view of the terms of the rules the bidding process was undertaken by the parties on 22.9.2010. The defendant offered an amount of Rs.10.35 crores as the net projected revenue against the plaintiff's offer of Rs.3 crore. The offer of defendant being highest it was awarded the right to market the series in terms of Rule 4(2) of The Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Rules, 2007. It is also pleaded that in view of the above acceptance of the bidding of the defendant it was under an obligation to furnish a bank guarantee in the sum of 25% of the bid amount. Hence, the defendant had to furnish a bank guarantee of Rs.2,58,75,000/- on

or before 6.10.2010. The defendant failed to provide the said Bank Guarantee.

4. Two ODI's could not be played. Accordingly, the projected revenue/bidding amount got reduced on a pro-rata basis by Rs.3.45 crores, being the value of one ODI. The share of plaintiff being 25% of the above stated revenue stood reduced proportionately.

5. It is averred that the proceeds of the revenue of the match that was played on 20.10.2010 were to be shared by the defendant with the plaintiff. The match was duly telecast by the defendant. The defendant also collected advertising revenue from the advertisers. It is the case of the plaintiff that the defendant neither furnished the requisite bank guarantees nor paid the 25% of the actual revenue being a minimum of Rs.86,25,000/-. Hence, the present suit has been filed.

6. I may note that in this case on 12.8.2015 Joint Registrar noted that the defendant has not filed written statement and hence closed the right of the defendant to file written statement. Defendant has at no stage sought any condonation of delay in filing the written statement or attempted to file written statement thereafter. Subsequently, on 10.1.2017 the learned counsel for the defendant chose not to cross-examine the witnesses of the plaintiff PW-1. Further, on 17.1.2017 learned counsel for the defendant submitted that the defendant does not wish to adduce any evidence on its own.

7. The plaintiff has led the evidence of Mr. E.S.Issac, Consultant Sports, Doordarshan, Prasar Bharti. The said witness has proved the bid that was submitted by the defendant for the sum of Rs.10,35,00,000/- as Ex.PW1/2. The bid of the plaintiff which was for a sum of Rs.3 crores has been proved as Ex.PW1/3. The witness has also proved the Minutes of Meeting dated

22.9.2010 which is marked as Ex.PW1/4 according to which the defendant has the marketing right to the airtime. The witness has also pointed out that the defendant booked advertisement for the matches. The witness has confirmed that two ODIs were not played. He has also stated that the defendant booked all the advertisement and released the revenue from the advertisement. They have never deposited the revenue amount in the escrow account nor provided the Bank Guarantee to the plaintiff. He has further averred that the plaintiff is entitled to the minimum stated amount of Rs.86,25,000/- or 25% of the actual revenue earnings whichever is higher. It has been also stated that the transaction was a commercial transaction and the plaintiff is entitled to interest @ 18% per annum which is the prevailing rate of interest in the year 2011, 2012 and 2013.

8. From the above unrebutted evidence of the plaintiff it is manifest that the ODI took place on 20.10.2010. The telecast was shared live with the plaintiff. The bookings for the advertisement were carried out by the defendant. In terms of section 3 of the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act 2007, the plaintiff had 25% share in the advertisements issued by the defendant. The minimum bid amount being 10.35 crores it transmits to a sum of Rs.3.45 crores for the single match that has been played. The minimum share of the plaintiff comes to Rs.86,25,000/-. Further, it has also been pointed out that a letter was served on the defendant on 24.3.2011 seeking payment and also seeking interest @ 18% per annum w.e.f. 15.1.2010. No steps have been taken by the defendant.

9. The plaintiff is entitled to a decree for a sum of Rs.1,29,84,860/- (not Rs.1,32,82,500/- stated in the plaint) which includes interest rate @ 18% per

annum from 15.1.2011 upto 31.1.2014. The plaintiff would also be entitled to pendente lite and future interest @ 15% per annum from the date of filing of the suit till recovery. The plaintiff would also be entitled to costs.

10. I pass a decree in favour of the plaintiff and against the defendant accordingly.

11. There is nothing on record to show that any additional revenue was earned by the defendant above the minimum guarantee. Hence, no other relief is granted to the plaintiff.

12. Suit is disposed of. All pending applications, if any, also stand disposed of accordingly.

JAYANT NATH, J

NOVEMBER 08, 2017

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