

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

Date of Reserved: 04.08.2020

Date of Decision: 17.08.2020

+ **W.P.(C) 4877/2020 & CM No. 17601/2020 (Stay)**

WELWORTH SOFTWARE PRIVATE LIMITED

.... Petitioner

Through Mr.Maninder Singh, Sr. Adv.
with Mr.Rajshekhar Rao,
Mr.Sharath Sampath,
Mr.Manikya Khanna,
Mr.Pratyaksh Sharma, Advs.

versus

SUN DISTRIBUTION SERVICES PVT. LTD. & ANR.

..... Respondents

Through Mr.Amit Sibal, Sr. Adv. with
Mr.Abhishek Malhotra,
Ms.Shilpa Gamnani,
Ms.Atmaja Tripathy, Advs. for
R-1.
Mr.Jayant Pawar, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

1. This petition has been filed by the petitioner challenging the order dated 20.07.2020 passed by the learned Telecom Disputes Settlement and Appellate Tribunal, New Delhi (hereinafter referred to as the Tribunal) in Broadcasting Petition No.221/2020, titled *SUN Distribution Services Pvt. Ltd. v. E-Infrastructure & Entertainment India Pvt. Ltd. & Anr.*, and Broadcasting Petition No.287/2020, titled

Welworth Software Pvt. Ltd. v. SUN Distribution Services Pvt. Ltd.,
directing the petitioner and the respondent no.2 herein to jointly and severally pay an amount of Rs.22.20 crores to the respondent no.1 herein within one month from the date of passing of the said order, failing which the respondent no.1 has been held entitled to take legal steps for recovery of the said amount by filing appropriate application before the learned Tribunal, including application for disobedience of the said order.

2. The respondent no.1 is the broadcaster of TV Channels while the petitioner and the respondent no.2 are the Multi System Operators providing cable TV services to the local cable operators and the subscribers in the State of Karnataka and Andhra Pradesh.

3. The respondent no.1 filed a petition under Section 14 read with Section 14A of the Telecom Regulatory Authority of India Act, 1997 (hereinafter referred to as the 'Act') before the learned Tribunal being Broadcasting Petition No.221/2020 against the petitioner and the respondent no.2 *inter-alia* making the following prayers:

“a. Pass a decree for an amount of INR 32,03,44,059 /- (Rupees Thirty Two Crores Three Lacs Forty Four Thousand Fifty Nine Only) payable as of May 30, 2020, in favour of the Petitioner and against Respondent No. 1 along with interest thereon @18% per annum calculated from date of accrual till date of receipt of payment; AND

b. Restrain Respondent No.1 from alienating /migrating its customers/network to any other third-party MSO/DPO/network, including but not limited to that of

Respondent No.2, without prior clearance of the dues of the Petitioner; AND

c. Restrain Respondent No.2 from taking over or migrating to itself, the subscribers and/ or the network of Respondent No.1.”

4. In the petition, the respondent no.1 asserted *inter-alia* as under:

“23. Owing to Respondent No. 1's illegal repudiation of its liability, the Petitioner is under an apprehension that Respondent No. 1 is likely to alienate or migrate the customers of its network to some other network, mainly that of Respondent No. 2. This belief is fortified by the following facts:

*i. Both the Respondents share common control, since Mr. P Kailasam, is not only Chief Executive Officer of Respondent No. 2 company, but is also the Chief Advisory Officer (CAO) of Respondent No. 1. Copies of the communique dated May 7, 2020 from Respondent No. 1's Board vesting all managerial powers in Mr. Kailasam as well as the Board Resolution dated June 21, 2019 appointing Mr. Kailasam as CEO of Respondent No. 2 are attached herewith and marked as **Annexure P-13** (Colly).;*

ii. Respondent No. 1 has, in April 2020, shifted the address where the CAS & SMS for its network is located, which address coincides with that of Respondent No. 2. This is evident from a bare perusal of the letter dated April 23, 2020 addressed by Respondent No. 1 to the Petitioner, wherein Respondent No. 1 has set out the new location of its CAS and SMS, which is identical to the address mentioned by Respondent No. 2 in the agreement executed by it with the Petitioner. A copy of the letter dated April 23, 2020 sent by Respondent No. 1

*to the Respondent and an extract of Respondent No. 2' s agreement with the Petitioner are attached herewith and marked as **Annexure P-14** (Colly).*

*24. Apprehending possible collusion between the Respondents in order to defeat the Petitioner's rights, the Petitioner addressed a letter dated June 1, 2020 to Respondent No. 2, directing it to refrain from migrating the Respondent No. 1's subscribers to their network. The Petitioner has also addressed similar correspondences to other MSOs in the region, in order to prevent Respondent No. 1 from escaping its admitted liabilities. A copy of the letter dated June 1, 2020 addressed by the Petitioner to Respondent No. 2 is attached herewith and marked as **Annexure P-15**.*

25. The urgency of filing the present petition is the apprehension of the Petitioner that Respondent No. 1 seeks to defeat the rights of the Petitioner by alienating or migrating its subscribers or network to other network/MSO/DPO, including that of Respondent No. 2."

5. The respondent no.1 thereafter filed an application, being M.A. No.95/2020, in the said petition before the learned Tribunal seeking to place on record an Assets Transfer Agreement dated December, 19, 2019 purportedly executed between the petitioner and the respondent no.2. In the said application the petitioner asserted *inter-alia* as under:

"6. It is, therefore, evident from the aforesaid Asset Transfer Agreement that Respondent No. 2 has taken over Respondent No. 1's business, leaving behind a shell company. As a result of this collusion between the Respondents, the Petitioner has been prejudiced and has failed to receive the dues legitimately owed to it by Respondent No. 1."

6. The petition as also the said application was listed for consideration before the learned Tribunal on 04.06.2020. It is important to note that on the said date, the petitioner and the respondent no.2 were duly represented before the learned Tribunal. The learned Tribunal, however, refused to grant any interim relief to the respondent no.1 observing *inter-alia* as under:

“It appears that Respondent no. 2 is actually running the business of respondent no.1 since 1.4.2019, whereas the claim for money made by the petitioner is against respondent no. 1. The issue of interim relief, if any, shall be considered on the next date.”

7. The respondent no.1 challenged the said order, insofar as it refused to grant any interim relief to the respondent no.1, before this Court by way of a Writ Petition, being WP(C) 3391/2020, titled ***Sun Distribution Services Private Limited v. Union of India & Ors.***

8. This Court by its order dated 09.06.2020, was pleased to dispose of the petition observing and directing as under:

“3. The ground on which the aforesaid relief is sought is that in the Claim Petition filed before the Telecom Dispute Settlement & Appellate Tribunal (TDSAT) the date given is of 06.07.2020 to hear the application for grant of interim protection in terms of the aforesaid prayers, so as to protect the petitioner's claims, especially because respondent no. 2 is alleged to be depleting its assets by transferring the same to respondent no. 3. According to the petitioner, both respondent nos. 2 and 3 are under common control and are in breach of Clauses 5(11) and 27 of their respective License Agreements with the petitioner. According to the petitioner, there is an admitted document of transfer of assets, which was

brought to the notice of the petitioner on 03.06.2020 by one Mr. Somashekhar, ex-Director of respondent no. 2 company. He is said to have informed the petitioner that 100% business of respondent no. 2 is to be taken over by respondent no. 3, which according to the petitioner is a clear breach of the aforesaid Clauses of the Agreement. The learned counsel for respondent no. 3 submits that the acquisition of assets is not a breach of the contract and that they are not providing any link to the Local Cable Operators (LCOs) or to other subscribers of R2 or other MSOs and it is supplying signals only to its own subscribers. It contends that, subscribers have the freedom to choose their own cable operator. It further contends that, in any case, it is maintaining a record of all subscribers who may have migrated from other LCOs and would furnish a detailed account of the same to the petitioner.

4. The learned Senior Advocate for the petitioner contends that if the assets of respondent no. 2 are taken over by respondent no. 3, respondent no. 2 would remain only a shell company and the money decree, if granted, would be nugatory.

5. The Court is of the view that these issues would best be decided by the court of first instance i.e. by TDSAT. In the circumstances, the learned counsel for the parties would request the learned TDSAT to take up the matter preferably on an earlier date. The petitioner may move an application for early hearing of the case before the learned TDSAT. The respondents have no objection to preponement of the case and to early hearing of the same.

6. In the interest of an early resolution of the lis, respondent nos. 2 and 3 undertake to serve a copy of their respective replies by 13.06.2020 to the petitioner's claim petition and would file the same before the TDSAT on 15.06.2020.

7. The petition, alongwith pending applications, is disposed-off in the above terms with the hope that the learned TDSAT will accommodate the request of the petitioner and hear the case preferably in the next Week.”

9. The respondent no.1 had filed another application, being M.A. No.98/2020, in the above referred petition before the learned Tribunal praying as under:

“a. Allow the present application and hold the Respondents jointly and severally liable to make payment of the dues of INR 32,03,44,059 /- (Rupees Thirty Two Crores Three Lacs Forty Four Thousand Fifty Nine Only) payable as of May 30, 2020, along with interest thereon @18% per annum calculated from date of accrual till date of receipt of payment; AND

b. Restrain Respondent No.2 from carrying out unauthorized re-transmission of the signals of Petitioner's channels to the subscribers of Respondent No. 1; AND/OR

c. Allow the Petitioner to disconnect the supply of signals to Respondent No. 2's network.”

10. Simultaneously thereto, the respondent no.1 also issued a notice dated 04.06.2020, threatening disconnection of its signal from the petitioner's network. The same was challenged by the petitioner by way of a petition before the learned Tribunal, being Broadcasting Petition No.287/2020 titled, ***Welworth software Pvt. Ltd. Sun Distribution Services Private Limited.***

11. On 24.06.2020 the learned Tribunal recorded the statement of the learned counsel for the respondent no.1 herein that it shall not give effect to the disconnection notice without seeking leave of the Tribunal.

12. After hearing the parties pursuant to the order passed by this Court in the Writ Petition filed by the respondent no.1, the learned Tribunal has been pleased to pass the Impugned Order. The Impugned Order holds *inter-alia* as under:

“7. On a careful perusal of the various documents brought on record by SUN Distribution which includes copy of the agreement with the respondents, copies of invoices against EEIPL and communications through letters/email, it appears that Mr.Somashekhar had made required communication on various occasion as Managing Director seeking facilities for respondent No. 1 of paying the outstanding through post-dated cheques between July 2018 to March 2019. The confirmation of balance in December 2019 showed an outstanding of Rs.25.99 crores supported by statement of account. On 13.01.2020 respondent No.1 assured to clear all the outstanding Rs.28.07 crores before 31 .03.2020 and issued a cheque for that amount. The communications from Mr.P. Kailasam on behalf of EEIPL dated 05.02.2020 and 27.02.2020 show that pursuant to the agreement of assts transfer, the CEO of Welworth, Mr.Kailasam had taken control of business of respondent No.1 EEIPL also and against a total claim of Rs.29.0034 crore for the period prior to February 2020, he agreed to pay Rs.22.20 crores by 31.03.2020 and only for the balance he raised the plea of reconciliation with an offer to pay the balance on reconciliation after 31.03.2020. A letter from SUN Distribution dated 23.04.2020 to Mr.Kailasam reveals that Rs.31.31 crores

stood as outstanding as on 31.03.2020. The letter alleged that Mr.Kailasam had let down the petitioner very badly. Thereafter on 28.04.2020 several allegation and claims came up for the first time. Mr.Kailam on behalf of respondent No.1 raised these but without corroboration through past correspondence/invoices or materials. This was apparently a ploy to create a defence against the admitted dues of at least Rs.22.20 crores and it lacks merits. SUN Distribution issued a disconnection notice dated 04.05.2020 for the dues amounting to Rs.31.31 crore outstanding as on 31.03.2020 granting time till 12.05.2020 to make the payment. By a reply dated 25.05.2020, EEIPL through Mr.Kailasrun accepted to suffer disconnection by making a request to effect disconnection from 27.05.2020. He also took the plea that since the earlier agreement had expired on 31.01.2020 respondent No.1 will not be liable to make any payments for signals received thereafter and the dues of the earlier periods shall be paid only if found due on reconciliation of accounts.

8. On a careful reading of the pleadings and particularly the documentary evidence on record it is found that respondent No.1 and respondent No.2 in B.P. No.221/2020 are being managed by the same interests represented by Mr.Kailasam. They have devised means to defraud the creditors of respondent No.1, EEIPL which has/had a large business claimed to be nearing a lakh of STBs by using and equipping Welworth to become its alter ego and take over all its business and assets without paying anything so that unsecured creditors like SUN Distribution may have no means to realize their money, even the admitted dues. Such arrangement and transactions cannot be protected only because respondent No.1 and 2 are juristic person having corporate veil. This cannot help to sanctify or legalise a fraudulent and sham transaction of transfer of assets apparently for no consideration. Suddenly

respondent no.2 Welworth which earlier had a business of 1000 STBs has acquired huge business and assets of respondent No.1 in a manner so as to render EEIPL an empty shell. Such machinations and designs are early products of fraud and cannot have any legal sanctity. The matter would have been different had Welworth accepted the liabilities of EEIPL but during the course of arguments also it has not offered to do so. Its plea that SUN Distribution wants to take over the entire business clandestinely is not worthy of any consideration, more so when SUN Distribution has, for the present agreed not to effect disconnection of supply of signals to Welworth if it fully discloses its total consumer base including that acquired from EEIPL and pay for the same. On such understanding only an interim order in favour of Welworth has already been passed recording in brief that SUN Distribution has agreed to not give effect to the notice for disconnection without seeking leave of this Tribunal. For the present that arrangement is permitted to continue in B.P. No.287/2020 without at present deciding the plea of SUN Distribution that redistribution of its channels by Welworth to consumers of EEIPL violates the terms of agreement.

9. However, interim order are urgently required to be passed in favour of the petitioner in B.P. No.221/2020, in order to prevent fraudulent acts to succeed and for protecting the interest of justice. On the basis of all the materials and discussions, respondent no.1 and 2, EEIPL and Welworth are held jointly and severally liable to pay the entire lawful dues of SUN Distribution as may be found payable. Further they are held jointly and severally liable to pay the admitted amount of Rs.22.20 crores to SUN Distribution within one month from today failing which SUN Distribution shall be entitled to take all legal steps for recovery of that amount by filing proper applications before this Tribunal including application for disobedience of this

order. Prayer for security for the balance of claimed amount shall be considered separately at a later stage.

10. The payment of Rs.22.20 crores shall be treated as payment 'on-account' and the rights and liabilities of the parties may be adjusted on final adjudication of claim made in B.P. No.221/2020."

13. The learned senior counsel for the petitioner in challenge to the Impugned Order submits that in the petition filed by the respondent no.1 there is no allegation of lifting of corporate veil against the petitioner and the respondent no.2 herein. The only averment made against the petitioner herein is in paragraph 3 of the petition, which is reproduced herein below:

"The Respondents are MSOs and are engaged in distribution of channels to their affiliated cable operators and direct subscribers, in the region of Karnataka through the digital mode. It is stated that the present petition is being filed in respect of the outstanding subscription charges due and payable by Respondent No. 1 to the Petitioner for the territory of Karnataka state only, being one of the territories for which the parties have executed subscription agreements. Respondent no.2 has been arrayed as a party for the limited extent of seeking orders restraining Respondent no.2 from "taking over" Respondent No.1's network and/or its subscribers, for the reasons detailed in the paragraphs hereinbelow."

(Emphasis supplied)

14. He submits that the prayer made against the petitioner was also not for a direction to pay any amount to the respondent no.1 but was limited to restraining it from taking over the subscribers/network of the respondent no.1. He submits that even in M.A. No.98/2020, though the respondent no.1 alleged collusion between the petitioner and the respondent no.2, no case of lifting of corporate veil was made out nor any amendment sought to be made in the Broadcasting Petition to allege the same. He submits that in absence of any pleadings to this effect, the Impugned Order passed by the learned Tribunal finding the petitioner liable to pay the amount of Rs.22.20 crores to the respondent no.1; being managed by same interests; and the petitioner being an alter ego of the respondent no.2, cannot be sustained. He submits that the learned Tribunal is to be guided by the Principles of Natural Justice, which have clearly been violated as in the absence of any pleadings, the petitioner stands prejudiced.

15. On merits of the dispute, he submits that there could be no embargo placed on the petitioner taking over the assets of the respondent no.2 while the respondent no.2 retains its liability towards the broadcasters. He submits that the learned Tribunal has erred in its finding that the Assets Transfer Agreement is without consideration. He submits that the learned Tribunal itself records that the petitioner has assumed liability of approximately Rs.7.39 crores of the respondent no.2 and this reflects the consideration for the asset transfer. He submits that the adequacy or inadequacy of the same cannot be a ground to challenge such Agreement.

16. Further, placing reliance on the details of shareholders of the petitioner as on 31.03.2019 and of the respondent no.2 as on 30.03.2018, he submits that Mr.Sachin Naryan is the only common shareholder of the two companies, that is the petitioner and the respondent no.2. He owned only 13.16% shares of the respondent no.2 company and therefore, was not its majority shareholder. He submits that therefore, even on facts, the petitioner and the respondent no.2 could not be stated to be related companies or companies of the same group.

17. As far as the finding of the learned Tribunal based on Mr.P.Kailasam's communications is concerned, he submits that Mr.P.Kailasam was neither a shareholder nor the Director of either the petitioner or the respondent no.2 company; he is merely an employee of the said companies and only for such reason, the corporate veil cannot be lifted. He submits that even otherwise, the purported admission of liability by Mr.P.Kailasam was only on behalf of the respondent no.2 herein and not on behalf of the petitioner. Therefore, based on such correspondence, the petitioner could not have been made liable.

18. On the other hand, the learned senior counsel for the respondent no.1 submits that the pleadings of the petitioner and the respondent no.2 being under common control are contained in paragraph 23 of the petition. At the stage of filing of the petition, the respondent no.1 was not aware of the Asset Transfer Agreement. On becoming aware of such transaction, the respondent no.1 immediately filed an application,

being M.A. NO.95/2020, seeking to place the same on record. He submits that because the copy of the Agreement made available to the respondent no.1 gave the effective date of transfer of assets as 01.04.2019, the learned Tribunal on 04.06.2020 refused to pass any interim order in favour of the respondent no.1. The petitioner and the respondent no.2, though were duly represented in the said proceedings, did not bring to the notice of the learned Tribunal that the assets transfer was to take place from 01.04.2020 and not on 01.04.2019. He submits that taking advantage of the lack of interim order, the petitioner proceeded to shift all subscribers of the respondent no. 2 to its network thereby trying to leave the respondent no. 1 remediless.

19. Drawing reference to the replies filed by the petitioner and the respondent no.2 before the learned Tribunal, he submits that there was no denial on behalf of the petitioner and/or respondent no.2 to the plea of the respondent no.1 of them being under common control. He submits that Mr.Kailasam took control of the respondent no.2 only after the execution of the Asset Transfer Agreement and such Asset Transfer Agreement was clearly a sham in order to deny the liability of the broadcasters owed by the respondent no.2. He submits that where the corporate veil is being used to perpetuate fraud or deny contractual liabilities, the Court is empowered to lift the corporate veil. He places reliance on the judgments of the Supreme Court in *Vodafone International Holdings BV v. Union of India and Anr.*, (2012) 6 SCC 613, *Arcelormittal India Pvt. Ltd. v. Satish Kumar*

Gupta & Ors., (2019) 2 SCC 1; *New Horizons Limited & Anr. v Union Of India and Ors.*, (1995) 1 SCC 478.

20. The learned senior counsel for the respondent no.1 further submits that the petitioner was fully aware of the case of collusion set up by the respondent no.1 against it. As the learned Tribunal is to be guided by the Principles of Natural Justice and is not bound by the Code of Civil Procedure, 1908, therefore, lacuna in the pleadings, if any, alone cannot be taken as a ground for challenging the Impugned Order. He places reliance on the judgment of this Court in *Shristi Communication Network v. Technobile Systems Pvt. Ltd. & Anr.*, 2019 SCC OnLine Del 9149.

21. Placing reliance on the judgment of this Court in *Star India Pvt. Ltd. v. Life Style Communication P. Ltd.*, 2007 SCC OnLine Del 1658, the learned senior counsel for the respondent no.1 further submits that the jurisdiction of this Court in challenge to the interim order passed by the learned Tribunal is highly circumscribed and would lie only to correct a jurisdictional error committed by the learned Tribunal. This Court could not enter into the re-appreciation of such order on merits. He further submits that Impugned Order being interim in nature, all pleas of the petitioner are open for consideration before the learned Tribunal, including the amount owed by the respondent no.2.

22. I have pointedly inquired from the learned senior counsels for both the petitioner and the respondent no.1 if the Impugned Order can be characterized as a final order or as merely an interim order. The

learned senior counsel for the petitioner submits that the Impugned Order is final in nature inasmuch as it holds the petitioner liable to pay the dues of the respondent no.2. Even the learned senior counsel for the respondent no.1 admits to this fact, however, submits that as far as the amount is concerned, as the final dues of the respondent no.2 are yet to be ascertained, the learned Tribunal has in the Impugned Order directed the payment of Rs.22.20 crores as ‘on-account’ payment with the rights and liabilities of the parties to be adjusted on the final adjudication of the claim.

23. In my view, the Impugned Order passed by the learned Tribunal as far as the petitioner is concerned, can only be treated as a prima facie opinion of the learned Tribunal and as an interim order. The learned Tribunal has directed the parties to complete the pleadings and the payment of Rs.22.20 crores has been directed to be treated as payment ‘on account’, further clarifying that “the rights and liabilities of the parties may be adjusted on final adjudication of claim made in Broadcasting Petition No.221/2020”. In fact, if such findings are treated as a final order of the learned Tribunal, the remedy of the petitioner would be in form of an appeal before the Supreme Court under Section 18 of the Act.

24. As held by this Court in *Star India Pvt. Ltd. v. Life Style Communication Pvt. Ltd.* (supra), the jurisdiction of this Court in exercise of powers of judicial review under Article 226 of the Constitution of India is circumscribed, especially in case of an interim order. This Court further held as under:

“18. The TDSAT’s orders can be interfered with where they disclose manifest errors, which are apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and a grave injustice or gross failure of justice has been occasioned.....”

25. In the present case, the plea of the petitioner of lack of pleadings justifying the lifting of corporate veil has to be considered in light of paragraph 23 of the petition filed by the respondent no.1 before the learned Tribunal, which has been quoted hereinabove. The respondent no.1 had clearly relied upon Mr.P.Kailasam being the Chief Executive Officer of the petitioner company and the Chief Advisory Officer of the respondent no.2 herein. It had further relied upon the location of the CAS and SMS systems of the petitioner and the respondent no.2. The petitioner has been unable to show any pleadings in its reply denying these assertions of the respondent no.1. As noted hereinabove, the respondent no.1 in its applications, being M.A. No.95/2020 and M.A. No. 98/2020, had also pleaded collusion between the petitioner and the respondent no.2.

26. Section 16 of the Act provides that the Tribunal shall not be bound by the procedure laid down by the CPC, but shall be guided by the principles of natural justice. Tested on the principles of natural justice, the petitioner was clearly made aware of the basis of the claim against it and, in fact, defended the same. It is now too late in the day for the petitioner to try and take benefit of any perceived lacuna in the pleadings of the respondent no. 1 before the Tribunal.

27. The learned senior counsel for the respondent no.1 has also strongly urged that it is only after the denial of interim injunction by the learned Tribunal in its order dated 04.06.2020, based on the premise that the transfer of the business from the petitioner to the respondent no.2 had taken place since 01.04.2019, that the petitioner actually joined the subscribers and the Local Cable Operators of the respondent no. 2 using the assets of the respondent no.2. Though the petitioner and the respondent no.2 were duly represented in these proceedings before the learned Tribunal on 04.06.2020, no effort was made by them to clarify to the learned Tribunal that in fact such assets transfer was to be take place only from 01.04.2020. The respondent no.2 and the petitioner, therefore, allowed the learned Tribunal to be misguided on this vital issue. In fact, even before this court in W.P(C) 3391/2020, no effort was made by the petitioner and the respondent no.2 to clarify the facts on this vital issue. The Assets Transfer Agreement was produced before the learned Tribunal only at the time of hearing of the application post the said orders. The petitioner is, therefore, guilty of misleading the Tribunal and taking advantage of the same.

28. The learned Tribunal has further placed reliance on the correspondence addressed by Mr.P.Kailasam, who admittedly is the Chief Executive Officer of the petitioner and the Chief Advisory Officer of the respondent no.2. One of the shareholders of the two companies, namely Mr. Sachin Narayan, is also common, holding majority shares in the petitioner company, and though only 13.16% in

respondent no.2 company as on 31.03.2018, a substantial shareholding in the same. In fact, the other major shareholder of the respondent no. 2, Mr. Annyappa Somashekar, is stated to have left the company and as having been removed as Director of the said company. The latest position of the shareholding of the respondent no. 2 company has been intentionally concealed even from this court in the present petition. The petitioner cannot plead ignorance of the same as its Chief Executive Officer is admittedly the Chief Advisory Officer of the respondent no. 2.

29. The learned senior counsel for the respondent no.1 has also drawn my attention to the address where the CAS and SMS system of the respondent no.2 was sought to be shifted and intimation thereof was given by the respondent no.2 to the respondent no.1 by its letter dated 23.04.2020. The address is admittedly of respondent no. 2. Curiously, in the said letter, there is no mention of any Asset Transfer Agreement. In fact, it reads as under:-

“ Due to the ongoing lockdown due to COVID 19 we are facing severe paucity of staff.

To address this issue and to ensure smooth functioning of our operations as mandated by the MIB, we have shifted our SMS and CAS to the below address:-

Xxxxx”

30. In ***DDA v. Skipper Construction Company (P) Ltd.,(1996) 4 SCC 622***, the Supreme Court held that “the concept of corporate entity

was evolved to encourage and promote trade and commerce and not to commit illegalities or to defraud people. Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned.”

31. In view of the above, the prima facie finding of the learned Tribunal that the Assets Transfer Agreement was merely a ploy used by the respondent no.2 and the petitioner to deny the liability of the broadcasters, including the respondent no.1 herein, cannot be faulted. At the least it cannot be said that the above finding is beyond the jurisdiction of the learned Tribunal or suffering from any error apparent on the face of the record.

32. I am intentionally restraining myself from opining further on the plea of lifting of corporate veil only for the reason that the same may prejudice either party in the final adjudication of the claims between them before the learned Tribunal. Such plea has to be considered by the learned Tribunal upon taking evidence, documentary and/or oral, lead by the parties.

33. As far as the amount of Rs.22.20 crores is concerned, the same is based on an email dated 27.02.2020 forwarded by Mr.P.Kailasam to the respondent no.1 and giving a schedule of payment of Rs.22.20

crores by 31.03.2020. In any case, the same is only an interim direction and is subject to the determination of accounts by the learned Tribunal after hearing the parties.

34. In view of the above, I find no merit in the present petition. The same is dismissed. There shall be no order as to cost.

35. It is made clear that any observation made by this court or by the Tribunal in its impugned order dated 20.07.2020 shall not influence the Tribunal in its final adjudication of the petitions filed by the petitioner and the respondent no. 1 herein.

NAVIN CHAWLA, J

August 17, 2020/Arya



सत्यमेव जयते