

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

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DATED 22ND JULY, 2005

Petition No.41(C) of 2004

Indusind Media and Communications Limited
Having its registered office at
315-G, New Charni Road
Next to Hinduja College
Mumbai 400 004

And Local Office at

Indusind Media and Communications Limited
2nd Floor, B71/1 Shivaji Marg
Motinagar, New Delhi

...Petitioner

Vs

1. Star India Private Limited
205, Okhla Industrial Estate
Phase-III
NEW DELHI 110 020

2. Telecom Regulatory Authority of India
A-2/14, Safdarjung Enclave
NEW DELHI 110 029

.....Respondents

BEFORE:

**HON'BLE MR.JUSTICE N. SANTOSH HEGDE,
CHAIRPERSON**

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

For Petitioner : Mr.Arun Kathpalia with Mr.Susmit Pushkar, Advocates for Bajpai & Co.

For Respondent No.1 – Star India Pvt. Ltd. : Mr.Rajiv Nayar,Senior Advocate with Mr.Gopal Jain, Ms.Kanika Agnihotri, Mr.Sarvesh Singh, Ms.Simran Brar, Advocates

For Respondent No.2- TRAI : None

ORDER

We have heard the learned counsel for the parties. In this petition, the petitioner contends that it is a Multi System Operator (MSO) engaged in the business of providing *inter alia* cable TV service and the respondent no.1 had been providing cable TV signals to it for more than eight years. It is also stated in the petition that the respondent no.1 had executed an Agreement dated 11th August,2004 with the petitioner for the purpose of *inter alia* providing various Star channels across India (excluding Hyderabad) on terms and conditions contained in the said Agreement. A copy of the said agreement dated 11th August,2004 has been annexed to the petition as Annexure 'A'. It is further stated in the petition that as demanded by the respondent no.1 the petitioner has provided all information regarding its operators in each city, including in the city of Delhi vide its e-mail dated 10th June, 2004. It is also asserted that the petitioner has complied with the terms of the Agreement between the parties. In spite of the same it is contended on behalf of the petitioner that the respondent no.1 had, without any reason and without any prior notice, disconnected the signals to the petitioner on 24th September,2004 to its Delhi Network, which the petitioner contends is contrary to clause-7 of the Agreement between the parties. Hence the petitioner has prayed for a direction to the respondent no.1 to restore the signals to its Delhi Network and not to disconnect the signals of any of the centers of the petitioner in India. There is a prayer also for a direction to pay damages.

2. Respondent no.1 in its counter filed before this Tribunal has contended that the petitioner has been making under-declaration/mis-declaration of subscribers thereby causing loss to it. It is also contended that petitioner owes substantial sums to it towards non payment of outstanding dues. Hence under clause-6 of the terms of the Agreement referred to hereinabove, it had to deactivate/suspend the services to the petitioner's network at Delhi.

3. We have perused the pleadings of the parties and having heard the learned counsel, we think this petition is liable to be allowed on a short ground on non-issuance of required notice.

4. As per the agreement dated 11th August, 2004 (Term Sheet) enclosed to the petition, it is provided thus:

“In the event of non-compliance with the terms and conditions of the subscription agreement by any IMCL network, STAR India agrees to give a seven days' notice before deactivating/suspending services of STAR Channels to such network.”

5. It is clear from the said Agreement between the parties that the petitioner was entitled to seven days' notice if the respondent no.1 wanted to terminate the signals to the network of the petitioner for any default alleged by the respondent no.1. It is an admitted fact that in the instant case there has been no such notice issued. However, the learned counsel for the respondent no.1 contends that as per clause-6 of the said Agreement it is entitled to disconnect the supply of signals to the petitioner in case of default on the part of the petitioner. Clause-6 of the agreement reads thus:

“Star India and IMCL agree to enter into subscription agreement/s for services of STAR channels w.e.f. July 01,2004, for IMCL Networks in cities listed in Table II to Annexure “A”, within seven days from the date of execution of this Term Sheet. A draft of the Subscription Agreement has already been handed over by STAR India to IMCL, which IMCL hereby acknowledges. Further, IMCL agrees that its local representatives in each city are authorized to deal with all ground issues including connectivity and subscriber movement and correspond with STAR India in this respect. IMCL shall not dispute and shall honour all commitments made to STAR India by IMCL’s local representatives in each city. The Subscription Agreement will be signed in Mumbai by the authorized signatories of STAR India and IMCL and copies of the Subscription Agreement/s duly executed by both Parties will be given to IMCL.”

6. Having perused the said clause of the Agreement, we noticed that this clause only enables the respondent to call upon the petitioner to enter into the Subscription Agreement for services of its channels in the cities listed in the said Agreement and it also makes it imperative for the petitioner to enter into such Agreement within seven days from the date of execution of the Term Sheet and emphasizes certain other conditions on the petitioner, but it nowhere authorizes the respondent to unilaterally disconnect the signals to the network of the petitioner without notice. On the contrary, termination could only be done by the respondent for any valid reasons as per the conditions laid down in clause-7 of the said Agreement (Term Sheet) which specifically says that the respondent should give a seven days’ notice before deactivating/suspending services of its channel to such network. On fact, it is seen that no such notice has been issued and this ground alone would suffice for us to allow this petition.

7. We do not intend going into the questions and various other pleas taken by the petitioner and Respondent no.1 in their respective pleadings. We leave those issues open. We also make it clear that if there is any cause of action for the respondent to discontinue the signals to the network of the petitioner on any future date, same can be done by complying with the requirements of the terms of the Agreement and provision of para-4 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 which has since come into force.

8. For the present petitioner is not entitled for any other relief except for a direction that respondent no.1 shall provide signals, if not already provided, on the terms and conditions as was prevailing on 24th Sepetember,2004 if not mutually agreed otherwise. Petition is allowed to the extent. No costs.

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(N. Santosh Hegde)
Chairperson

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(Vinod Vaish)
Member

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(D.P.Sehgal)
Member