

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Arbitration Petition (Ld) No.284 of 2009.

MSM Satellite (Singapore) Pte.Ltd. ..Petitioner

vs.

Board of Control for Cricket  
in India ..Respondent

[Mr.Iqbal Chagla](#), Sr.Counsel with Mr.Janak Dwarkadas, Sr.Counsel with Mr.Sanjay Kamat with [Mr.A.Bhattacharya](#) with Mr.Ashish Prasad i/b Anil Menon and Associates for petitioner.

Mr. Virag Tulzapurkar, Sr.Counsel with [Mr.V.R.Dhond](#), Mr.Gaurav Shah and Ms.Shahezad Kaxi and Ms.Akhila Kaushik i/b M/s Negandhi Shah and Himayatullah for the respondent.

Judgment Reserved on: 16<sup>th</sup>March,2009

Judgment Pronounced on: 23<sup>rd</sup> March,2009

**CORAM: S.J.KATHAWALLA J.  
23<sup>rd</sup> March, 2009.**

**J U D G M E N T:**

1. The Petitioner “MSM Satellite (Singapore) Pte Ltd.” is a company organized under the laws of Singapore. The petitioner owns and operates cable and satellite television channels

including SET-MAX channel. The Respondent, Board of Control for Cricket in India, (BCCI) is a society registered under the Tamil Nadu Societies Registration Act. Respondent has its office in Mumbai at Cricket Centre, Wankhede Stadium, Mumbai 400 020. Respondent is the Apex Governing Body for Cricket in India. The Indian Premier League (IPL) is a sub-committee of the respondent established to implement and oversee the functioning of a twenty overs per side cricket league competition involving atleast eight teams. The respondent owns and controls the commercial rights to each of the league, the matches and player auctions related to the Indian Premier League.

2. On 21<sup>st</sup> January, 2008, the petitioner and the respondent have entered into an Indian Premier League Media Rights Licence Agreement (MRLA) with respect to the IPL whereby the respondent (licensor) granted a bouquet of exclusive and non exclusive Media Rights to the petitioner (licensee) as detailed in clause 2 of the MRLA. According to the petitioner at the announcement of the IPL format, there was a lot of speculation, both in the cricketing circles as well as the advertising community regarding the commercial viability of the IPL. Not too many organisations were ready to risk

partnering the respondent in its foray into IPL. The petitioner was one of the few companies which offered to partner the respondent and invested huge sums of money, not only in buying the Media Rights for the IPL for five years but doing everyting possible to make IPL a success. The inaugural season of the IPL was played in India from 18<sup>th</sup> April, 2008 to 1<sup>st</sup> June, 2008 (“IPL-2008 season”).

3. According to the petitioner the IPL-2008 season, was a roaring success with unprecedented spectator attendance at the game, venues and unprecedented television viewer-ship. While exercising its rights under the MRLA the petitioner complied with each and every term of the MRLA and there was no complaint from the respondent regarding any violation of the MRLA by the petitioner through out the entire 2008 IPL season, except for an e-mail dated 9<sup>th</sup> May, 2008 wherein one Mr.Andrew Wildblood writing on behalf of IMG (an entertainment and media management company acting for and on behalf of the respondent) pointed out certain operational issue with regard to live coverage of IPL matches. Vide e-mail dated 9<sup>th</sup> May, 2008 the petitioner caused some of those issues to be addressed and thereafter implemented the suggestions made by Mr.Andrew Wildblood. According to the

petitioner, the respondent did not raise any issue with regard to the quality of transmission/coverage thereafter. Despite discussions pertaining to operational matters even as late as on 17<sup>th</sup> October, 2008 and 18<sup>th</sup> October, 2008 at the end of IPL Season 2008 the only suggestion made by the Commissioner of IPL was to “beef up” (i.e. to increase the distribution net work of petitioner's channel in South Asia) as can be seen from the email dated 7<sup>th</sup> August, 2008 (Exh.B page 93 at page 94 of the petition).

4. It is submitted by the petitioner that clause 8.9 of the MRLA, casts an obligation upon the licensee, in relation to the primary product category of Official Sponsor to first offer and provide such official sponsor an opportunity to purchase Broadcast Sponsorship package. Clause 8.9 further obliges the licensee, in the event it intends to appoint a broadcast sponsor in relation to that product category on terms more favourable than those first offered to the Official Sponsor, to provide a reasonable opportunity to the Official Sponsor to accept the appointment on the same favourable terms. The right to appoint a Broadcast Sponsor is circumscribed by licensee's obligations towards an Official Sponsor, if any, appointed by the licensor. In other words, if no Official Sponsor

has been appointed by the licensor, the licensee is free to appoint a broadcast sponsor on such terms and conditions as it may deem fit without any reference to the licensor.

5. According to the petitioner, it was represented to them by the respondent that Reliance (BIG TV) had been appointed as the Official Sponsor in the DTH product category. The petitioner accordingly by its letter dated 26<sup>th</sup> August, 2008 offered Reliance an opportunity to purchase the Broadcast sponsorship before it offered the same to any other party. As Reliance showed no interest in such appointment, the petitioner entered into a deal with Airtel on terms which were no more favourable than those offered to Reliance. The respondent vide communication dated 16<sup>th</sup> December, 2008 gave an impression to the petitioner that the petitioner was obliged to offer Reliance the same terms and conditions as contained in the agreement with Airtel. The petitioner indicated to the respondent that it was ready to negotiate with Reliance on the same terms offered to Airtel. However, there was no response to the offer made by the petitioner. On the contrary vide e-mail dated 19<sup>th</sup> December, 2008 the Commissioner of IPL informed the petitioner that the respondent was negotiating

with Airtel for the on ground official sponsorship in DTH product category. The petitioner has submitted in the petition that it now appears that the representation made by the respondent was without any basis and that in fact Reliance had not at any time been appointed as the Official Sponsor. In the circumstances, the petitioner has submitted that the petitioner was under no obligation to offer the broadcast sponsorship in DTH product category either to Reliance or any other party before concluding the contract with Airtel and that it cannot be said that the petitioner is in breach of clause 8.9 (a)(ii) of the MRLA.

6. The petitioner has stated that the petitioner was shocked to receive a legal notice dated 3<sup>rd</sup> February, 2009 from IMG acting on behalf of the respondent alleging breach of the contract by the petitioner in having sold Broadcast Sponsorship in the DTH product category to Airtel despite the 27<sup>th</sup> August, 2008 email from IMG to the petitioner intimating the petitioner that Reliance would be the IPL Official Sponsors in the Digital TV provider/DTH category. The petitioner was called upon to remedy the alleged breach within a period of 14 days, failing which, the notice contended the respondent was entitled to terminate the MRLA

under clause 10.2 of the MRLA.

7. The petitioner having denied the respondent's allegation a dispute arose as on 9<sup>th</sup> February, 2009 between the petitioner and the respondent which entitled the petitioner to invoke clause 28 (in particular clause 28.2) of the MRLA. Clause 28.2 of the MRLA provides for 21 days good faith negotiation period to resolve the dispute, prior to initiation of arbitration proceedings for resolving the dispute. The petitioner, therefore, by its letter dated 9<sup>th</sup> February, 2009 invoked clause 28.2 of the MRLA i.e. the Clause to resolve disputes by good faith negotiations for a period of twenty one (21) days from the date of issuance of written notice that a dispute has arisen.

8. According to the petitioner the respondent was determined to somehow terminate the MRLA so that the respondent could offer those rights, till now being enjoyed exclusively by the petitioner, to its competitors for a higher amount. For this reason, IMG acting on behalf of the respondent, vide letters dated 10<sup>th</sup> February, 2009 and 11<sup>th</sup> February, 2009 issued legal notices against the petitioner alleging violation of clause 2.8 of the MRLA and threatened to terminate the MRLA within a period of

14 days if the said alleged breach was not cured by the petitioner vide a further legal notice also dated 11<sup>th</sup> February, 2009, IMG, acting on behalf of the respondent, alleged violation of clause 6.3 of the MRLA and threatened to terminate the MRLA within a period of 14 days, if the said alleged breach was not cured. However, the termination of the MRLA dated 14<sup>th</sup> March, 2009 is not based on the alleged violations of clauses 2.8 or 6.3 of the MRLA.

9. It is submitted by the petitioner that the third legal notice dated 14<sup>th</sup> February, 2009 was issued by IMG acting on behalf of the respondent alleging breaches of clause 8.2 to 8.5 of MRLA. According to the petitioner these clauses of the MRLA relate to certain operational issues viz virtual advertising and quality of broadcast and of the IPL 2008 season matches. It is submitted that the said issues, by their very nature, could have been raised either immediately after they arose during the live telecast of the IPL 2008 season or reasonably soon after the IPL 2008 season ended and not at a belated stage. However, apart from the e-mail dated 9<sup>th</sup> May, 2008 from Mr. Andrew Wildblood raising certain operational matters, which were duly replied to by the respondent and suggestions made therein were thereafter implemented, there was

no other grievance from the respondent in relation to those issues, prior to notice dated 14<sup>th</sup> February, 2009. In fact, the respondent by its email dated 13<sup>th</sup> December, 2008 (Exh.S page 131 to the petition) recorded that the only pending matter for 2008 is the TDS certificate which was to be issued by the petitioner to the respondent. The petitioner was also asked to address a letter to the Chairman of IPL requesting BCCI-IPL to discharge/return back the Bank Guarantee for 2008 since contractually the petitioners have paid the dues for 2008 and issued the Bank Guarantee for 2009. The respondent also accepted unconditional Bank Guarantee (of Rs.220 crores) provided by the petitioner to secure payment of right fee as on 31<sup>st</sup> December, 2008 as provided under the MRLA and also paid the first installment of Rs.90 crores towards the IPL 2009 rights fees. According to the petitioner, the respondent by its conduct has acquiesced and waived/abandoned its rights for any alleged breach, if any, of clauses 8.2 to 8.5 of MRLA during IPL 2008 season.

10. It is submitted by the petitioner that the parties were not able to resolve their disputes within a contractually prescribed 21 days negotiations period, which began on 9<sup>th</sup> February, 2009

and ended on 1<sup>st</sup> March, 2009. The said negotiations were, therefore, extended. The petitioner has submitted that with the threat of termination of MRLA hanging over the petitioner's head, the petitioner agreed to all the terms and conditions of the respondent including the remedies suggested by the respondent. The final version of the Settlement and Amended Agreement was circulated to the respondent for its approval in the morning of 14<sup>th</sup> March, 2009. However, the respondent without responding to or in any manner referring to ongoing negotiations and settlement terms, in the afternoon of the same day terminated the MRLA on the following grounds:

- i) alleged violation of clause 8.9 of the MRLA
- ii) Alleged violation of clauses 8.2 to 8.5 of the MRLA.

11. The petitioner intended to refer disputes and/or differences between the respondent and itself to arbitration in accordance with the clause 28.3 of the MRLA and, therefore, filed the present petition under section 9 of the Arbitration and Conciliation Act, 1996 on 14<sup>th</sup> March, 2009 on the ground that the MRLA is valid and subsisting as on date and that the purported

termination of the MRLA is illegal and malafide. The petitioner, in the present petition, pending the disposal of Arbitration proceedings, initially sought the following reliefs.

- a) Order restraining respondent from acting upon the letter dated 14<sup>th</sup> March, 2009 terminating the MRLA dated 21<sup>st</sup> January, 2008.
- b) Order and Injunction restraining the respondent from obstructing/interfering with petitioner's enjoyment/exercise of its Exclusive Media Rights under the MRLA.
- c) Order and Injunction restraining the respondent from granting any form of rights contemplated in the MRLA dated 21<sup>st</sup> January, 2008 in relation to the DLF IPL Twenty 20 Cricket Tournaments to any third party;
- d) Order and injunction restraining the respondent by an order and injunction from invoking/encashing the bank guarantee furnished by the petitioner to the respondent dated 30<sup>th</sup> September, 2008 for Rs.220 crores.

12. On Sunday 15<sup>th</sup> March, 2009 at 11 a.m. the petitioner moved an urgent application before this Court seeking an order and injunction against the respondent from entering into the Media Rights Licence Agreement with any third party, when this Court passed the following ad-interim order:

*“Heard parties. Mr.Dhond states that the respondent are served at 10 a.m. and they do not have instructions.*

*The respondent are restrained from entering into any media rights licence agreement with any third party upto Tuesday the 17<sup>th</sup> March, 2009.*

*Place the matter for hearing on Monday the 16<sup>th</sup> March, 2009 at 11.00 a.m.”*

13. On Monday, 16<sup>th</sup> March, 2009 when the petition was taken up for urgent ad-interim orders, the learned Counsel appearing for the respondent, tendered an affidavit of Mr.Lalit Modi, Chairman and Commissioner of Indian Premier League (IPL) wherein the respondent has stated that the said affidavit is for a limited purpose of placing on record the fact that the respondent had prior to the passing of the order dated 15<sup>th</sup> March, 2009 duly signed an agreement with World Sports Group (Mauritius) Limited

(WSGM) for the grant of media rights. The detailed particulars pertaining to the execution of the said agreement are set out in paragraphs 3, 4 and 5 of the said affidavit which paragraphs are reproduced hereunder:

*“3. At or around 3 a.m. in the morning of 15<sup>th</sup> March, 2009 the Respondent and World Sports Group (Mauritius) Limited signed an agreement entitled “Indian Premier League Media Rights Licence agreement” (“the said agreement”) for the grant by the Respondent, to World Sports Group (Mauritius) Limited, of Rights, more particularly stated therein. A copy of the said Agreement is annexed hereto and marked as “Exhibit 1”*

*4. As stated therein, the said Agreement was signed by me on behalf of the Respondent and by Mr.Andrew Georgiou and Mr.Venu Nair on behalf of World Sports Group (Mauritius) Limited. My signature was witnessed by Mr.Sundar Raman, Chief Operating Officer (IPL) and Mr.Paul Manning. The signatures of Mr.Andrew Georgiou and Mr.Venu Nair were also witnessed by Mr.Paul Manning. Mr.Paul Manning is*

*Barrister of the Supreme Court of England and Wales.*

*5. The signing of the said Agreement took place at the Chandragupta Suite at Hotel Maurya Sheraton which had been booked by me.”*

Admittedly, in the afternoon of (Sunday) 15<sup>th</sup> March, 2009 a copy of said affidavit along with a copy of the Agreement dated 15<sup>th</sup> March, 2009 was forwarded by the Advocate for the petitioner to the Advocate for the respondent.

14. Mr.I.M.Chagla, learned Senior Advocate appearing for the petitioner, therefore, tendered the Draft Amendments to the petition. By the Draft Amendments, amongst others, pending the hearing and final disposal of the arbitration proceedings, the petitioner sought the following reliefs against the respondent as prayers d(i) to d(iv).

- i) injunction against the respondent from violating the negative covenant contained in clause 2.3(i) and 2.3(iii) of the MRLA dated 21<sup>st</sup> January, 2008.
- ii) Injunction against the respondent from acting in furtherance of or implementing the agreement dated 15<sup>th</sup> March, 2009 with World Sports Group

(Mauritius) Limited.

- iii) Injunction against the respondent from approving the appointment of any broadcaster pursuant to the provisions of the respondent's alleged agreement dated 15<sup>th</sup> March, 2009 with World Sports Group (Mauritius) Limited.
- iv) Injunction against the respondent from approving the appointment of any broadcaster pursuant to provision 6.2 of the Respondent's alleged agreement dated 15<sup>th</sup> March, 2009 with World Sports Group (Mauritius) Limited.
- v) Injunction against the respondent from exercising any of the rights, obligations and privileges reserved to the Respondent under the Respondent's alleged agreement dated 15<sup>th</sup> March, 2009 with World Sports Group (Mauritius) Limited.

15. After going through the affidavit filed by the respondent dated 15<sup>th</sup> March, 2009 and the reliefs sought by the petitioner by way of the draft amendments to the petition, this Court inquired

from Mr.Chagla, appearing for the petitioner, whether the presence of World Sports Group (Mauritus) Limited will not be necessary for the petitioner to get the reliefs as prayed. Mr.Chagla informed this Court that since the petitioner was seeking reliefs only against the respondent it is not necessary for the petitioner to join the World Sports Group (Maritius) limited as party respondent to the petition. This Court thereafter inquired from Mr.Virag Tulzapurkar, the learned Senior Advocate appearing for the respondent, whether the respondent had approved the appointment of the broadcaster etc. pursuant to the provisions of the agreement dated 15<sup>th</sup> March, 2009. Mr.Tulzapurkar informed the Court that he has no instructions since the officials of the respondent are at New Delhi and he will be able to obtain the necessary instructions by 4.30 p.m. Therefore, by agreement of the parties the matter was kept back upto 4.30 p.m.

16. At 4.30 p.m. (on 16<sup>th</sup> March, 2009) Mr.Tulazapurkar on behalf of the respondent tendered a copy of the letter dated 15<sup>th</sup> march, 2009 addressed by the Chairman and Commissioner, IPL to WSGM and submitted that the approval pertaining to the broadcasting is already granted by the respondent to WSGM as set

out in the said letter. Mr.Chagla appearing for the petitioner submitted that the said letter cannot be treated as an approval on the part of the petitioner in view of the elaborate requirements set out under clause 13 of the purported agreement dated 15<sup>th</sup> March, 2009. Thereafter this Court asked Mr.Tulazapurkar whether the respondent were agreeable to maintain status quo pertaining to the new agreement dated 15<sup>th</sup> March, 2009 until the respondent files their reply and the matter could be heard fully. However, Mr.Tulazapurkar expressed his inability and submitted that he has instructions to oppose the application of the petitioner for grant of any urgent reliefs. Mr.Chagla also submitted that the petitioner will want to press for urgent reliefs against the respondent, even though the Court was ready to hear the petition finally on 24<sup>th</sup> March, 2009 i.e. after completion of the pleadings by both the sides. Under the circumstances, this Court proceeded to hear the application of the petitioner for urgent ad-interim reliefs on 16<sup>th</sup> March, 2009, and at around 6 p.m. adjourned the matter for further hearing to Tuesday the 17<sup>th</sup> March, 2009. When the court was about to rise on 16<sup>th</sup> March, 2009, Mr.Tulazapurkar appearing for the petitioner informed the Court that in response to a query made by the

Advocates on record, the respondent has forwarded a template of Indian Premier League Media Rights Licence Agreement approved by the respondent.

17. Mr.I. M.Chagla, learned Senior Advocate appearing for the petitioner, submitted that WSGM is neither a necessary nor a proper party to the proceedings. It is submitted that if the suit would have been filed by the petitioner against the respondent, it would not have been necessary for the petitioner to join WSGM as a party defendant and relief could have been obtained by the petitioner only against the respondent. It is submitted that if a suit can be filed by the petitioner against the respondent, without making WSGM a party, it cannot be said that a petition under section 9 of the Arbitration and Conciliation Act, 1996 cannot be decided or that no reliefs can be granted in favour of the petitioner without joining WSGM as a party respondent to the petition. In support of his submission Mr.Chagla has relied on the decision of the Hon'ble Supreme Court of India in the case of **Ramesh Hirachand Kundanamal Vs. Municipal Corporation of Greater Mumbai and others** reported in 1992(2) SCC 524. Mr.Chagla has inter alia relied on paragraphs 13 and 14 of the said decision.

Mr.Chagla has pointed out that in the said decision the Hon'ble Apex Court has held that in a suit in which the subject matter of litigation is property, the rule of the present interest as distinguished from the commercial interest is required to be shown before a person may be added as a party. The person to be joined as a party to an action must be one whose presence is necessary as a party. The only reason which makes it necessary to make a person a party to an action is, so that he should be bound by the result of the action and the question to be settled therefore must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that a person must be directly or legally interested in the action in the answer, i.e. he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. Mr.Chagla has, therefore, submitted that he is not pressing for any relief which concerns WSGM and this Court can grant the petitioner, relief to the extent of restraining the respondent from carrying out its obligations under the MRLA agreement dated 15h

March, 2009 executed by and between the respondent and the WSGM.

18. Mr.Tulzapurkar on behalf of the respondent has submitted that the above contention advanced by Mr.Chagla on behalf of the petitioner cannot be accepted. It is submitted that in fact the decision cited by Mr.Chagla in the case of Ramesh Hirachand Kundanmal (supra) more particularly paragraphs 6 and 13 gives a complete answer to the question as to whether WSGM will be a necessary party to the proceedings.

19. I am in agreement with Mr.Tulzapurkar. A necessary party is amongst others, one without whom no order can be made effectively. Presence of such a party is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. As set out in paragraph 13 of Ramesh Kundanmal's case (supra) in a suit relating to the property, the rule of present interest as distinguished from the commercial interest is required to be show before a person may be added as a party. The reliefs sought by the petitioner in the draft amendment (prayers d-(ii), d-(iii), d(iv) and d-(v)) would directly and/or substantially affect and/or interfere with the enjoyment and/or

exploitation, by the WSGM of vested rights, and their present interest in the property which is the subject matter of the contract created in their favour and subsisting in presentii. This will amount to curtailing their rights, which in turn will affect the WSGM legally. Therefore, in my view, WSGM would be a necessary party to any proceedings between the petitioner and respondent pertaining to the subject matter of the MRLA agreement dated 21<sup>st</sup> January, 2009 and no ad-interim reliefs can be granted against the respondent until WSGM is joined as party to the present proceedings before the Court.

20. Mr.Chagla, on behalf of the petitioner, next submitted that the termination of the agreement between the petitioner and the respondent dated 21<sup>st</sup> January, 2008, though dated 14<sup>th</sup> March, 2009 came into effect only on Monday the 16<sup>th</sup> March, 2009 and, therefore, the Agreement between the respondent and WSGM dated 15<sup>th</sup> March, 2009 was executed prior to the termination of the Agreement dated 21<sup>st</sup> January, 2008 between the petitioner and the respondent having come into effect. Mr.Chagla, therefore, submitted that the petitioner is entitled to seek urgent ad-interim reliefs only against the respondent without joining the WSGM as

party respondent to the present petition.

21. In support of his aforesaid contention Mr.Chagla relied on the definition of the word “working day” and clause 17 pertaining to the “NOTICES” under the said MRLA agreement dated 21<sup>st</sup> January, 2008. The same are reproduced hereunder.

*“Working day means any day excluding Saturday, Sunday and Public Holidays in Mumbai, India and/or Singapore.”*

*“17: NOTICES.*

*Any notice required to be given hereunder shall be sufficiently given to either party, if delivered in person (including by hand or via courier) or forwarded by prepaid post addressed to the address of the party to be served referred to above or such other address as may be agreed in writing between the parties hereto or sent by facsimile to the addressee's number as notified to the sender or recorded on any official stationary. All notices shall be deemed to have been received when delivered in person or by fax (unless after 5 pm local time, in which case they shall be deemed delivered on the next Working Day) or on the*

*date on which they would be received in the ordinary course of faxing or posting (if posted to an address within India) or 5 business days after airmail posting (if posted to an address outside the India).*

22. Mr.Chagla submitted that the said notice of termination was received by the petitioner on 14<sup>th</sup> March, 2009 at around 10.44 p.m. Singapore time (which corresponds to 8.14 p.m. India time) which was a Saturday. He submitted that clause 17 inter alia provides that “All notices shall be deemed to have been received when delivered in person or by fax (unless after 5 p.m. local time in which case they shall be deemed delivered on the next Working Day.)” Mr.Chagla submitted that since the said notice of termination was received by the petitioner on 14<sup>th</sup> March, 2009 at 10.44 p.m. Singapore time which was a Saturday, the said notice is deemed to have been received by the petitioner only on Monday the 16<sup>th</sup> March, 2009. Since the purported agreement with WSGM was entered into by and between the respondent and the said WSGM at 3 a.m. on 15<sup>th</sup> March, 2009 which was a Sunday the said agreement is of no consequence because the same was executed before the termination notice came into effect. It was further

submitted that the said agreement dated 15<sup>th</sup> March, 2009 executed/entered into during the validity and the subsistence of the MRLA and in defeasance of the negative covenant contained in clause 2.3(i) read with 2.3(iii) is nonest and/or not binding upon the petitioner and cannot be performed or implemented by the respondent. It was, therefore, submitted that the said WSGM is not and cannot claim to be bonafide licensee for value without notice of inter alia the petitioner's exclusive Media Rights under the MRLA and is not entitled to claim any of the benefits and privileges thereunder and/or entitled to seek performance thereof. It is submitted that the cause of action against WSGM is separate and independent and the petitioner will adopt appropriate proceedings against the WSGM as advised.

23. On behalf of the petitioner, reliance was placed on a decision of the Hon'ble Supreme Court of India in *Narasimhiah Vs.H.C.Singri Gowda and others* reported in (1964) 7 SCR 618: AIR 1966 SC 330. In the said case amongst others the legality of the proceedings of the General Meeting of the Municipal Council held on October 14, 1963 and the validity of the resolution of no confidence passed there was challenged on the ground that

requisite 3 days notice was not served on all the members and so the meeting was not validly held. In the said decision whilst dealing with the main contention that three days notice of the special general meeting was not given and so the meeting is invalid, the Hon'ble Supreme Court held that it was difficult to agree with the High Court that "sending" the notice amounts to "giving" notice. Mr. Chagla, learned Senior Advocate relied on paragraph 11 of the said decision which reads as under:

"11. "Giving" of anything as ordinarily understood in the English language is not complete unless it has reached the hands of the person to whom it has to be given. In the eye of law however "giving" is complete in many matters where it has been offered to a person but not accepted by him. Tendering of a notice is in law therefore giving of a notice even though the person to whom it is tendered refuses to accept it. We can find however no authority or principle for the proposition that as soon as the person with a legal duty to give

the notice despatches the notice to the address of the person to whom it has to be given, the giving is complete. We are, therefore, of opinion that the High Court was wrong in thinking that the notices were given to all the Councillors on the 10<sup>th</sup> October. In our opinion, the notice given to five of the Councillors was of less than three clear days.

24. The petitioner has also relied on the decision of the Hon'ble Supreme Court of India in the case of Munnalal Agarwal Vs. Jagdish Narayan and others reported in 2000(1) SCC 31 wherein the Hon'ble Supreme Court while interpreting the word "given" occurring in section 5 of the U.P.Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 has held that the word "given" occurring in section 5 of the Act definitely shows that the Legislature intended that the notice must actually be delivered to the tenants within three months from the date of commencement of the Act. Merely sending notice or despatching or posting the notice within three months is not the requirement of section 5 of the Act. What the provision of the Act contemplated is

that notice should be tendered offered or handed over to the tenant within three months from the date of commencement of the Act and in case the service of notice is after three months of commencement of the Act, the landlord is not entitled to take benefit of such notice. Ofcourse, if the notice for enhancement of the rent is sent to the tenant and is refused by him within three months from the commencement of the Act, it would be a valid notice. Mr.Chagla, on behalf of the petitioner, therefore, submitted that a notice means effective notice and for a notice to be effective the same is not only required to be just given/sent to the addressee but should also be received by him. He submitted that this is more so because under clause 11.5 the licensee to whom the notice is meant to be given is required to take certain steps immediately upon receiving the notice from the licensor.

25. Mr.Tulzapurkar, on behalf of the respondent, has submitted that the aforesaid submissions made on behalf of the petitioner, that the notice dated 14<sup>th</sup> March, 2009 given by the respondent to the petitioner terminating the Indian Premier League Media Rights Licence Agreement dated 21<sup>st</sup> January, 2008 is not effective, are incorrect and untenable, inter alia, because the

provision for termination in clause 10.2 only requires a Notice of termination to be given, - it does not require the notice to be received by the addressee for the termination to take effect. The termination takes effect forthwith upon the giving of notice of termination and, thereupon the consequence in clause 11 ipsofacto takes effect. It is further submitted that clause 17 of the MRLA deals with "Notices". The said clause is in two independent parts. The first part talks of any notice required to be given under the Agreement and states that any notice shall be sufficiently given after the terms of the first part of clause 17 are complied with. Those terms deal with the notice given by different modes: (a) by delivering in person (by hand or courier); (b) by forwarding by prepaid post; (c) by sending by facsimile to the addressee's number as notified to the sender or recorded on any official stationery. In this case, the notice was sent by fax and there is no dispute that the notice sent by fax was sent to the number as specified in clause 17. It is submitted that on reading of the first part of clause 17, the requirement is only of giving notice and the mode of giving Notice. The mode of giving notice in this case is by Fax. It is submitted that, therefore, clause 17 (first part) read with clause 10.2 results

in the agreement terminated forthwith on the giving of any notice in writing to the licensee. The termination takes effect, the moment the Notice is given and there is no requirement that the notice should be received by the addressee as a condition to the termination taking effect. It is further submitted on behalf of the respondent that the second part of clause 17 does not have any application to the facts of this case and the issue at hand. The question only relates to whether or not termination effected by fax/notice dated 14<sup>th</sup> March, 2009 has become effective. It is submitted that the termination has taken effect, inter alia, because the receipt of the notice by the addressee (petitioner) is not required under the agreement of termination to take effect. It is further submitted that the second part of clause 17 deals with the receipt of any notice given by a party under the Agreement. The clause provides for a deeming receipt of the notice by using the words “All notices shall be deemed to have been received.....” and provides for the various modes in which the notice may be delivered; namely, (a) in person or (b) by fax, if the fax or delivery is made after 5 p.m local time, the delivery shall be deemed to have been made on the next working day. There is one more mode of receipt of notice by

the addressee i.e. on the date on which it would be received in ordinary course of faxing. It is submitted that in this case the notice sent by fax to the petitioner by the respondent was admittedly received in fact by the petitioner at 10.44 p.m on 14<sup>th</sup> March, 2009. Since the notice was actually and in fact received by the petitioner there is no question of resorting to the deeming provision of receipt of Notice; such deeming provision will apply only when and if there is no actual receipt of the Notice in fact (which is not so in this case). The provision relating to deemed delivery on the next working day is also not applicable because here also deeming provision does not come into play in view of the actual receipt of notice by the petitioner. The respondent has also relied upon the decision in *Carne & anr. Vs. Debono*, reported in (1988) 1 WLR 1107 wherein the Court of Appeal while considering a similar clause to the effect “12(h): *Any notice given by either party to the other under the provisions of this agreement shall be in writing and shall be deemed to have been served at the expiration of 48 hours after it has been posted.....*” has held that the deeming provision does not exclude the possibility of proving the earlier receipt. It is not a statement that for all purposes, the document

shall only be treated as having received at a particular time.

26. Mr. Tulzapurkar referring to the decisions cited on behalf of the petitioner in the case of K.Narasimhiah (supra) and Munnalal Agarwal (supra) pointed out that the same will be of any assistance to the petitioner since in those cases the addressee of the notice were required to do certain things or act upon the same, like attending the special general meeting of the Municipal council or make payment of the enhanced rent. In the instant case the parties have under clause 17 of the MRLA dated 21<sup>st</sup> January, 2008 agreed that the notice required to be given shall be sufficiently given to either party if sent by facsimile to the address's number as notified to the sender or recorded in the official stationery which is infact done and admittedly received by the petitioner on 14<sup>th</sup> March, 2009 at 10.44 p.m. Mr.Tulzapurkar has, therefore, submitted that the petitioner's contention that the notice of termination had not come into effect upto Monday the 16<sup>th</sup> March, 2009 is untenable and devoid of any merits.

27. Though the interpretation sought to be given by the respondent to clause 17 of the said MRLA dated 21<sup>st</sup> January 2008 and the contentions raised by the respondent are not

completely devoid of substance or merits, at this threshold stage, I am inclined to accept the argument of the petitioner that giving of notice would mean and include receipt of notice. This is so, because under clause 11.1 of MRLA the licensee to whom notice is meant to be given is required to take certain steps immediately upon receiving notice from the licensor and the respondent itself has in the last paragraph of the notice of termination called upon the petitioner to immediately comply with its obligations under clause 11 of the MRLA. If the argument of the licensor were to be accepted viz. That the notice of termination were to be effective merely on issuing/sending and not until it is received by the licensee, it would mean that the licensee in accordance with clause 17 would be in breach of clause 11.1 even though the licensee has not received and/or is deemed not to have received the notice of termination. Therefore, I am of the prima facie view that the notice issued by the respondent to the petitioner came into effect on Monday the 16<sup>th</sup> March, 2009. However, it, therefore, cannot be said that the Agreement dated 15<sup>th</sup> January, 2009 is nonest or null and void as alleged or for the reasons alleged by the petitioner. In my view, this will also not help the petitioner to obtain any ad-interim

reliefs, because the fact remains that the MRLA was executed by the respondent in favour of WSGM on 15<sup>th</sup> March, 2009 at 3 a.m. The transfer/creation/vesting of rights in favour of WSGM is, therefore, complete and absolute. In my view for the purpose of deciding whether the petitioner is entitled to ad-interim relief or not, it is not relevant whether the termination notice issued by the respondent to the petitioner had come into effect or not because on 15<sup>th</sup> March, 2009, legal rights have already accrued in favour of WSGM in respect of the same property which is the subject matter of MRLA dated 21<sup>st</sup> January, 2008 which rights cannot be interfered with, without WSGM being before the Court. The petitioner despite having tendered the draft amendments seeking further reliefs have chosen not to join WSGM, the 3<sup>rd</sup> party who by virtue of the agreement dated 15<sup>th</sup> March, 2009 has present interest in the same property which is the subject matter of the MRLA dated 21<sup>st</sup> January, 2008. It cannot be disputed that grant of any ad-interim relief as sought by the petitioner would directly affect the legal rights of WSGM vested in them under the MRLA dated 15<sup>th</sup> March, 2009, Assuming that the respondent had failed to give any termination notice to the petitioner, and had entered into the

MRLA dated 15<sup>th</sup> March, 2009 with WSGM, even then the petitioner will not be entitled to any ad-interim relief against the respondent in the absence of WSGM because all the reliefs sought by the petitioner, directly and/or substantially affect and/or interfere with the enjoyment and/or exploitation by WSGM of their vested rights and present interest in the property which is the subject matter of the contract created in their favour and subsisting in presentii.

28. Mr.Chagla, the learned Senior Advocate appearing for the petitioner, has next relied upon clause 13 of the Indian Premier League Media Rights Licence Agreement dated 15<sup>th</sup> March,2009 executed between the respondent and WSGM to submit that the terms thereof more particularly clauses 13.1(i); 13.1.(ii) and 13.1(iii) indicate that there is still something outstanding which remains to be done by the respondent and that creation of rights in favour of WSGM is not complete. Mr.Chagla has submitted that in view thereof the petitioner are entitled to seek orders against the respondent restraining the respondent from acting in furtherance of or implementing the MRLA dated 15<sup>th</sup> March, 2009 with WSGM. Both sides have submitted their written submissions on this issue.

Though, Mr. Tulzapurkar the learned Senior Advocate on behalf of the respondent has submitted that the respondent has granted all approvals contemplated by clause 13.1(i) and (iii) and no approval is being contemplated under clause 13.1(ii), there is nothing which remains to be done by the respondent under clause 13.1 of MRLA. Mr. Tulzapurkar has raised a fundamental objection viz. the reliance by the petitioner on clause 13 of MRLA is ex facie misconceived, because nothing in clause 13 of the MRLA detracts or derogates from the fact that the transfer of rights by the respondent to WSGM was complete. Clause 13 of the MRLA is a clause which prescribes the rights of the parties in the performance of the MRLA. It is not a clause which is antecedent to the execution or formation or conclusion of a contract, but a clause in performance of a concluded contract. Reliance on clause 13 in aid of an argument that transfer of rights had not taken place, would be, plainly misplaced and/or misconceived. In my view, Mr. Tulzapurkar is correct in his submission. In my view, respondent cannot be restrained from acting in furtherance and/or implementing the MRLA dated 15<sup>th</sup> March, 2009 because the said WSGM is not joined as a party to the petition and granting of relief against the

respondent from acting in furtherance or implementing the MRLA with WSGM would directly affect and/or interfere with the enjoyment and/or exploitation by WSGM of their vested right and their present interest in the property which is subject matter of the contract created in their favour and subsisting in the present time. No ad-interim relief, therefore, can be granted in favour of the petitioner even on this count.

29. Mr.Chagla, the learned Senior Advocate appearing for the petitioner, has submitted that the termination of MRLA by the respondent on 14<sup>th</sup> February, 2009 is completely malafide. He has submitted that the termination of MRLA is on the following grounds:

- i) alleged violation of clause 8.9 of the MRLA;
- ii) alleged violation of clauses 8.2 to 8.5 of the MRLA.

Mr.Tulzapurkar, the learned Senior Advocate appearing for the respondent, has submitted that Reliance had not been appointed as Official Sponsor in DTH product category. He has submitted that qua Reliance it was their case that IPL has window prior to start of the tournaments to confirm the same. In view thereof the

respondent is not pressing violation of clause 8.9 of the MRLA. However, Mr.Tulzapurkar has submitted that termination of the MRLA is also in view of the violation of clauses 8.2 to 8.5 of the MRLA. Mr.Chagla has submitted that the statement/submission made by Mr.Tulzapurkar of not pressing breach of clause 8.9 at this stage across the bar supports the allegation made by the petitioner that the respondent was determined to terminate the MRLA with the petitioner and enter into an Agreement with a third party for higher bid. Mr.Chagla submitted that breaches of clauses 8.2 to 8.5 of the MRLA only relate to certain operational issues namely virtual advertising and quality of the broadcast and integrity of the broadcast of the IPL 2008 matches. He has submitted that apart from the email dated 9<sup>th</sup> May, 2008 from Mr.Andrew Wildblood raising certain operational matters which was duly replied to by the respondent and suggestions made therein were thereafter implemented, there was no other grievance from the respondent in relation to those issues prior to the notice dated 14<sup>th</sup> February, 2009. Mr. Chagla has submitted that the petitioner and respondent even met at Bangkok to discuss and resolve the operational matters as late as on 17<sup>th</sup> October, 2008 and 18<sup>th</sup>

October, 2008 but the respondent did not raise any issue/objection referred to in the notices dated 10<sup>th</sup>, 11<sup>th</sup>, and 14<sup>th</sup> February, 2009. Mr.Lalit Modi had requested the petitioner to “beef up” distribution of its channel in South India as that was the only weak spot in the whole IPL programme. He submitted that this confirms that there was no shortcomings whatsoever in the petitioner's broadcast during the IPL 2008 season. Mr.Chagla has submitted that the respondent settled all its accounts and financial claims relating to IPL 2008 season unconditionally with the petitioner. Furthermore, vide email dated 13<sup>th</sup> December, 2008 the respondent expressly and unequivocally confirmed that contractually the petitioner had paid its dues for 2008 to the respondent and the only pending matter for 2008 was the issuance of TDS certificate. The respondent also unconditionally accepted the petitioner's Bank Gaurantee to the tune of Rs.220 crores as a security towards the payment of the licence fee for the IPL 2009 season. The respondent in January 2009 also raised two invoices each towards the right fees payable by the petitioner on 10<sup>th</sup> March 2009 and on 30<sup>th</sup> September, 2009. The payment under the first invoice was also accepted by the respondent from the petitioner on 9<sup>th</sup> March, 2009 when the

petitioner remitted the sum of Rs.90 crores to the respondent. Mr.Chagla has, therefore, submitted on behalf of the petitioner that the respondent has deemed to have acquiesced/abandoned and waived his right to raise any issue pertaining to IPL 2008 season as also from contending that the petitioner has committed any breach in terms of the MRLA. Mr. Chagla has also submitted that the invoice for payment of the amount of the first invoice acts as an express waiver of the alleged right to terminate the MRLA.

30. Mr.Tulzapurkar, learned Senior Advocate appearing for the respondent, has refuted these submissions/allegations advanced on behalf of the petitioner. He has submitted that on 9<sup>th</sup> May, 2008 itself Mr.Andrew Wilblood wrote a letter on behalf of the respondent to the petitioner pointing out certain issues with regard to live coverage of IPL matches (page 44 of the petition compilation). He has submitted that the petitioner responded to Mr.Andrew Wildblood on 9<sup>th</sup> May 2008 treating the letters requesting the petitioner to address the issue raised in the said letter as feed back and observations. He has submitted that on 14<sup>th</sup> February, 2009 (page 108 of the petition compilation) the respondent recorded in detail the breaches on the part of the

petitioner of clauses 8.2 to 8.5 of the agreement. It was also recorded in the said letter/notice that despite warning from Mr. Andrew Wilblood by his letter dated 9<sup>th</sup> May, 2008, the petitioner's broadcasts continued to breach the terms of the MRLA in each and every match during the IPL 2008 including the final as demonstrated beyond doubt in the taperecording of each match. It was further recorded that these constitutes further material breaches of the Agreement that cannot be remedied, and the BCCI is entitled to terminate the agreement forthwith. The petitioner was, therefore, informed that BCCI would terminate the agreement unless a solution satisfactory to the BCCI is agreed in the next meeting between Sony and BCCI. Mr. Tulzapurkar has submitted that the petitioner by its letter dated 19<sup>th</sup> February, 2009 refuted the allegation made by the respondent in its notice dated 14<sup>th</sup> February, 2009 but failed to take any steps to cure the said material breach even during the meeting held thereafter i.e. the good faith negotiations. Mr. Tulzapurkar has submitted that though there is no delay on the part of the respondent as alleged, in any event, in view of clause 18 of the MRLA agreement, the submission made on behalf of the petitioner pertaining to delay and waiver of

breaches of clauses 8.2 to 8.5 of the agreement are untenable.

Clause 18 of the agreement is reproduced hereinunder:

*“18: NON WAIVER:*

*No Failure or delay by Licensor or Licensee in exercising any right power or privilege hereunder shall operate as a waiver thereof nor shall single or partial exercise thereof preclude any subsequent exercise in law in equity or otherwise.”*

31. Mr.Tulzapurkar submitted that in view of the above clause the allegations pertaining to delay advanced on behalf of the petitioner are untenable. Mr.Tulzapurkar also submitted that until the agreement is terminated the respondent could not have refused to accept the Bank Guarantee and/or any payment made by the petitioner to the respondent under the MRLA. In view thereof, acceptance of the Bank Guarantee and/or the payment under the first invoice by the respondent cannot act as a waiver or estoppel against the respondent from terminating the contract on the ground that the petitioner has committed breach of clauses 8.2 to 8.5 of the MRAL.

32. In my view, though there appears to be some silence on

the part of the respondent pertaining to the alleged material breach of clauses 8.2 to 8.5 of the MRLA agreement after the letter of Mr. Andrew Wildblood dated 9<sup>th</sup> May, 2008 and response of the petitioner also dated 9<sup>th</sup> May 2008, upto 14<sup>th</sup> February, 2009, it cannot be held that the delay on the part of the respondent coupled with them having accepted the Bank Guarantee as well as the payment towards the first invoice from the petitioner, amounts to waiver/estoppel as alleged. I accept the submissions advanced by Mr. Tulzapurkar on this count. Even assuming that the aforesaid submission made on behalf of the petitioner would have prima facie been accepted by the Court, at this stage, the petitioner would not be entitled to any ad-interim relief on the ground that the same would directly and/or substantially affect and/or interfere with the enjoyment and/or exploitation by WSGM of their vested rights and present interest in the property which is the subject matter of the contract created in their favour and subsisting in presentii since WSGM is not made party to the present proceedings.

33. Mr. Chagla, has submitted that balance of convenience is in favour of the petitioner. Mr. Tulzapurkar submits that balance of

convenience cannot be determined between the petitioner and the respondent in the absence of WSGM which is a necessary party. In my view, Mr.Tulzapurkar is correct.

34. Under the circumstances, though it is submitted on behalf of the petitioner that the petitioner is only seeking reliefs against the respondent restraining the respondent from implementing their obligations under the agreement with WSGM dated 15<sup>th</sup> March, 2009 and are not claiming any relief against the WSGM, it cannot be disputed even by the respondent that passing of such order against the respondent would substantially affect and/or interfere with the enjoyment and/or exploitation by WSGM of their vested legal right and present interest in the property i.e the subject matter of the contract created in their favour and subsisting in presentii. In view thereof this Court cannot do indirectly which in law cannot be done directly. Even otherwise Mr.Tulzapurkar has submitted that nothing remains to be done by the respondent under the agreement dted 15<sup>th</sup> March, 2009 between the respondent and WSGM and even if any reliefs as sought is/are granted in favour of the petitioner, the same would be noneffective. In view of the above, no ad-interim reliefs are

granted in favour of the petitioner. The petitioner shall within two days from today carry out the amendments to the petition in terms of the draft amendments tendered and shall also get all the office objections removed and the petition numbered.

35. S.O. to 30<sup>th</sup> March, 2008 for admission.

**(S.J.KATHAWALLA J.)**