$~65

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

\+ **W.P.(C) 8961/2017**

SUN DISTRIBUTION SERVICES PVT. LTD ..... Petitioner

Through Mr Abhishek Malhotra, Advocate with Mr Angad Dugal, Advocate.

versus

UNION OF INDIA AND ORS. ..... Respondents

Through Mr Anil Soni, CGSC with Mr Nivesh Sharma, Advocate for R1/UOI.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **13.10.2017**

VIBHU BAKHRU, J

CM No. 36652/2017

1. Allowed, subject to all just exceptions.

2. The application is disposed of.

W.P.(C) 8961/2017& CM No. 36651/2017 (stay)

3. The petitioner has filed the present petition assailing an order dated 20.07.2017 passed by the Telecom Disputes Settlement and Appellate Tribunal (hereafter 'TDSAT'), whereby the petitioner's application for a decree on admissions made by All Digital Network India Ltd (hereafter 'ADNIL'), (respondent no.2), was rejected.

4. The petitioner had filed an application (MA. No. 209/2016 in Broadcasting Petition No. 233/2015), *inter alia*, praying that an order be passed directing ADNIL to pay a sum of ₹ 13,24,79,663/-, which according

to the petitioner was the amount admittedly payable as on June 24, 2016.

5. The petitioner had originally filed a petition before the TDSAT seeking recovery for a sum of ₹9,15,07,077/- being the outstanding subscription charges due and payable by ADNIL along with interest at the rate of 18% per annum. During the pendency of the petition, ADNIL entered into a Memorandum of Understanding (MoU), whereby the infrastructure of ADNIL was agreed to be taken over by E-Infrastructure and Entertainment India Pvt. Ltd. (hereafter 'EIEIPL'). The petitioner was also a party to the said MoU. The relevant extract of the said MoU is set out below:-

> "The terms of Memorandum of Understanding (MOU), as per Annexure A to the M.A. are as under:-
>
> 1. Mr. Somasekhar of E Infrastructure and Entertainment India Pvt. Ltd., hereafter referred as **("EIEIPL")** has informed Sun Distribution Services Pvt. Ltd. **("SDSPL")** that the is taking over the network of Messrs. All Digital Network India Ltd., situated at B-89, 3rd Floor, 5th Main, Rajajinagar Industrial Estate, Rajajinagar 6th Block, Bangalore-560010.
> 2. Messrs. All Digital Network India Ltd., hereinafter referred as **("All Digital")** owes an outstanding amount due of Rs. 15,81,97,110/- (Rupees Fifteen Crores Eighty One Lakhs Ninety Seven Thousand One Hundred and Ten only) as on 31st March, 2016 to **"SDSPL"**. The statement of Account of **"All Digital"** in enclosed along with this MOU as Annexure "A".
> 3. Mr. Somasekhar of **"EIEIPL"** has undertaken to clear the entire outstanding amount due of Rs. 15,81,97,110/- (Rupees Fifteen Crores Eighty One Lakhs Ninety Seven Thousand One Hundred and Ten Only) of Messrs. All Digital Network India Limited.
> 4. Mr. Kariappa and Mr. Raju of **"All Digital"** have confirmed the above and have no objection whatsoever

for the payments made by **"EIEIPL"** and taking over of "All Digital" network by Mr. Somasekhar of **"EIEIPL"**

5. The following payment plan to clear the above outstanding amount due has been agreed and the same has been tabulated as under:-

PAYMENT SCHEDULE		
S.No.	**Payable by**	**Amount Payable**
1.	Payable vide Cheque No. 617182 dt. 14.04.2016 drawn on Corporation Bank and will be banked and cleared by 18th April, 2016.	Rs. 3,50,00,000/-
2.	Payable vide Cheque No. 617183 dt. 25.04.2016 drawn on Corporation Bank and will be naked and cleared by 25.04.2016.	Rs. 1,00,00,000/-
3.	Payable vide Cheque No. 617184 dt. 29.04.2016 drawn on Corporation Bank and will be naked and cleared by 29.04.2016.	Rs. 2,50,00,000/-
4.	Will be cleared within 45 days from the date of this MOU.	Rs. 8,81,97,110/-
	TOTAL OUTSTANDING DUE	**RS. 15,81,97,110/-**

6. Basis this above commitment, Mr. Somasekhar of **"EIEIPL"** has requested **"SDSPL"** to restore the signals of Sun channels of **"ALL DIGITAL"** immediately.
7. **"SDSPL"** agreed to restore the signals, without prejudice to our rights and contentions on disconnection notice issued. This is subject to realization as per the payment schedule tabulated above.
8. However for any reason whatsoever, if the above payment schedule is not adhered or remain unfulfilled, then **"SDSPL"** will immediately resort to disconnection of SUN channel services. All payment made under this MOU is against the outstanding amount payable by **"ALL DIGITAL"** to **"SDSPL"** of Rs. 15,81,97,100/-, which is understood by all parties signing this MOU.
9. Mr. Somasekhar of **"EIEPL"** has agreed to execute fresh subscription agreement on 18th April, 2016 for the services availed by the combined entity of **"EIEPL**" and**"ALL DIGITAL"**. This is subject to clearance of the First payment of Rs. 3,50,00,000/- as mentioned above.

6. On the basis of the admissions made in the MoU, the petitioner filed an application claiming an amount of ₹13,24,79,663/- payable as on 24.06.2016. The said application was opposed by the respondents principally on the ground that the sum as stated in the MoU as payable to the petitioner was premised on EIEIPL taking over the network of ADNIL and since the said transaction had not gone through, the question of any admissions made in the MoU being held against ADNIL did not arise. In addition, it was also submitted that the amounts claimed pertained to all the respondents before TDSAT and no break-up of the sum payable by each respondent was specified. It was also pointed out that in the MoU, the amount stated to be due to the petitioner was quantified at ₹15,81,97,110/-,

which was in excess of the amount claimed by the petitioner in its application.

7. In view of the above, TDSAT held that as there are so many gray areas, the interest of justice would be subserved only if parties are permitted to file evidence on affidavits and lead oral evidences as required.

8. The learned counsel for the petitioner has pointed out that the difference in the sum as mentioned in the MoU and as claimed in its application is for the reason that the amount as claimed in the application was computed as payable on 24.06.2016 while the respondents had continued to receive signals even thereafter and therefore, the amount as reflected in the MoU was larger. He also submitted that the MoU had an annexure indicating the manner in which the amounts as payable by ADNIL had been worked out. He submitted that the MoU contained a clear admission on the part of ADNIL and the petitioner was entitled to an order on such admissions.

9. *Prima facie,* the contention advanced on behalf of the petitioner appears to be merited. A plain reading of the MoU indicates that the sum payable to the petitioner had been specified and further the breakup of the said amount had also been specified. Having stated the above, this Court is of the view that no interference with the impugned order is called for as it is well settled that an admission made by any party is only a piece of evidence which requires to be properly evaluated in the original proceedings; in this case, the proceedings before the TDSAT. It is also settled that whether to pass a decree on admissions or not is at the discretion of the Court after evaluating the admissions. Unless the Court is satisfied that the admission is unequivocal clear and unambiguous, the Court would not proceed on such

basis. In ***Uttam Singh Duggal & Co. Ltd. v. United Bank of India and Ors.: (2000) 7 SCC 120*** the Supreme Court considered the provisions of Order 12 Rule 6 CPC and explained that the principle will apply only in cases where "there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed"

10. In ***Premsuk Das Assaram v. Udairam Gunga bux: AIR 1918 Calcutta 467,*** a Division Bench of the Calcutta High Court held as under:-

> "A judgment on admission is not a matter of right; it is in the discretion of the Court, so that if a case involves question which cannot be conveniently disposed of on a motion under the rule, the Court may, in the exercise of its discretion, refuse the motion. The discretion is judicial and an erroneous exercise thereof may be open to correction by a court of appeal which, however, on well established principles, will be slow to interfere, unless either of the parties has been manifestly and unfairly prejudiced."

11. A similar view was expressed by the Jammu & Kashmir High Court in ***Union of India v. M/s. Feroze and Co. AIR 1962 J&K 66,*** wherein the court obseerved as under :-

> "A judgment on admission under Order 12 rule 6 is a matter of discretion and not a matter of right and the court would not entertain an application for such judgment when the case involves questions which cannot be conveniently dealt with in a motion under the rule...... In order that a judgment may be obtained under Order 12 rule 6 the admission must be unconditional, clear and unequivocal."

12. It is further seen that TDSAT has exercised its discretion and has decided to evaluate the evidentiary value of the admissions after receiving

complete evidence. It is also noticed that the proceedings are at the stage of filing of affidavits of evidence and this Court has no reason to believe that the TDSAT will not fully examine the MoU and the statements made thereunder since that is an admitted documents.

13. Further given the nature of dispute it is also expected that the petitioner's petition would be disposed of expeditiously. This Court requests TDSAT to do so as expeditiously as possible and preferably within a period of three months from the parties filing their affidavits of evidence.

14. The petition alongwith the pending application is disposed of with the aforesaid observations.

VIBHU BAKHRU, J

OCTOBER 13, 2017
pkv