

(2013) 03 DEL CK 0265

Delhi High Court

Case No: Company Petition No. 292 of 2004

Pacific Convergence Corporation
Ltd.

APPELLANT

Vs

Data Access (India) Ltd.

RESPONDENT

Date of Decision: March 12, 2013

Citation: (2013) 3 CompLJ 169

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

Bench: Single Bench

Advocate: Arjun Pall, for the Appellant; Y.P. Narula , Aniruddh Chaudhary, Anuj Aggarwal, Gaurav Khanna, Ms. Manini Brar, Ms. Padma Priya, Mukesh Kamal and Ms. Meenakshi Sood, Advocates, with him, Kanwal Chaudhary, Advocate, for Official Liquidator, for the Respondent

Final Decision: Disposed Off

Judgement

S. Muralidhar, J.

These applications arise out of orders passed by the court in Company Petition No. 292 of 2004 seeking the winding up of the respondent Data Access (India) Limited ("DAIL"). The subject matter of the present order concerns the payments due to two advertising agencies, Infinity Advertising Services Private Limited and Blue Bird Advertising (P) Limited. DAIL was involved in the business of international long distance network services using high grade technical equipments. It was operating its business from various places in India, i.e., Delhi, Bangalore, Chennai, Mumbai and Kolkata. The assets of DAIL lying at the aforesaid places, were inventorised and valued under the orders of this court. By a judgment dated 18 November, 2005 [[Pacific Convergence Coproation Ltd. Vs. Data Access \(India\) Limited](#)], DAIL was directed to be wound up by the Court.

2. Canara Bank ("CB") is one of the secured creditors of DAIL. Pursuant to the orders dated 2 February, 2007, and 8 March, 2007, passed by the court, proclamations for the sale of the movable assets of DAIL were ordered to be issued. According to

Canara Bank no bids were received in response to the notices issued. By an order dated 31 May, 2007, the court directed that a fresh advertisement be issued for the sale on 20 September 2007. This led to Canara Bank filing Company Application No. 907 of 2007 stating that since it was in the process of negotiating with some private parties, the order dated 31 May, 2007 should be kept in abeyance.

3. Canara Bank also filed Company Application No. 908 of 2007 stating that pursuant to the orders dated 6 November, 2006, 18 December, 2006, 2 February, 2007, and 8 March, 2007, the sale proclamations had been issued in various newspapers by the official liquidator ("OL"). Pursuant to the order dated 2 February, 2007, the advertisement was published by the official liquidator on 16 February, 2007, in various newspapers through an advertising agency, Infinity Advertising Services Private Limited ("Infinity"). The cost of the advertisement had to be borne by CB. Infinity raised a bill of Rs. 42,69,844 on the OL, who in turn asked Canara Bank to pay the said sum. The official liquidator also asked Canara Bank to pay the invoices raised by Blue Bird Advertising (P) Limited ("Blue Bird") for a sum of Rs. 27,80,347.50.

4. Canara Bank contended that the demand raised by Infinity was exorbitant and not payable for the following reasons:

(a) The Official Liquidator is bound by the new Advertising Policy of the Government of India, which is effective from 1 June 2006.

(b) As per the said policy, all Central Governments advertisements are to be routed through the Directorate of Advertising and Visual Publicity ("DAVP"), which is the Nodal Advertising Agency of the Government of India.

(c) As per the DAVP Policy, all the Government, autonomous organizations and PSUs under the Ministries/Departments are also bound to route their advertisement through DAVP.

(d) As per the said policy, the advertisements are to be published in newspapers, which are in the panel of DAVP, and the rates of advertisement fixed by the Rate Committee of the DAVP are applicable uniformly to all the newspapers.

5. Canara Bank further states that the bill raised by Infinity was not as per the DAVP rates and was, therefore, not payable by the official liquidator to Infinity. It is pointed out that a sum of Rs. 17.54 lakhs had been spent by Canara Bank towards the inventorization charges and the valuation of the assets of DAIL. It is further pointed out that Canara Bank was being subjected to unreasonable expenditure on account of different charges as well as security charges. It was prayed that the official liquidator should ensure that the public money was not wasted by accepting exorbitant and wrong demands of the advertising agency who was obliged to ensure that the DAVP rates would be charged by the newspapers for advertisements in question. In Company Application No. 908 of 2007 Canara Bank prayed that (a)

the official liquidator should be directed to deposit the amount received so far in the account of DAIL with CB; (b) the official liquidator should be directed to submit advertising bills as per the DAVP rates; (c) the ex-directors of DAIL should be directed to pay the advertisement charges, and (d) the official liquidator should be directed to make security arrangements through security agencies at reasonable rates.

6. Annexed with Company Application No. 908 of 2007 are the relevant documents including correspondence exchanged between the parties. A letter dated 27 June, 2007, was written by the official liquidator addressed to Canara Bank asking it to make the payment directly to Infinity "after deducting 8% discount on DAVP rates". By letter dated 30 July, 2007, the official liquidator referred to a meeting held on 20 July, and 26 July, 2007, with the officers of Canara Bank and requested that payment of the advertisement bills of both Infinity and Blue Bird be made after deducting 10% discount as charged by the official liquidator in other cases. On its part, Infinity wrote to the official liquidator on 1 May, 2007, pointing out that both Eenadu and Times of India declined to offer DAVP rates for the advertisement issued by the OL. Their letters were enclosed with the application.

7. The applications first listed before the court on 3 September, 2007, were directed to be listed on the administrative side. A reply dated 17 September, 2007, was filed by Blue Bird stating that the newspapers had not offered DAVP rates to the OL, Debts Recovery Tribunal ("DRT"), Mahanagar Telephone Nigam Limited ("MTNL"), Bharat Sanchar Nigam Ltd. ("BSNL") and other public sector undertakings ("PSUs"). It was contended that the official liquidator was fully aware of the above fact. It was stated that on 12 May 2007, the official liquidator wrote to Blue Bird placing an order requiring it to publish one advertisement specifying the rates and cost, as under:

8. Thereafter, Blue Bird raised a bill as per the newspapers' card rate for a sum of Rs. 54,31,932. On 12 July, 2007, the court passed an order requiring the official liquidator to pay the advertising charges to Blue Bird and recover it from CB. On 31 July, 2007, the official liquidator issued a cheque in the sum of Rs. 22,88,894 to Blue Bird as part payment after deducting 10% discount, which was, according to it, never offered to the OL. Blue Bird submitted that all newspapers and advertising agencies registered with the Indian Newspaper Society ("INS") were bound by its policy circulars/orders dated 1 July, 2004, and 28 August, 2006. Copies of the said circulars enclosed with Blue Bird's reply showed that the Standing Committee of Information Technology and the Committee of Secretaries had made a representation to INS to reconsider its decision. The Executive Committee of INS had in a meeting held on 22 June, 2006, considered the request but, "reiterated the stand taken earlier that the advertisements of public sector undertakings (PSUs) and autonomous bodies and Prasar Bharati/Doordarshan would only be accepted on commercial card rates of newspapers and not on DAVP rates". Newspapers in which

the advertisements were issued were demanding 18% interest on delayed payments. Accordingly, on 7 September, 2007, Blue Bird submitted to the official liquidator a bill for Rs. 1,42,132 towards 18% interest for three months.

9. Infinity filed a reply on 25 September, 2007, referring to the order dated 17 May, 2007, passed by the court on Report No. 148 of 2007 filed by the official liquidator directing that the advertisement expenses as detailed in the report should be released in accordance with rules after deducting 8% discount on the bill amount from the Common Pool Fund ("CPF") of the OL. On 5 June, 2007, the official liquidator cleared the bill of Infinity for a sum of Rs. 47,41,431 after deducting a 11% discount instead of 5% and 8%. The official liquidator enclosed a letter addressed to Canara Bank to release the payment directly to Infinity and asked Infinity to collect payment directly from CB. However, Canara Bank refused to make payment except as per DAVP rates. Infinity accordingly prayed that Company Application No. 908 of 2007 should be dismissed.

10. The official liquidator at the relevant time, Mr. A.K. Chaturvedi, himself filed an affidavit in these proceedings on 29 September, 2007. The official liquidator stated that by letters dated 13 and 22 February, 2007, Infinity had been told that the rate charged should not be more than the cost claimed by DAVP or by the newspaper concerned. The official liquidator acknowledged that both the Hindustan Times and The Times of India declined to extend the benefit of DAVP rates because according to them the official liquidator was recovering the cost either from the party involved or from the auction money recovered by him. It was mentioned therein that an official of the OL, Mr. Vinod Sharma, and an official of Infinity visited at the office of H.T. Media Limited on 27 April, 2007. On 30 April, 2007, the official liquidator wrote a detailed letter explaining the functions of the official liquidator and requested Hindustan Times to consider charging DAVP and non-commercial rates. In reply Hindustan Times by its letter dated 7 May, 2007, informed the official liquidator that the advertisements of the High Court would be entitled to DAVP rates whereas the advertisements of official liquidator are accepted at their card rate. The official liquidator enclosed the newspaper clipping of the advertisement dated 16 February, 2007, published in The Hindu, Madurai, by Infinity and the one dated 15 May, 2007, in The Times of India, New Delhi, by Blue Bird along with photocopies of the relevant bills of the said advertising agencies.

11. The official liquidator wrote to the DAVP on 25 September, 2007, requesting for DAVP rates for the advertisements published by the official liquidator in The Times of India, the Hindustan Times and Economic Times, Delhi, Mumbai and Bangalore editions. In reply, the DAVP stated that the aforementioned newspapers were not publishing advertisements relating to the office of the official liquidator at DAVP rates.

12. In the reply filed by HT Media Limited it was categorically stated that the advertisement revenues were the principal source of income of any newspaper

establishment accounting for almost 83% and that the said revenues would be severely affected if DAVP rates were to be offered to all PSUs and government institutions as well. It was pointed out that the official liquidator had voluntarily and consistently for decades been publishing advertisements and public notices in the said newspaper by paying the card rates applicable from time to time without protest or demur. The release orders and invoices relating to advertisements issued by the official liquidator and proof of payment having been paid for the said advertisements at card rates were enclosed. It was stated that where the court itself published notices etc. then out of deference for the judiciary the newspapers charged DAVP rates.

13. Prajavani, which is a Kannada daily newspaper, filed a reply pointing out inter alia that under the advertising policy, DAVP rates were applicable only to those advertisements that were outed through the DAVP. The relevant clauses of the policy referred to in the reply read as under:

Clause 23

No newspaper will publish DAVP advertisement without receipt of the relevant Release Order. Request for a duplicate Release Order by publications will be entertained on merits and on case to case basis.

Clause 24

The newspaper will be obliged to strictly adhere to the date of publication of DAVP advertisements as given in the Release Order. Publication of advertisement on dates other than that given in the Release Order, unless intimated otherwise, will not be regularized with revalidation of Release Order and no payment will be made in such cases.

Release of Advertisements

Clause 25

As soon as requisitions for release of advertisements are received from various Ministries and Departments as also from public sector undertakings and autonomous bodies, DAVP will prepare a suitable media list keeping in view the content, the target audience or the advertisement and availability of funds after consideration of the recommendations of the client.

14. It is submitted that the advertisement dated 16 May, 2007, was published pursuant to a release order placed by Blue Bird and the rate of Rs. 525 per sq. cm had already been approved by the official liquidator before the release order was issued to Prajavani. Annexed to Prajavani's reply is a copy of a letter dated 12 May, 2007 written by the official liquidator to Blue Bird.

15. The DAVP filed a reply to Company Application No. 908 of 2007, on 3 September, 2008, enclosing a copy of DAVP policy effective from 1 June, 2006. There was also a

new advertisement policy effective from 2 October, 2007 whereunder all Central Government ministries/departments were asked to have their advertisements issued through DAVP in order to avail of the DAVP rates.

16. It may be noticed that Blue Bird has filed Company Application Nos. 480 of 2008, 1702 of 2009 and 151 of 2011 praying for release of the balance sum due to it.

17. Mr. Y.P. Narula, learned senior counsel appearing for Canara Bank, refers to the order dated 6 November, 2006, passed by the court on which date, inter alia, the court was informed that the sale proclamation inviting bids for movable properties would be published by Canara Bank within three weeks in three local newspapers on the "usual terms and conditions in consultation with the OL". Mr. Narula also refers to the order dated 18 December, 2006, under which Canara Bank was given "liberty to sell and dispose of the fixture, fittings, partitions, etc., (other than electronic, computer and expensive equipments) by taking out advertisements in the local newspapers" in consultation with the official liquidator "on usual terms and conditions". In para 17 of the order, directions were issued to issue a joint sale proclamation in The Times of India, the Hindustan Times and the Hindustan (Hindi) in Delhi, Mumbai and Bangalore, and in The Hindu, Chennai and The Statesman, Kolkata, in consultation with the official liquidator "on usual terms and conditions". Mr. Narula refers to the order dated 2 February, 2007, which recorded that Canara Bank sought fifteen days' time for publishing the advertisements in the newspapers. Canara Bank, and the official liquidator were directed to coordinate with each other and ensure that the advertisements would be published and bids received would be produced in court on the next date of hearing, i.e., 8 March, 2007. Mr. Narula stressed that with the official liquidator having clearly informed Infinity and Blue Bird that the advertisements should be issued only on DAVP rates, it was not open to either Blue Bird or Infinity to furnish bills on the basis of newspaper card rates.

18. Both Ms. Manini Brar, learned counsel for Blue Bird, and Ms. Padma Priya, learned counsel for Infinity, submitted that the advertising agencies were bound by the INS policy and were obliged to pay the card rates for the advertisements issued by the OL. The newspapers in question were categorical that they would not offer the official liquidator the DAVP rates and this was informed to the official liquidator even at the beginning. Ms. Brar referred to the letter dated 12 May, 2007, from the official liquidator to Blue Bird specifying the names of the newspapers in which the advertisements had to be issued as well as the rates to be paid. Both counsel pointed out that the advertising agencies had already paid the newspapers and could not be expected to subsidise the costs of Canara Bank in issuing the advertisements.

19. In response, Mr. Narula doubted the authenticity of the OL's letter dated 12 May, 2007, and pointed out that the said letter did not contain any despatch number. Mr. Kanwal Chaudhary, learned counsel appearing for the OL, however,

confirmed that the said letter definitely formed part of the record and was genuine. After the applications were heard at length, Mr. Narula sought time to take instructions from Canara Bank. Thereafter, he sought time to file a further affidavit to show that Canara Bank was not in fact made aware that DAVP rates would not be available for the notices published by the OL. The court did not agree to this request considering that the applications were pending for nearly six years and Canara Bank did not avail of several opportunities it had to file a rejoinder.

20. The narration of events shows that, as far as Infinity is concerned, on 13 February, 2007, the official liquidator sent a letter to Infinity requesting publication of public notices inviting claims for the sale of assets. The list of companies for the sale of whose assets notices were to be published included DAIL. It was stated in the letter that "the rate charged by you should not be more than the cost claimed by DAVP or by the newspaper concerned. In case any difference is found at later stage, the official liquidator reserves the right to recover the difference of cost between DAVP and advertising agency charges. The official liquidator also reserves the right to verify the rates offered by you with DAVP and newspaper concerned".

21. However, soon thereafter on 15/16 February, 2007, Infinity informed the official liquidator as under:

Further, we would like to inform you that some of publications are not accepting advertisement's on DAVP rates, hence, as per our telephonic conversation and confirmation with you and with Mr. Shankaran, Mr. Raghu and Mr. Malik of Canara Bank, we are releasing the advertisement on commercial rate applicable on court/tender notice advertisements. Please also note that Hindu and Indian Express (Southern Editions) are publishing advertisements in all their editions on DAVP rates because they do not have any separate DAVP rates for single edition.

22. Mr. Narula tried to compare the letter dated 15 February, 2007, with another letter dated 19 July, 2007, addressed to the official liquidator in which Infinity informed that it did meet Mr. V. Ragu, Senior Manager, and Mr. S. Segaran, Chief Manager, Canara Bank, whereas the names mentioned in the letter dated 15 February, 2007, were different. As far as the above submission is concerned, the court finds that the name of Mr. Raghu is common in both the letters. There may be a typographical error as regards the names of Mr. Segaran and Mr. Shankaran. However, clearly the letter dated 19 July, 2007 refers to CB's letter dated 27 June, 2007.

23. Mr. Narula then referred to the letter dated 13 February, 2007, written by Mr. Sanjay Yadav, Assistant official liquidator in which he requested the Canara Bank to make payment directly to the advertising agency after deducting 8% discount on the DAVP rates. He compared it with another communication dated 30 July, 2007 addressed to the Senior Chief Manager, Canara Bank by Mr. R.K. Bakshi, Assistant Official Liquidator, giving instructions to make payment to Infinity and Blue Bird

towards the bills raised by them. Mr. Narula also referred to the affidavit dated 28 September, 2007, filed by the official liquidator himself in which the entire sequence of events had been set out explaining why the DAVP rates were not made available by the newspapers concerned to the OL. Mr. Narula submitted that a misleading picture was given to the court by the Assistant Official Liquidator that these rates by the advertising agencies were in terms of the DAVP rates and had to be paid accordingly.

24. Mr. Narula may be right in his submission that two Assistant OLs, i.e., Mr. Sanjay Yadav and Mr. R.K. Bakshi, appear to be taking contradictory positions on whether the advertisements issued should be charged at DAVP rates or card rates. This perhaps is what prompted the present application. However, the official liquidator has in his affidavit dated 28 September 2007, after referring to the letters dated 13 February, and 22 February, 2007, written to Infinity stating that rate charged should not be more than the cost claimed by DAVP or by the newspaper concerned, also mentioned the fact that Infinity had informed the official liquidator that the newspapers had stated that the advertisement of the official liquidator is "commercial in nature and not entitled to DAVP rate". The OL's affidavit does not deny that Infinity wrote the letter dated 15 February, 2007, a copy of which was enclosed with the affidavit of Infinity.

25. Mr. Narula submitted that the letter dated 12 May 2007, from the official liquidator to Blue Bird does not find mention in the OL's affidavit. It is not for this court to speculate as to why the official liquidator has not specifically mentioned the said letter in his affidavit. Nevertheless, learned counsel for the official liquidator has confirmed that the aforementioned letter forms part of the OL's records and that is what is important. The official liquidator has acknowledged being informed by Infinity that DAVP rates were not available for the OL's advertisements. In the absence of DAVP rates, it would not be fair to expect the advertising agencies to be subsidising the OL's (or even CB's) costs of publication.

26. Consequently, the court rejects prayers (b) and (c) in Company Application No. 908 of 2007 to the extent they relate to payment to be made to Infinity and Blue Bird. Canara Bank will now make payments to them in terms of the bills raised after adjusting the sums already released to them by the OL. By an order dated 19 December, 2007, in Company Application No. 908 of 2007 the court had directed Canara Bank to deposit a sum of Rs. 15 lakhs with the official liquidator and had further directed the official liquidator to release the said sum to Infinity and Blue Bird "in terms of DAVP rates". The court clarified that "the decision with regard to the payment actually due to them shall be subject to what the newspapers have to say in response to the case set up by the secured creditor."

27. Canara Bank is hereby directed to pay Blue Bird and Infinity the amounts as per the bills raised by them, respectively, after accounting for the sums already released to them by the official liquidator pursuant to the order dated 19 December, 2007,

together with simple interest @ 9% per annum from the date of the bills till the date of payment, which should not be later than four weeks from today. Canara Bank will also pay both Infinity and Blue Bird costs of Rs. 20,000 each within four weeks.

28. The official liquidator is directed to undertake an inquiry into the circumstances under which the contradictory statements/reports were made by Mr. Sanjay Yadav and Mr. R.K. Bakshi, Assistant Official Liquidators, which led to Canara Bank filing the present application. The official liquidator will complete the enquiry within six weeks and place a report before the Court for appropriate directions.

29. Company Application Nos. 908 of 2007, 480 of 2008, 1702 of 2009, and 151 of 2011 are disposed of in the above terms.

Company Application No. 907 of 2007

30. In view of the subsequent developments this application has been rendered infructuous and is dismissed as such.

Company Application No. 989 of 2007

List for hearing on 15 March, 2013 at 2.15 pm.