
(2010) 12 DEL CK 0328

In the Delhi High Court

Case No : Writ Petition (C) 8585 of 2010 and CM Appl 21898 of 2010 and Caveat No"s. 293 and 294 of 2010

Msm Discovery Private Limited

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-12-2010

Acts Referred:

Specific Relief Act, 1963 — Section 14, 20, 41

Citation : (2010) 12 DEL CK 0328

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Aman Lekhi, Abhishek Malhotra, Nitin Bhatia and Sahana Basavapatna, for the Appellant; Maninder Singh Kaushik Mishra, for R-2/ Caveator in Caveat No. 293/2010, Amit S. Chadha and Ramji Srinivasan, Gaurav Juneja, Zeyaul Haque, Arjun Natrajan and Garima Sharma for R-3/Caveator in Caveat (C.A.) No. 294/2010, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—The challenge in this petition is to an order dated 16th December 2010 passed by the Telecom Disputes Settlement and Appellate Tribunal ("TDSAT") declining the Petitioner's prayer for an ad-interim injunction in Petition No. 422(C) of 2010.

2. The Petitioner is a broadcaster within the meaning of the provisions of the Telecommunication (Broadcasting and Cable Services) Interconnection Order, 2004. It entered into an agreement (‘Term Sheet’) for carriage of the channels of the Respondent No. 2 New Delhi Television Ltd. (‘NDTV’) on 1st April 2005. By amendments made to the said agreement, the Petitioner agreed to perform its obligations for a fixed fee.

3. Anticipating the termination of the Agreement (Term Sheet), the Petitioner on 10th December 2010 filed the aforementioned petition before the TDSAT praying inter alia for a declaration that the agreement dated 1st April 2005 and its

subsequent amendments dated 29th August 2007 and 1st April 2009 were "valid, binding and subsisting between the parties." A direction was sought to restrain Respondent No. 3 herein, i.e., Star Den Media Services Private Ltd. (`SDMSPL") from interfering with the Petitioner's rights during the term of its agreement dated 1st April 2005, i.e., till 31st March 2012. The interim relief sought was to restrain NDTV from terminating the agreement and creating third party interests. The TDSAT was to take up the petition for hearing on 14th December 2010.

4. It is stated that late in the night of 13th December 2010 the Petitioner was served with an undated notice issued by NDTV terminating the Term Sheet. In the said letter, after listing out the events leading to the termination, the NDTV stated as under:

In this background, it is evident that MSMD's acts of omission and commission lack in commercial probity and there is lack of fair dealing on its part.

This has shattered the trust and faith in the relationship, which is incapable of being remedied. This has also caused huge financial loss to NDTV apart from the loss of business opportunity i.e. the consequences of which are irreversible. Resultantly the Term Sheet stands terminated forthwith.

You are hereby called upon to refrain from holding yourself out or representing yourself to the trade as the Distributor of NDTV Channels and to return all material belonging to NDTV that may be in your possession. You are also called upon to make the payment of all sums due and owed to NDTV till the date termination of the Agreement.

5. By the impugned order, the TDSAT declined the prayer for ad-interim relief. It held that a combined reading of Sections 14(1)(a) and (c) and Section 41(e) of the Specific Relief Act, 1963 (`SRA") revealed that no ad- interim mandatory injunction would be granted when the aggrieved party could be sufficiently compensated in terms of money. The TDSAT held that the Petitioner had failed to establish a prima facie case for grant of an ad-interim mandatory injunction. It was further held that the validity and illegality of the action of the parties could be adjudged only after the case had been finally heard. The balance of convenience was also not in favour of the Petitioner.

6. Mr. Aman Lekhi, learned Senior counsel appearing for the Petitioner urged that the TDSAT proceeded on a misreading of Section 14(1)(a) SRA. It set out only one of the grounds on which a Court might decline to exercise its discretion for grant of an ad-interim injunction. He emphasized on the word `adequate" occurring in Section 14(1)(a) SRA and submitted that if the Court was of the view that the compensation would not constitute an `adequate relief", it should proceed to issue a mandatory injunction directing the continuance of the contract. He relied upon certain passages from A Treatise on the Specific Performance of Contracts by Edward Fry (1st Indian reprint 1997 @ p.3) and Specific Performance by Gareth Jones and William Goodhart (2nd Edition - 1996 @ p. 1). Mr. Lekhi states that the grounds set out in Section 20 SRA for not

granting specific performance could not be read in aid of Section 14 SRA. They were only aids to the exercise of discretion by the Court in awarding damages instead of ordering specific performance. They did not prevent the Court, in an appropriate case, from issuing an ad-interim mandatory injunction directing specific performance.

7. Mr. Lekhi pointed out that the essential condition as provided in Clause 21 of the Term Sheet for bringing about a termination of the contract did not exist and, therefore, the termination itself was illegal. It was submitted that Section 14(1) (d) SRA could not fetter the discretion of the Court. Mr. Lekhi sought to distinguish the judgment of the Supreme Court in *Indian Oil Corporation Ltd. Vs. Amritsar Gas Service and Others*, and the earlier judgment of this Court in *MSM Discovery Pvt. Ltd. v. Viacom 18 Media Pvt. Ltd.* 2010 VII AD (Delhi) 45 which affirmed an order dated 27th July 2010 passed by the TDSAT declining ad-interim mandatory injunction in similar circumstances. Mr. Lekhi pointed out that unlike in the said case, here it was a principal-to-principal agreement and, therefore, there was no question of any agency being involved. Mr. Lekhi relied upon the judgment in *C H Giles & Co. Ltd. v. Morris* [1972] 1 All ER 960 and submitted that the rule against grant of specific performance even in a contract of agency was also not absolute.

8. The above submissions have been considered. At the ad-interim stage, the Court has to proceed on the basis of the documents presented before it. The Court does not have the benefit of evidence which would help it in determining if the actions of the parties were justified in terms of the agreement. The letter dated 13th December 2010 issued by NDTV terminating the 'Term Sheet' inter alia points to the breakdown of trust and faith in the relationship. Where one of the parties to an agreement is categorical that it does not wish to continue the agreement for whatever reason, it is not possible for a court at an ad-interim stage to direct revival of such agreement. [see *Percept D'Mark (India) Pvt. Ltd. Vs. Zaheer Khan and Another*,]. Prima facie, it appears that Section 14(1)(c) SRA is attracted. The agreement in question was in its very nature a determinable one. Further, in terms of Section 14(1)(a) SRA, it cannot possibly be contended that the Petitioner cannot be compensated for the breach of agreement resulting in its non-performance. Whether such compensation would be an adequate relief cannot possibly be determined at an ad- interim stage. However this Court is of the view that in the circumstances, given the nature of the agreement between the parties, the damages or losses, if any, suffered by the Petitioner on account of the alleged breach of its agreement by NDTV can certainly be quantified. Section 41(e) places a further fetter on the Court in granting injunction to prevent a breach of contract the performance of which would not be specifically enforced.

9. The judgment of the Supreme Court in *Indian Oil Corporation Ltd. v. Amritsar Gas Service* is clear that even where the termination of a contract is illegal, the only relief that can be granted is by way of damages and not continuation of the

contract by an interim mandatory injunction.

10. This Court has not been shown any Indian precedent where, in similar circumstances, the continuance of contract has been ordered at the interim stage. The order dated 8th December 2010 of a learned Single Judge of the Bombay High Court in KPH Dream Cricket Pvt. Ltd. v. Board of Control for Cricket in India Arbitration Petition (Lodge) No. 1303 of 2010 and the order dated 14th December 2010 in Board of Control for Cricket in India v. Jaipur IPL Cricket Pvt. Ltd. Arbitration Appeal (Lodging) No. 30742 of 2010 relied upon by Mr. Lekhi contain no reference whatsoever to provisions of the SRA.

11. For all the above reasons, this Court finds no ground having been made out for interference with the impugned order of the TDSAT. The writ petition is dismissed as such but, in the circumstances, with no order as to costs. Both the caveats as well as the application for stay stand disposed of.