

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI**

DATED APRIL 6, 2005

PETITION No.18(C) OF 2004
(With M.A.Nos.125,128, 131, 132, 152 of 2004)

Maj. J.S.Kohli (Retd.)

... Petitioner

Proprietor,
M/s. KOHLEES
No. 29, B-10 Market, Vasant Kunj
New Delhi-110070

Vs.

IndusInd Media and Communications Ltd.

...Respondent (1)

71/1, 2nd Floor, Shivaji Marg,
Najafgarh Road, Moti Nagar,
New Delhi-110015.

ESPN Software India Pvt. Ltd.

....Respondent (2)

Building No. 22, Pushp Vihar Community Centre,
New Delhi-110062.

Star TV Pvt. Ltd.

.....Respondent (3)

205-206, Okhla Industrial Area, Phase-III
New Delhi-110020.

Telecom Regulatory Authority of India

...Respondent (4)

A-2/14, Safdarjung Enclave
New Delhi-110029.

BEFORE:

**HON'BLE MR. JUSTICE D.P. WADHWA,
CHAIRPERSON**

**MR. VINOD VAISH, MEMBER
LT.GEN. D.P.SHEGAL(RETD.), MEMBER**

For Petitioner : Maj.J.S.Kohli (Retd.)
IN PERSON

For Respondent No. 1 – : Mr.Arun Kathpalia, with
IndusInd Media & Ms.Jayne Kuriakose, Advocates
Communication Ltd

For Respondent No. 2-ESPN : Mr.Ajay K. Dutta, Advocate
Software India Pvt. Ltd.

For Respondent No. 3-Star : Mr. Gopal Jain,
TV Pvt. Ltd. Ms.Niharika Bahl,
Mr.Ashish Jha, Avocates

For Respondent No. 4-TRAI : None

Catchwords:

Petitioner a Cable Operator – main dispute with respondent MSO with regard to rates and the subscription base – agreement on subscription base agreed – two options by MSO on rate – offer fair and reasonable – one option accepted by the petitioner – dispute resolved.

Inter se disputes between cable operators and MSOs - TDSAT not concerned.

ORDER

Maj. J.S. Kohli (Retd), Proprietor M/s. KOHLEES, has filed a petition against Indusind Media & Communications Limited (Respondent No. 1) and others for maintenance of status quo with respect to cable signals and rates and the procedures in force till date. Other respondents in the case are ESPN Software India Pvt. Limited (Respondent No. 2), Star TV Pvt. Limited (Respondent No. 3), and Telecom Regulatory Authority of India (Respondent No. 4). The petitioner, who is a cable operator and a franchise of Respondent No. 1 argued his case in person.

2. The petitioner, an ex-serviceman, has been in business of Cable TV since 1991 and is providing service in the name and style of M/s. KOHLEES to the residents of Vasant Kunj. He states that he has his own head end and is also a franchise of Indusind

Media Communication Limited, a Multi System Operator (MSO). While arguing his case he stated that he is a franchise with Respondent No. 1 since 14.12.2003 through a proper agreement. Respondent Nos. 1, 2 & 3 are companies incorporated under the Companies Act, 1956; Respondent No. 1 being MSO and Respondent No. 2 & Respondent No. 3 being Broadcasters respectively.

3. The petitioner states that he has been paying the subscription to Respondent No. 1 for the exact number of subscribers and as per the terms of the agreement. He alleged that in March 2003 no invoice was raised by Respondent No. 1 but instead their officer Mr. Ravi Sawhney visited his office and accepted payment for 498 subscribers at the rate of Rs. 20/- per subscriber. In April 2004, however, since no invoice was raised by Respondent No. 1 the amount was paid through a Pay Order amounting to Rs. 11,400/- (subscription for 570 subscribers @ Rs. 20/-) through a forwarding letter. He stated that on 4th May 2004 a letter was received by hand from Mr. Sawhney, representative of Respondent No. 1, demanding an additional amount of Rs. 100/- per subscriber who were using Set Top Boxes (STBs). The demand raised was for Rs. 85,400/- for the period December 2003 to April 2004. However, he collected Rs. 59,040/- i.e. Rs. 90/- per Set Top Box instead of Rs. 100/- and the same was settled in writing. The petitioner stated that subsequently Respondent No. 2 and Respondent No. 3 switched off their signals without any reason. On 31st May 2004 the petitioner received an invoice dated 2.5.2004 for Rs. 1 lakh from Respondent No. 1, which did not give any details about the rates and the number of subscribers etc. Between, June 1-3, 2004, Mr. Ravi Sawhney approached the petitioner and offered to settle for Rs. 70,000/- instead of Rs. 1 lakh. They also asked for the subscriber list etc. The petitioner also states that he approached Telecom Regulatory Authority of India who advised him to approach this Tribunal for relief.

4. The petitioner has prayed the following:-

- (a) Order Respondent No. 1 to maintain status quo with respect to the cable signal and rates and the procedures in force till date.

- (b) Order Respondent No. 1 to refrain from causing any damage to the business interests of the petitioner by direct or indirect means.
- (c) Direct Respondent No. 2 to release its signal to Respondent No. 1 immediately in the interest of the subscribers and sort out their payment problems before this Hon'ble Tribunal in a transparent manner for everyone including petitioner to learn the truth and claim damages accordingly.
- (d) Direct Respondent No. 3 to remove its switch off warning from all its channels immediately and sort out all its payment problems before this Hon'ble Tribunal in a transparent manner for everyone including petitioner to learn the truth and claim damages accordingly.
- (e) Allow the petitioner to keep his rights reserved for claiming damages at an appropriate time, which may come out of the present state of denial of channels to the subscribers, leading to their leaving the network of the petitioner, or otherwise, along with incidental damages of loss of reputation etc.
- (f) To direct payment of cost of this petition by the Respondent No. 1 to the petitioner.
- (g) And pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

5. Main dispute is between the MSO and the Petitioner. In this case, the principal respondent is Respondent No. 1, an MSO, with whom the petitioner is having an agreement to receive the signals. Respondent No. 1 in turn gets signals from the Broadcasters (Respondents No. 2 & 3) through a separate agreement. Respondents No. 2 & 3 (Broadcasters), therefore, do not necessarily become parties in this dispute. No relief has been claimed against the Respondent No. 4 (TRAI) and we fail to understand why TRAI has to be impleaded as a party respondent. However, we may point out that after the notification of TRAI notified in December many of the disputes that arise now between the Broadcasters, MSOs and Cable Operators can be resolved in the interest of the consumers i.e. subscribers who get the signals from the cable operators.

In this petition we have to consider only the first prayer i.e. Prayer (a).

Prayer (b) is too widely worded without any particulars and has no meaning. Such prayer cannot be granted.

As far as Prayer (c), this Tribunal is not concerned with the disputes between Respondents *inter-se*. However, during the course of hearing, in the interest of consumers, we have tried that the differences between Respondent No. 1 (MSO) and Respondents No. 2 & 3 (Broadcasters) are removed so that the interest of subscribers do not suffer. To this end, we were able to succeed but this should not be quoted as a precedent in future in other cases.

We cannot grant Prayer (d) which has been made in as much as Respondent No. 1 (MSO) has not made any commitment to the Respondent No. 2 & Respondent No. 3 (Broadcasters). We cannot possibly direct Respondent No. 3 in the present petition to remove its switch off warning since it amounts to breach of agreement between Respondent No. 1 and Respondent No. 3. For this, in any case, after the Regulation framed by TRAI notice is required for any breach of conditions of the agreement to switch off the signals.

Prayer (e) has again no meaning and has to be rejected.

As far as Prayer (f) & (g) are concerned, these are only for the consideration of the Tribunal.

6. The case was listed on 25th June 2004 when emergent notice was given to Respondents and was listed on 28th June 2004 for directions/further proceedings.

7. On 28th June 2004, Petitioner submitted an application that he was under threat by Respondent No. 1 and prayed that Respondent No. 1 be asked not to indulge in untoward action. The Counsel for Respondent No. 1 stated that the application lacked essential details and wants time to file reply. Counsel for Respondent No. 1 stated that while no reply has been given, the matter was under negotiation with the petitioner. He also stated that a letter dated 8.6.2004 had been sent to the petitioner in furtherance to settle the matter amicably. Counsel for Respondent No. 1 admitted that the signals had been disrupted on 17th May 2004. After hearing in some detail, the following order was passed by this Tribunal:-

“Prima facie, therefore, it appears that without the process of dialogue having been gone through fully signals have been withdrawn from the petitioner, which is, in my view, an act which does not set a healthy precedent and is certainly not in the interest of the consumers. Counsel for Respondent No. 1 states that he will make all efforts to see that the signals are restored to the petitioner by the broadcasters at the earliest.

Having heard the petitioner and counsel for Respondent No. 1, it is quite clear that even while the process of discussion and dialogue was still on between the petitioner and the Respondent No. 1, the signals of ESPN and Star TV, for some reasons, continue to remain withdrawn from the petitioner.

While it is appreciated that Respondent No. 1 has offered to make all sincere efforts to get the signals restored in the circumstances of the case, I hold that this disruption cannot be allowed to go on for long and, therefore, I direct that the parties enter into a dialogue immediately and sort out the matter and in the meantime respondent nos. 1 & 2 should ensure that the signals are restored within the next two days.

The matter be put up for hearing again on 6th July 2004 for directions/further proceedings. It is made clear that respondents may file the replies before that date.”

8. On 30th June 2004 M.A. No. 61 of 2004 was filed by Respondent No. 2. Urgent notice was issued and case listed on 1st July 2004 for directions/further proceedings.

9. On the next date of hearing i.e. 1.7.2004, Learned Counsel for Respondent No. 1 informed the Tribunal that signals had been restored and a dialogue was on between Respondent No. 1, Respondent No. 2 & Respondent No. 3 to resolve some outstanding matters. The Tribunal on that day passed the following order:-

“In the context of M.A. Nos. 61 of 2004 filed by Respondent No. 2, it is noted that there is no contract between the petitioner and Respondent No. 2.

Learned Counsel for Respondent No. 1 informs that the relevant signals have been restored to the petitioner and a dialogue is on between Respondent No. 1 and Respondents Nos. 2&3 to restore certain outstanding matters. In the context of M.A. No. 61 of 2004 filed by Respondent No. 2, it is noted that there is no contract between the petitioner and Respondent No. 2. It is also noted that the signals are being given by Respondent No. 1 to the petitioner on the basis of the signals being received by him from Respondent No. 2 as of now. If there are

inter se disputes between Respondent Nos. 1&2 it is expected that the parties will keep the process of dialogue on in order to reach a satisfactory conclusion at the earliest and ensure that disruption of the signals does not take place.

The parties also indicated their resolve to make all efforts to settle their disputes and reach a mutually satisfactory conclusion before 6th July 2004. Meanwhile, Respondent No. 1 undertakes to pay Rs. 3.30 lakh by 2nd July 2004 to Respondent No. 2 without prejudice to the contentions of the parties.

M.A. No. 61 of 2004 is disposed off accordingly.”

10. Parties indicated their resolve to make all efforts to settle their disputes. In the subsequent hearings the petitioner was directed to pay fee for 4 months @ Rs. 22,485/- per month for May, June, July and August 2004. On 13th September 2004, following order was passed:-

“After hearing the petitioner and Mr. C.S. Vaidyanathan, learned senior counsel for Respondent No. 1 for some time, we feel that the dispute ultimately boils down to the number of subscribers. Though it is also the contention of Mr. Vaidyanathan that the Franchise Agreement (Annexure-`A` page-21) is a different agreement which Respondent No. 1 MSO entered with the cable operators. The form of that agreement shall be brought on record. To shorten the controversy, the petitioner shall file an affidavit with supportive documents, if any, to give the figure of the number of subscribers with a copy to learned counsel for Respondent No. 1. That affidavit shall be filed within one week. Thereafter if Respondent No. 1 disputes the figure, he shall file an affidavit pointing out as to how the figure of the subscribers given by the petitioner is not acceptable to him.

In the meanwhile, the petitioner shall go on paying Rs. 22,485/- for other months till the disposal of the petition. To be listed again on 5th October, 2004 for further proceedings/hearings. Till then, status quo shall be maintained.”

11. The petitioner submitted on 14th October 2004 before this Tribunal in the presence of the Respondents that he has brought the relevant books showing the number of subscribers and he was prepared to show the same to the Respondents on that day itself.

12. On 15th December 2004 when the case was listed for arguments, the learned counsel for Respondent No. 1 asked for time to file an affidavit to bring out all the

discrepancies about the subscribers. A copy of the subscribers' list available with the petitioner was given to the counsel for the respondent.

13. The case was listed again on 24th February 2005 when the case was argued by Respondent No. 1. The learned counsel for Respondent No. 1 said that he was ready to accept the subscriber base given by the petitioner. He said that he was willing to continue supply of signals to the petitioner and offered two options as under as regards the charges are concerned:-

Option 1 – As per the existing agreement he is willing to charge the following rates:-

- (i) At the rate of Rs. 20/- for subscribers getting free-to-air channels.
- (ii) At the rate of Rs. 110/- to subscribers using Set Top Boxes (STB) and getting all the pay channels.

Option 2 – As an alternative he suggested that he could give all the channels i.e. pay channels and free-to-air @ Rs. 250/- per subscriber on a declared base. For this, however, a new contract will have to be mutually agreed upon and signed.

14. The petitioner was asked whether he was ready to accept any of the two options offered by the Respondent. He asked for time to deliberate on the issue and file his reply. Based on his request he was given time and the case was listed for final hearing/disposal on 7th March 2005.

15. On 7th March 2005, the petitioner stated that he was charging only Rs. 100/- per month from his subscribers and, therefore, he cannot afford to accept Option 2 and go in for a new contract. On the second option, however, he wanted to bring out the irregularities and malpractices being adopted by various Cable Operators and MSOs. He was advised to stick to the petition and his prayer. On this he reconfirmed his non-acceptance of Option 2.

16. Having gone into the details of the case and having heard both the sides we feel that both the options offered by the Respondent are quite fair. The first option is as per the agreement already entered upon by the petitioner with the respondent. The second option also appeared to be reasonable since, it is common knowledge that normal charges being levied by various Cable Operators vary generally from about Rs. 250 to Rs. 380 per month depending upon the locality one lives in. Since the petitioner is charging his customers as per the old agreement and the same is being offered by the Respondent to remain operative, we feel the matter automatically stands resolved.

17. We direct that Respondent No. 1 continues providing signals as per the agreement for a subscriber base of 498 as declared by the Petitioner and as accepted by Respondent No. 1. We also direct that the effective date for this subscriber base and the charges to be paid by the petitioner to the respondent will be from the date of this judgement.

18. The Petition No. 18 (C) of 2004 along with M.A. Nos. 125 of 2004, 128 of 2004, 131 of 2004, 132 of 2004 and 152 of 2004 stands disposed off. No order as to costs.

.....J
(D.P. Wadhwa)
Chairperson

.....
(Vinod Vaish)
Member

.....
(D.P. Sehgal)
Member