

# Gulf Dth Fz Llc vs Dishtv India Limited & Others on 30 August, 2016

**Author: S. Muralidhar**

**Bench: S. Muralidhar**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS (OS) 3355/2015

GULF DTH FZ LLC ..... Plaintiff

Through: Mr. P. Chidambaram & Mr. Rajiv  
Nayar, Senior Advocates with Mr. Rishi  
Agrawala, Mrs. Niyati Kohli,  
Mrs. Aayushi Sharma Kharanchi &  
Mr. Karan Luthra, Advocates.

versus

DISHTV INDIA LIMITED & OTHERS ..... Defendants

Through: Ms. Pratibha M. Singh, Senior Advocate  
with Mr. Rohan Swarup, Advocate for  
D-1.  
Ms. Suhasini Raina, Advocate for D-3.  
Mr. D.K. Singh, Mr. Saurabh Agrawal  
and Ms. Komal Mundhra, Advocates for  
D-6.  
Mr. Saurabh Srivastava and Mr. Dhavish  
Chitkara, Advocates for D-7 & 8.  
Mr. Sajad Sultan and Mr. Akul  
Mehandru, Advocates for D-10.  
Mr. Ajay Kalra and Ms. Varuna  
Bhandari Gugnani, Advocates for D-12.  
Ms. Radhika Dubey, Advocate for D-  
17.  
Mr. Azmat H. Amanullah and Ms.  
Debdatta Ray Chaudhury, Advocates  
for D-20.

CORAM: JUSTICE S. MURALIDHAR

ORDER

% 30.08.2016

1. This is an application for recall of the order dated 19th April, 2016 passed by the Court whereby it was noted that the statutory period for filing the written statement by Defendant No. 1 had expired

in terms of proviso to Order V Rule 1 of the Code of Civil Procedure, 1908 (CPC) as amended by the Schedule to the Commercial Courts and Commercial Appellate Divisions of the High Courts Act 2015 ('the Commercial Courts Act').

2. It is stated in the application by Defendant No.1 that the present suit was filed on 6th November, 2015 and came up for hearing on 16th November, 2015 on which date the Court issued summons in the suit and notice on the application under Order XXXIX Rules 1 & 2 of the CPC (IA No.23637/2015) to the Defendants.

3. According to Ms. Pratibha M. Singh, learned Senior Advocate appearing for Defendant No. 1, when the suit was filed on 6th November, 2015 the Commercial Division of this Court had not been notified. She further submits that the suit, in fact, continues to be numbered as a civil suit and not a commercial suit. She submits that in terms of Section 15 of the Commercial Courts Act, since this was a suit that was transferred to the Commercial Division from 15th November 2015 onwards, the proviso to Order V Rule 1 of the CPC as amended by the Commercial Courts Act would not apply and the Court has still the discretion to extend the time period prescribed within which the written statement can be filed. She referred to an order dated 9th December, 2016 passed by a learned Single Judge of this Court in IA No. 25029/2015 in CS (OS) No. 764/2015 (Telefonaktiebolaget L.M Ericsson v. Lava International Limited.)

4. Ms. Singh states that the summons in the suit and notice in the application for interim injunction was actually served on Defendant No. 1 on 19th December, 2015. Since it was a holiday for Defendant No. 1 summons and notice was received only at the gate and the officers got to know about the service of summons and notice only on 21st December, 2015 after coming to the office. Since the issue was technical in nature, the written statement took some time to draft. It is stated that although the period of 120 days expired on 18th April, 2016, Defendant No. 1 was under the impression that it was not a commercial dispute but only an ordinary suit. It chose to file an application under Order VII Rules 10 & 11 of the CPC (IA No. 550/2016) and proceeded on the basis that till such time the said application was not decided, the written statement need not be filed. In support of the last submission, Ms. Singh placed reliance on the decision in Saleem Bhai v. State of Maharashtra (2003) 1 SCC 557 and R.K. Roja v. U.S. Rayudu AIR 2016 SC 3282.

5. Mr. P. Chidambaram, learned Senior Advocate appearing on behalf of the Plaintiff, on the other hand, refers to the fact that the Commercial Courts Act was preceded by an Ordinance, which came into effect on 23rd October, 2015 and since the Ordinance was replaced by the Commercial Courts Act, that was the effective date of the Act coming into operation. The treating of the present suit as a commercial dispute did not have to await the formal numbering of the suit as a commercial suit which was only as per internal instructions of the High Court on the administrative side. He points out that on the date when the suit was filed i.e., 6th November, 2015, the Commercial Courts Act having come into force, this suit was a commercial suit. Secondly, there was no question of transfer of this suit to the Commercial Division under Section 15 of the Commercial Courts Act. It is submitted that in terms of the amendment of the CPC brought about by the Commercial Courts Act, a written statement has to be filed within 30 days of the service of summons. That clearly expired on 18th March, 2016. In terms of the amended proviso to Order V Rule 1 CPC, an application had to be

filed seeking extension of time beyond 30 days for filing the written statement. Even then, the Court cannot extend the time beyond 90 days thereafter. That further period of 90 days expired on 18th April, 2016. Apart from the fact that no application was filed, the written statement was also not filed on or before 18th April, 2016.

6. The above submissions have been considered. Certain dates are relevant as far as the present application is concerned. The suit was filed on 6th November, 2015, which came up for hearing first on 16th November, 2015. The Commercial Courts Ordinance came into effect on 23rd October, 2015. It was replaced by the Commercial Courts Act which also came into effect on 23rd October, 2015. Section 1 (3) of the Commercial Courts Act states that "It shall be deemed to have come into force on 23rd day of October, 2015.

7. Any suit filed thereafter which answers the description of "commercial dispute" under Section 2 (1) (c) of the Commercial Courts Act shall be a commercial suit. It did not hinge upon either the suit having to be numbered as a commercial suit, which was a formality in terms of the administrative instructions to be issued by the Court concerned or the formal notification of the Commercial Division of the Court. In any event, the formal notification of the Commercial Division of this Court by the orders of the Chief Justice was dated 15th November, 2015 i.e., one day prior to the suit being listed for hearing for the first time before the Court on 16th November, 2015.

8. Therefore Defendant No.1 is not right in contending that when the suit was filed it was not already a commercial suit. Since it was already a commercial suit on the date of its filing, it did not have to await being numbered as a commercial suit in order to be treated as one. Section 15 of the Commercial Courts Act would, therefore, have no application whatsoever since this is not a transfer of a pending suit to the Commercial Division. The decision in *Telefonaktiebolaget L.M Ericsson v. Lava International Limited* is again of no help to Defendant No.1 since in that case the suit had been filed in the month of March, 2015, much before coming into force of the Commercial Courts Act on 23rd October, 2015.

9. The Schedule to the Commercial Courts Act amends the CPC provisions. There are two significant amendments - One is the amendment to proviso to Order V Rule 1 CPC and the other to the proviso to Order VIII Rule 1 CPC. Both are identically worded and read as under:

"Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.

10. In the present case, Defendant No. 1 has itself not disputed the fact that summons in the suit were served on it on 19th December, 2015. On 5th January 2016, the matter was listed before the

Joint Registrar (JR) but none appeared on behalf of Defendant No. 1. It was noticed by the JR that Defendant No.1 had been served. Defendant No. 1 opted to file IA No. 550/2016 under Order VII Rules 10 & 11 of the CPC and not a written statement.

11. The question then arises whether it was open to Defendant No. 1 to await the disposal of the said application and to expect that time for filing the written statement would get extended till such time the application under Order VII Rules 10 & 11 of the CPC was not disposed of?

12. In the considered view of the Court, given the very object of the Commercial Courts Act and the amendments brought about in the CPC for strict adherence of the timeline for the various stages in a commercial suit, the above proposition put forth by Defendant No. 1 is not legally tenable.

13.1 Reliance placed by Defendant No.1 on the two decisions referred to above also appears to be misplaced. In *Saleem Bhai v. State of Maharashtra* (supra), the Supreme Court itself formulated the question that arose for consideration in para 7 of the judgment as under:

□7. The short common question that arises for consideration in these appeals is, whether an application under Order VII Rule 11 C.P.C. ought to be decided on the allegations in the plaint and filing of the written statement by the contesting defendant is irrelevant and unnecessary. 13.2 While answering the said question the Court in para 9 held as under:

□9. A perusal of Order VII Rule 11 C.P.C. makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order VII Rule 11 C.P.C. at any stage of the suit - before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order VII C.P.C. the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order VII Rule 11 C.P.C. cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects.

14. The above decision was followed in *R.K. Roja v. U.S. Rayudu* (supra) where it was held in para 6 as under:

□Once an application is filed under Order VII Rule 11 of the CPC, the court has to dispose of the same before proceeding with the trial. There is no point or sense in proceeding with the trial of the case, in case the plaint (Election Petition in the present case) is only to be rejected at the threshold. Therefore, the defendant is entitled to file the application for rejection before filing his written statement. In

case, the application is rejected, the defendant is entitled to file his written statement thereafter (See *Saleem Bhai v. State of Maharashtra*).

But once an application for rejection is filed, the court has to dispose of the same before proceeding with the trial court. To quote relevant portion from paragraph-20 of *Sopan Sukhdeo Sable* (2004) 3 SCC 137:

¶20. ... Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word "shall" is used, clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. ...

15. What the above decisions emphasise is only that the remedy under Order VII Rule 11 of the CPC is an independent one which does not have to await the filing of the written statement. The decisions further emphasize that an application under Order VII Rule 11 CPC would have to be decided even where a written statement has not been filed. None of the above decisions were dealing with a special statute like the Commercial Courts Act which has amended the relevant provisions of the CPC for the time limit for filing of a written statement. By no stretch of imagination can it be construed that either of the above decisions have held that the time for filing written statement in a commercial suit in terms of the Commercial Courts Act gets postponed till the disposal of the application under Order VII Rule 11 CPC.

16. In the context of the Commercial Courts Act which prescribes a mandatory time schedule for completion of various stages in commercial suits, the submission that the time for filing the written statement in a commercial suit will, notwithstanding the amendment to the proviso to Order V Rule 1 and the proviso to Order VIII Rule 1 of the CPC, get extended beyond the disposal of the application under Order VII Rules 10 & 11 CPC is not legally tenable and is rejected as such.

17. What makes it difficult for Defendant No. 1 is the further fact that there is no automatic presumption that the time for filing the written statement in a commercial suit is extended up to 120 days even if the Defendant No.1 had filed an application before the Court seeking extension of time beyond 30 days. The normal time period for filing written statement even in a commercial suit is 30 days from the date of service of summons. It is only upon filing an application before a Court furnishing valid reasons can the Commercial Court extend the time for filing written statement beyond 30 days. What the proviso to both Order V Rule 1 as well as the Order VIII Rule 1 CPC, as amended by the Commercial Courts Act, does is to curb the discretion available with the Court to extend the time beyond 120 days.

18. In the present case, Defendant No. 1 has not filed an application before the Court seeking extension of time to file the written statement beyond 30 days. Secondly, since in any event no

written statement has been filed before the expiry of 120 days, the question of a Court further extending the time beyond 18th April, 2016 - the date on which 120 days expired - as if such an application had been filed before it does not arise. The order dated 19th April, 2016 of this Court simply notes that fact the right of Defendant NO.1 to file a written statement stands closed. Consequently, there is no error apparent on the face of the said order warranting its recall.

19. This application is accordingly dismissed.

20. This is an application under Order 7 Rules 10 & 11 of the CPC filed by Defendant No. 1 seeking rejection of the plaint.

21. The submissions of Ms. Pratibha M. Singh, learned Senior Advocate for Defendant No. 1/Applicant and Mr. P. Chidambaram, learned Senior Advocate for the Plaintiffs/non-applicants have been heard.

22. It is necessary in the first place to note the averments in the plaint. The Plaintiff, Gulf DTH FZ LLC, is a company registered in Dubai with the Dubai Technology and Media Free Zone Authority with its offices at OSN Building, Dubai Media City, P.O. Box No. 502211, Dubai, UAE, has filed the accompanying suit for permanent injunction restraining infringement of copyright and damages against DISH TV India Limited (Defendant No. 1) and 19 other Defendants, some located within and some outside India.

23. In the plaint it is stated that the Plaintiff operates a direct-to-home (DTH) satellite subscription pay television platform in the following countries in Middle East and North Africa (MENA) region:

Afghanistan, Algeria, Bahrain, Chad, Djibouti, Egypt, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, South Sudan, Sudan, Syria, Tunisia, United Arab Emirates and Yemen (hereafter "OSN Territory").

24. The Plaintiff claims to be the largest digital satellite premium pay television network operator in the OSN Territory. The Plaintiff's services offer premium Arabic, South Asian, Filipino, and Western linear television ("TW") channels and on-demand entertainment content such as movies, series, documentaries, sporting events and other types of TV entertainment (collectively hereinafter referred to as the "Works"). The Plaintiff claims to have the exclusive license to broadcast, communicate to the public and make available the Works and Channels by DTH satellite as well as cable and IP TV networks in the OSN territories. The Plaintiff claims to enjoy exclusivity for television broadcast in the OSN territory.

25. Defendant No. 1 is stated to be a public limited company, which is a group company of Essel Group of Companies, which within its portfolio also includes Zee Television Network. It is stated to be Asia's largest DTH service provider and claims to have 19.3 million active subscribers and uses three satellites to beam a single DTH service.

26. It is stated that both the Plaintiff and Defendant No. 1 have contractual arrangements with content licensors. Whereas the Plaintiff has exclusive rights for such distribution in the OSN territories, Defendant No. 1 is stated to have non-exclusive rights for India. It is submitted that all content license agreements contain express provisions restricting the licensee to distribute within the defined territory. This requires the licensee not to distribute outside of its own authorised market. According to the Plaintiff, Defendant No. 1 is not permitted and/or authorised and/or licensed to broadcast and/or distribute Works or the Channels in the OSN territory.

27. The plaint states that Defendant No. 1 has set up a subsidiary in Singapore under the name and style of Dish TV Singapore Pte. Limited (Defendant No. 2), solely for the purpose of enabling Defendant No. 1 to deceptively further expand its illegal activities in the OSN territory by using Defendant No. 2 as a conduit to carry out certain processes and funnel the collection of illegal monies/revenues derived from the sale of Set Top Box (STB), Smart Cards, subscription and recharge services in the OSN territory.

28. The specific case of the Plaintiff is that Defendant No. 1 incorporated, managed, financially controlled and supervised Defendant No. 2 to actively promote and financially manage the sale of Dish TV subscriptions, STBs, Smart Cards and recharge cards in the OSN territory although Defendant No. 2 was not licensed to do that in India or Singapore and definitely not in the OSN territory. The Plaintiff states that it is inconceivable that the Smart Cards necessary to decrypt Defendant No. 1's scrambled signal could be acquired by Defendant No. 2 for distribution in the OSN territory without the knowledge and involvement of Defendant No. 1. Accordingly, it is inferred by the Plaintiff that Defendant No. 1 established and promoted Defendant No. 2 solely for circumventing the law and the contractual rights of the Plaintiff as also of the copyright owners/content providers none of whom have granted any right to Defendant No.1 to distribute the content in the OSN territory.

29. In para 13 of the plaint, it is stated that in terms of the financial statement published by Defendant No. 1 for the year ending 31st March, 2012, it admitted to controlling Defendant No. 2 and its investment in Defendant No. 2 is declared as a □Long Term Investment . It is further stated that the financial statements of Defendant No. 2 showed that from the date of its incorporation on 6th October, 2011 and the period ending 31st March, 2012, Defendant No. 2 generated receipts on behalf of Defendant No. 1 in excess of US \$ 2.8 million and made payments to Defendant No. 1 for an amount of US \$ 1.5 million. The financial statement of Defendant No. 1 showed that Defendant No. 2 had collected Rs. 1,420 lakh on behalf of Defendant No. 1 at the exchange rate of 1 US \$ = Rs. 51 which translated to approximately to US \$ 2.8 million. Likewise, the period between 1st April, 2012 up to 31st March, 2013, Defendant No. 2 generated receipts on behalf of Defendant No. 1 in excess of US \$ 17.2 million and paid Defendant No.1 US \$ 18.1 million. The financial statement of Defendant No. 1 for the year ending 31st March, 2013 showed that it had undertaken transactions worth Rs. 9,851 lakh as □remittance received out of collection on behalf of the company , which approximately worked out to US \$ 18.1 million.

30. It is stated that on 19th March, 2013, Defendant No. 1 entered into a Share Purchase Agreement with an undisclosed party for transfer of its investment in Defendant No. 2 at an agreed price of

Singapore Dollar 12,000. According to the Plaintiff, Defendant No. 2 controlled by Defendant No. 1 so agreed to do so to facilitate the expansion of its activities in the OSN territory and to avoid any contractual, tax or regulatory law. The divestment, according to the Plaintiff, masked the flow of funds between Defendant No. 2 and Defendant No. 1 as 'Subscription revenue' in the financial statements of Defendant No. 1 for the year ending 31st March, 2014 and thereafter.

31. The Plaintiff further points out that Defendant No. 1 owns and controls the domain name 'http://dthworld.sg' with an IP address in Singapore, which was and is currently used as a 'B2B' (Business to Business) portal to provide recharge and subscription services for pay TV services of Defendant No. 1 and this is made available to a dealer network operating illegally in the OSN territory. A screen shot of the recharge and subscription are enclosed with the plaint.

32. It is stated that the above B2B portal is not accessible from India and has been set up for overseas dealers and distributors. It is stated that the main website of Defendant No.1 is 'http://dishtv.in' and the one supporting its improper dealer network is 'http://dthworld.sg', which has multiple elements that run in tandem to reveal that they are in fact, operated and/or controlled by Defendant No. 1. The aforementioned websites bear similar IP addresses and both domains also resolve to the same server i.e., Net Magic Data Centre, based in Mumbai, India. The main server of both domains belong to Essel Group of Companies. It is further pointed out that Defendant No. 1 owns and controls the URL 'http://easy-pay.sg', which works as an access to the B2B portal in Singapore for the recharge and subscription of pay TV services of Defendant No. 1. It is accordingly submitted that the URLs were established for the purposes of enabling renewal of subscriptions of pay TV services of Defendant No. 1 through dealerships in the OSN networks. The details are also given about the international customer services used by Defendant No. 1 to introduce subscribers and customers in the OSN territory to the local dealers in the same region.

33. It is pointed out that Star Middle East FZ LLC is a studio which operates six Indian entertainment/news channels viz. Star Plus, Life OK, Star Gold, Star Jalsa, ABP News and Star Pravah, of which the Plaintiff has an exclusive license arrangement. It is stated that in terms of the License Agreement dated 7th September, 2014 between the Plaintiff and Defendant No. 3, the Plaintiff has inter alia (a) has an exclusive license to re-transmit (and to authorise a third party platform to re-transmit) the channels in the OSN territories; (b) to re-transmit channels except via Cable and IP TV platform owned and/or operated by Emirates Cable TV and Multimedia LLC (E-vision) in UAE; (c) the non-exclusive license to re-transmit channels via Cable and IP TV platform and owned and/or operated by E-vision; (d) exclusive license to re-transmit channels operated by Qatar Telecom QSC (Q-Tel) in Qatar. It is clarified that no relief is claimed against Defendant No. 3.

34. Likewise Defendant No. 4 is a studio, which operates an English news channel under the name and style of 'Times Now' with which again the Plaintiff has an exclusive license arrangement. Defendant No. 5 is a studio which operates Indian entertainment channels viz. Sony Entertainment TV, SET MAX, SAB TV and MIXES channels. Defendant No. 6 operates an English news channel under the name and style of 'NDTV 24X7' channel. Defendant No. 7, formerly known as UTV Entertainment Television Limited (now renamed Disney Broadcasting India Limited), operates two



Bollywood entertainment channels viz. UTV Movies International and UTV Stars.

35. Defendant No. 8 is a studio which operates a Hindi entertainment channel under the name and style of Bindaas. Defendant No. 9 is a studio which operates a Hindi entertainment channel under the name and style of Colors. Defendant No. 10 is a studio and operates a Hindi news television channel under the name and style of AAJ TAK. Defendant No. 11 is a studio which operates South Indian regional channels under the names Sun TV, Surya TV, Gemini TV, Udaya TV and Kiran TV. Defendant No. 12 is a studio which operates a South Indian regional channel under the name and style of Jaya TV. Defendant No. 13 is a studio which operates a South Indian regional news channel under the name and style of Asianet News.

36. Defendant No. 14 is a studio which operates Hindi and Indian regional news and entertainment channels under the names Zee TV, Zee News, Zee Cinema and Ten Cricket. Defendant No. 15 is a studio which operates English entertainment channels under the names Disney Channel, Disney XD and Disney Junior. Defendant No. 16 is a studio which operates entertainment channels under the names Cartoon Network (English and Arabic), Boomerang (English), TCM (English), CNN International (English).

37. Defendant No. 17 is a studio which operates English entertainment channels under the names ID Investigation Discovery, Discovery Channel HD, Animal Planet, Discovery Science, Discovery World and TLC HD. Defendant No. 18 is a studio which operates a music/entertainment channel under the name and style of MTV India. Defendant No. 19 is a studio which operates entertainment channels under the names Nickelodeon HD, Nick Jr., MTV Live HD and VH1. Defendant No. 20 is a studio which operates entertainment channels under the names viz. Star World HD, Star Movies HD, National Geographic Channel HD, Nat Geo People HD, Nat Geo Wild HD and Baby TV.

38. The Plaintiff states that it is not seeking any relief against Defendant Nos. 3 to 20 but they have been impleaded as Defendants pursuant to the provisions of Section 61 of the Copyright Act, 1957 as it is an owner of copyright and/or channel licensor. The further common feature is that the Plaintiff has exclusive License Agreement with each of the above content providers for distribution in the OSN territories. The details of the Agreements entered into by the Plaintiff with various studios/content providers are set out in para 57 of the plaint.

39. It is stated that the Plaintiff has not only acquired the rights on the channels exclusively licensed by Defendant Nos. 3 to 20 but has also made huge investments in exclusive content from all major Hollywood studios and other content Licensors, including programming for Plaintiff's own-branded channels for movies, series, general entertainment and sports.

40. According to the Plaintiff, Defendant No. 1 with the assistance of Defendant No. 2 has repeatedly and wilfully transmitted the Channels and Works from India to locations outside of India, in particular the OSN territory. It is stated that Defendant No. 1 uplinks the works from India to three satellites for transmission including transmission in the OSN territories. The Plaintiff has undertaken a content and channel mapping exercise which clearly illustrates that Dish TV in the OSN territory broadcasts the same channels and content as the Plaintiff. It is accordingly stated that

Defendant No. 1 is blatantly infringing the Plaintiff's rights in the Works and Channels. Given that scores of separate Works and Channels are transmitted by Defendant No. 1 each week and that it has been transmitting these into the OSN territories without authorisation, Defendant No. 1 is alleged to have infringed the copyright and the Plaintiff's exclusive rights in hundreds if not thousands of Works and Channels exclusively licensed to the Plaintiff by Defendant Nos. 3 to 20 even during the time period in issue in the plaint.

41. The modus operandi of Defendant No.1 is described in the plaint. It is stated that there are four suppliers of technology for DTH STBs and two manufacturers of the CAS encryption cards. It is explained that STB needs an encrypted pairing key with its associated card and STB. This STB will work anywhere it is physically present so long as it is within the satellite footprint. The STBs need to be paired and worked together in order to decode, decrypt and access the pay TV service. It is stated that the Plaintiff's smart card cannot be used in a generic STB that is not controlled by the Plaintiff.

42. By filing administrative, criminal and civil proceedings, the Plaintiff states that it has attempted to seize and stop the sale and distribution of Defendant No. 1's STB and smart cards as well as to stop the recharge and renewal of subscriptions in the OSN territories. However, this has been costly and time consuming.

43. It is stated that the STBs of several suppliers including Ansoon, Choudon, Dixon and Changhong STBs are being imported into the OSN territory by Defendant No. 1. There the STBs are sold together with smart cards, which only work with Defendant No. 1's STBs after activation and are designed to decrypt the signals of Defendant No. 1 to receive programming in the OSN territory. Thus, Defendant No.1 is stated to have orchestrated and established the most extensive illicit dealer network in the OSN territory and is obviously facilitating the export of STBs and smart cards into the OSN territories.

44. It is stated that the activation of Defendant No. 1's smart cards needs to be done necessarily from and within Defendant No. 1's subscriber management system, which matches subscriber to smart card to STB. The B2B portal and recharge in the OSN territory necessarily needs a direct access and interface with Defendant No. 1's subscriber management system. The Plaintiff has placed on record screen shots of the webpages of 'satbeams.com' to depict the footprint overspill of various DTH providers including inter alia Defendant No. 1, Tata Sky, Airtel and Reliance (Big TV) in the OSN territory.

45. It is stated that there is a parity of overspill of Defendant No. 1, Airtel and Reliance but it is only the financial statements of Defendant No. 1 which recorded collection of subscription revenue in foreign currency. The financial statements of Defendant No. 1 for the year ending 31st March, 2015 records 14,722 lakh. The list of channels illegally broadcasted by Defendant No. 1 in the OSN territory has been set out by the Plaintiff in para 80 of the plaint. The list of studio channels/content owners which had granted exclusive licenses to the Plaintiff for the MENA region to the Plaintiff has been set out in para 81 of the plaint.

46. In para 83 of the plaint, the efforts made by the Plaintiff to check the instances of piracy and copyright infringement in the OSN territory have been set out including raiding shops where STBs were sold. The Plaintiff has offered solutions by which Defendant No. 1 can refrain from providing service to the MENA region without compromising its services in India. An Expert Report attached with the List of Documents has been filed by the Plaintiff.

47. It is stated that the Plaintiff sent cease and desist notices on 1 st and 2nd April, 2013 to Defendant No.1 with reminders on 13th & 19th May, 2014. The cause of action is described in para 106 which reads thus:

□106. The cause of action for the instant suit first arose when the (predecessors of) Plaintiff (vide letter dated 9 April 2007) attempted to open a dialogue with Defendant No. 1 to address the Dish TV piracy issue in the OSN Territory and the Defendant No. 1 failed to respond thereto despite repeated reminders. A copy of the letter dated 9 April 2007 issued by the Plaintiff to Defendant No. 1 is attached with the List of Documents. The cause of action thereafter arose when the Plaintiff, through their lawyers sent legal cease and desist notices dated 1 April 2013 and 2 April 2013 to the Defendant No. 1 and satellite operators respectively, in response where to, the Defendant No. 1 acknowledged the issue of piracy and undertook to address it by deactivating such connections involved in piracy. The cause of action further arose when the Defendant No. 1 failed to comply after written deactivation requests and reminders by the Plaintiff dated 13 May 2014 and 19 May 2014. Copies of the letters dated 13 May 2014 and 19 May 2014 issued by the Plaintiff to Defendant No. 1 are attached with the List of Documents. The cause of action continues till date since the infringement by Defendant No. 1, aided and abetted by Defendant No. 2, of the copyrighted content is taking place this very day and on a massive scale. The cause of action is a continuing one and shall continue till the Defendant Nos. 1 & 2 are restrained by way of a permanent injunction.

48. Explaining the jurisdiction of the Court, it is stated in para 107 as under:

□107. This Hon'ble Court has jurisdiction to try and entertain this suit as the Defendant No. 1 has its registered office at Essel House, B-10, Lawrence Road Industrial Area, New Delhi - 110035 and carries on business in Delhi which is within the jurisdiction of this Hon'ble Court. The Defendant No. 1 is evidently spearheading the entire process of infringement of the copyrighted content, i.e. from the act of exporting STBs to the OSN Territory, activating and reactivating the Dish TV connections in the OSN Territory and enabling the broadcast of copyright content in the OSN Territory. Further, Defendant No.1 uplinks its satellite television channels encrypted signals from its uplink centre in India. Accordingly, the cause of action arises within the territorial jurisdiction of this Hon'ble Court.

49. The prayers in the suit include a decree for permanent injunction to restrain Defendant Nos. 1 & 2 from distributing STBs and smart cards in the OSN territory dealing with dealers, distributors,

who directly or indirectly sell Defendant No. 1's STBs and smart cards and/or recharges Defendant No. 1's pay TV services in the OSN territory; activating any smart cards for use by consumers in the OSN territory; operating websites/domain names 'www.dthworld.sg' & 'www.dishtv.sg' apart from full rendition of accounts.

50. An application for interim injunction under Order XXXIX Rules 1 & 2 CPC has also been filed for the same purpose.

51. It is first submitted by Ms. Pratibha Singh, learned Senior counsel appearing for the Defendant No. 1 that a perusal of the agreements between the Plaintiff and the broadcasters, copies of which have been placed on record, reveals that it is the broadcasters who remain the owners of the copyright and the content of the TV channels. It is submitted that inasmuch as the Plaintiff itself has no copyright in the Channels and the Works distributed by the Plaintiff, the Plaintiff does not have any cause of action whatsoever to file the present suit. Referring to Section 16 of the Copyright Act, 1957 ('Copyright Act'), she submitted that there is no copyright except as provided in the Act, the remedies available under the Act against the alleged infringement are also available essentially to owners of the copyright. Reference is made to Sections 54, 55 and 58 of the Copyright Act. She further submitted that in any event, the Plaintiff did not have any rights in India in respect of the works distributed by it.

52. Countering the above submissions, Mr. P. Chidambaram, learned Senior counsel appearing for the Plaintiff pointed out that the Plaintiff was an exclusive licensee as far as the OSN territory is concerned. Referring to Section 2(j) which defines exclusive licence and Section 54

(a) of the Copyright Act, in terms of which the owner of the copyright should be an exclusive licensee, it is submitted that even a person who is not an owner of the copyright can still have exclusive license to bring forth the suit complaining of infringement and this suit can be brought in within the jurisdiction where the Defendant resides. He referred to Section 62 of the Copyright Act read with Section 20 of CPC.

53. Ms. Pratibha Singh, on the other hand, points that while the Plaintiff was a distributor of the Star TV channels, Star India Pvt. Ltd. itself was not made a Defendant. According to her, under Section 61 it is necessary that the owner of the copyright is made a party.

54. Ms. Singh further urged the plea that this Court has no territorial jurisdiction to deal with the present subject matter. According to her, the signals were uploaded by the Defendant No. 1 in Noida, UP and merely because the registered office of the Defendant No. 1 may be in New Delhi does not give the Court the jurisdiction to entertain the present suit. According to her, no part of the cause of action arose within the jurisdiction of this Court. She placed reliance on the decisions in Patel Roadways Ltd. Bombay v. Prasad Trading Co. (1991) 4 SCC 270, New Moga Transport Co. v. United India Insurance Co. Ltd (2004) 4 SCC 677, South East Asia Shipping Co. Ltd. v. Navbharat Enterprises Pvt. Ltd (1996) 3 SCC 443 and IPRS v. Sanjay Dalia (2015) 10 SCC 161.

55. In order to appreciate the above submissions, it is first necessary to refer to the relevant provisions of the Copyright Act. Section 2 (j) defines exclusive licence as under:

□(j) exclusive licence means a licence which confers on the licensee or on the licensee and persons authorised by him, to the exclusion of all other persons (including the owner of the copyright) any right comprised in the copyright in a work, and □exclusive licensee shall be construed accordingly.

56. Chapter 11 of the Copyright Act deals with infringement of copyright and Chapter 12 deals with civil remedies. Sections 54, 55, 61 and 62 read as under:

□54. Definition - For the purposes of this Chapter, unless the context otherwise requires, the expression, "owner of copyright"

shall include-

a. an exclusive licensee :

b. in the case of an anonymous or pseudonymous literary, dramatic, musical or artistic work, the publisher of the work, until the identity of the author or, in the case of an anonymous work of joint authorship, or a work of joint authorship published under names all of which are pseudonyms, the identity of any of the authors, is disclose publicly by the author and the publisher or is otherwise established to the satisfaction of the Copyright Board by that author or his legal representatives.

55. Civil remedies for infringement of copyright -

(1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right.

Provided that if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for believing that copyright subsisted in the work, the Plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may in the circumstances deem reasonable.

(2) Where, in the case of a literary, dramatic, musical or artistic work, a name purporting to be that of the author or the publisher, as the case may be, appears on copies of the work as published, or, in the case of an artistic work, appeared on the work when it was made, the person whose name so appears or appeared shall, in any proceeding in respect of infringement of copyright in such work, be presumed, unless the contrary is provided, to be the author or the publisher of the work, as the case may be.

(3) The costs of all parties in any proceeding in respect of the infringement of copyright shall be in the discretion of the court.

61. Owner of copyright to be party to the proceeding -

(1) In every civil suit or other proceeding regarding infringement of copyright instituted by an exclusive licensee, the owner of the copyright shall, unless the court otherwise directs, be made a defendant and where such owner is made a defendant, he shall have the right to dispute the claim of the exclusive licensee.

(2) Where any civil suit or other proceeding regarding infringement of copyright instituted by an exclusive licensee is successful, no fresh suit or other proceeding in respect of the same cause of action shall lie at the instance of the owner of the copyright.

62. Jurisdiction of court over matters arising under this Chapter -

(1) Every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the district court having jurisdiction.

(2) For the purpose of sub section (1), a "district court having jurisdiction " shall notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, include a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain.

57. While under Section 54(a) of the Copyright Act, the expression 'owner of a copyright' includes 'an exclusive licensee', there is nothing to indicate that such exclusive licensee should be in respect of a copyright work in India. In the present case, the broadcasters, viz., the owners of the copyright of the Contents and the Works for the distribution of which over TV channels an exclusive licence has been granted to the Plaintiff can seek remedies against infringement of such copyright. Even as regards the infringement taking place in a territory which may be located outside India, while it is true that under Section 1(2) of the Copyright Act, the Act extends to the whole of India, however, in a situation where the rights of such owner of copyright are not exclusive to the India territory but some other territory outside India and are being infringed by an entity in India, there is no reason why such owner of copyright, which includes the exclusive licensee, cannot come to Indian Courts to seek relief. The Court is, therefore, not prepared to read Section 54 read with Section 55 of the Copyright Act in a narrow manner as suggested by Defendant No. 1.

58. Section 61(1) of the Copyright Act requires that the owner of the copyright be made a party to the proceedings where the suit is instituted by an exclusive licensee but only for the purposes of disputing the claim of exclusive licensee. In the present case, the question of owners of the copyright disputing the right of the Plaintiff as an exclusive licensee does not arise. In fact, the Plaintiff is clear

that it is not seeking any relief against the said owner of the copyright. As already noted, they are being made parties only to ensure compliance by Defendant No. 1. The failure to make Star India Pvt. Ltd. as a party does not per se affect the maintainability of the suit. In any event, all other Indian broadcasters who issued exclusive licences to the Plaintiff and are located in India have been made parties. Thus, the mere failure to implead Star India Pvt. Ltd. is not sufficient to reject the plaint in terms of Order VII Rule 11 CPC.

59. As far as Section 62(1) Copyright Act of the Act is concerned, it requires the suit regarding infringement of the copyright to be instituted ☐ in the district court having jurisdiction . Section 62(2) of the Copyright Act expresses a ☐ district court having jurisdiction to include a Court within whose jurisdiction ☐ the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain . This is notwithstanding anything contained in CPC except to this extent. Therefore for all other purposes for determining the jurisdiction of the Court Section 20 of the CPC would apply. Section 20 of the CPC reads as under:

"20. Other suits to be instituted where defendants reside or cause of action arises .- Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction--

(a) The defendant, or each of the defendants where there are more than one, at the time of the commencement of the Suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

60. The disjunctive 'or' separating clauses (a), (b) and (c) of Section 20 makes it clear that even if one of the clauses is fulfilled, the suit can be validly instituted in the concerned court. Section 20 (a) does give jurisdiction to the Court within whose limits the Defendant carries on business. It is not in dispute that Defendant No. 1 does carry on business within the jurisdiction of the Courts in Delhi. The mere fact that signals may be uploaded by the Defendant No. 1 from Noida, does not take away the jurisdiction of the Delhi Court within whose jurisdiction the Defendant No. 1 has its registered office and is carrying on business. The control of all operations of Defendant No. 1 obviously is from its head office. Consequently, the Court is unable to agree with the submission of Defendant No. 1 that this Court lacks territorial jurisdiction to entertain the present suit. In any event, this is a mixed question of fact and law and evidence has to be led to demonstrate that a part of cause of action vis-à-vis the subject matter of the present case did arise within the jurisdiction of this Court. As long as the Plaintiff is able to show that the Defendant No. 1 carries on business within the jurisdiction of

this Court, the requirement of Section 62 (1) of the Copyright Act read with Section 20 (a) of the CPC is satisfied.

61. It is then urged by Ms. Singh by referring to clauses of the agreement entered into by the Plaintiff with the broadcasters that the concept of 'spill over' is anticipated in the agreement and a remedy is provided thereunder. According to her, the remedy available to the Plaintiff is only that of termination of the exclusive licence with the concerned broadcasters. She submits that there is no remedy provided against the person responsible for such 'spill over' broadcast.

62. As pointed out by Mr. Chidambaram, the relevant clauses of the agreement do not refer to paid channels which have specifically encrypted and subscribed and made available only to such subscribers. They talk of the spill over in the context of the free to air channels. In any event, this is also a matter of evidence and in the present suit, the Court cannot come to the conclusion that for the spill over broadcast against which the Plaintiff has complained, no remedy by way of injunctive relief is available in the courts in India. Prima facie, a perusal of the agreements in question does not persuade the Court to agree with the above submission of Defendant No. 1.

63. Mr. Chidambaram is right in pointing out that for the purposes of Order VII Rule 11, the plaint has to be read as a whole. The Court has to ascertain whether it discloses a valid cause of action. The averments in the plaint have been referred to in extenso. It is not possible to hold that it fails to disclose any cause of action qua Defendant No. 1. Without expressing an opinion on one way or the other on the merits of the contentions of the parties, the Court is satisfied that none of the grounds for rejection of the plaint under Order VII Rule 11 of the CPC have been made out by the Defendant No. 1.

64. The application is accordingly dismissed.

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65. For the aforementioned reasons, the Court is satisfied that the Plaintiff has made out a prima facie case in its favour for grant of interim reliefs as prayed for in this application.

66. Coming to the question of balance of convenience, there is a specific averment in the plaint regarding the B2B portal which is being used by the Defendant No. 1 for transfer of monies to it from Defendant No. 2 which is located in Singapore. The averments in the plaint also show that there are agents in the OSN territory providing content of the channels for which Defendant No. 1 holds exclusive licence only for the Indian territory and further that the monies collected by such agents have been transferred in the account of the Defendant No.1. With the right of Defendant No.1 to file a written statement being closed, the said averments remain uncontroverted.

67. In the circumstances, the balance of convenience for restraining Defendant No. 1 in the manner prayed for is in favour of the Plaintiff. The Court is also satisfied that if the interim relief as prayed for is not granted, the Plaintiff will suffer irreparable loss.



68. For the aforementioned reasons, this Court directs that an interim injunction shall be issued in favour of the Plaintiff restraining the Defendants No. 1 & 2, jointly and severally, directly and indirectly, through their associates and affiliates and their officers, employees, agent and representatives and others acting on their behalf and in active concert with them

(a) from distributing STBs and smart cards in the OSN Territory;

(b) from in, any manner dealing with dealers, distributors, agents , or any entity which directly and/or indirectly sells Defendants No.1 STBs and smart cards and/or recharges Defendant No. 1 pay-TV services in the OSN Territory;

(c) from in any manner, receiving subscription revenue from overseas except legitimate subscription revenues from Sri Lanka

(d) from activating any smart cards for use by consumers in the OSN territory.

69. The above interim injunction is made absolute during the pendency of the suit. The application is disposed of.

70. It is stated that the documents in question i.e., the redacted version of the exclusive licence agreement executed have already been submitted and are taken on record. No further orders are called for in this application.

71. The application is disposed of.

72. For the reasons stated therein, the application is allowed. The Special Power of Attorney executed in favour of the newly authorised representative of the Plaintiff is taken on record.

73. The suit be re-numbered as a Commercial Suit.

74. List the matter before JR for admission/denial in terms of Commercial Courts Act on 24th October, 2016.

75. To be listed before the Court on 12th December, 2016 for framing of issues.

S. MURALIDHAR, J AUGUST 30, 2016 Rk/mg/b'nesh