

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

DATED 20th APRIL, 2006

Petition No.100 (C) of 2005

Home Cable Private Limited,
19, CSC DDA, Sukhdev Vihar,
New Delhi-25

...Petitioner

Vs.

M/S Zee Turner Limited,
5th Floor, Radisson Plaza,
N.H-8, New Delhi-110037.

...Respondent

BEFORE:

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

MR. VINOD VAISH, MEMBER

LT.GEN.D.P.SEHGAL(RETD.),MEMBER

For Petitioner : Mr.Prabhat Kumar,Advocate

For Respondent : Mr.Maninder Singh with
Mr.Yoginder Handoo,
Mr.Tejevver Singh Bhatia, Advocates

ORDER

The Petitioner is a Multi-system Operator in Delhi, engaged in the business of receiving TV signals from the broadcasters and retransmitting it

to the Cable Operators/Subscribers. The Respondent is a Broadcaster of TV signals. The

Petitioner claims to have entered into a subscription agreement dated 1/1/2003 with the respondent for supply of Cable TV signals with a subscriber base of 2200 on monthly subscription fee of Rs.1,10,000/-. Copy of the subscription agreement signed by both the parties has not been produced before us. According to the petitioner the same has not been supplied to it by the Respondent, as such a copy of the agreement signed by the petitioner that was handed over to the respondent has been filed along with the petition. The said written

agreement was valid till 31/12/2003, however signals were continued beyond the period by the broadcaster on the basis of some oral understanding between the parties.

The petitioner has alleged that the respondent has been issuing invoices for inflated amounts of subscription fee and has been arbitrarily altering the terms and conditions of the subscription agreement. The Petitioner has each time represented in writing as well as orally to the respondent against these invoices and has asked for rectification/clarification, however the respondent has not cared to reply.

Vide letter dated 30/8/2005 respondent has demanded an amount of 13,14,519/- claiming it to be arrears as on date and threatened the petitioner with disconnection w.e.f 30.9.2005. Petitioner has disputed this amount and has stated that up to date payments have been made by it to the respondent.

2. In the petition the following prayers have been made:

- (a) Direct Respondent to continue to supply its channels being received/shown by the petitioner, without any obstruction or hindrance.
- (b) Direct the Respondent to declare the rates of its individual channels.
- (c) Direct the Respondent to permit the petitioner to subscribe to individual channels that it wishes to subscribe to for redistribution to its subscribers and accordingly charge on the basis of the individual rates declared by the Respondent.
- (d) In view of the above averments, direct the Respondent to correct/rectify the invoices raised till date with respect to the Petitioner.
- (e) Pass such other order or orders as this Hon'ble Tribunal may deem just and proper under the facts and circumstances of the matter.

Pending the consideration of this petition, prayer for interim relief was also made seeking direction to the respondent to not to disconnect the signals of channels of the respondent being shown and redistributed by the petitioner. On 28/9/2005 the Tribunal gave directions that "status quo in regard to supply of signals shall be maintained".

3. The subscription agreement dated 1/1/2003 stipulated payment of subscription fee of Rs.1,10,000 on a subscriber base of 2200 meaning thereby that the rate per subscriber was Rs.50/-. It appears that the subscription rate was increased to Rs.55/- soon after. According to the respondent this was done because CNBC channel was added to the bouquet of channels because of which the rate was enhanced from Rs.50/ to Rs.55/-.

Vide invoice of 30.4.2005 the respondent again increased the subscription fee by 7% and started charging Rs.58.85 per month per subscriber.

With effect from March 2004 respondent started raising invoices on a subscription base of 2970 instead of 2200 subscribers, however w.e.f. April 2005 it started charging for only 2200 subscribers which has continued till the date of filing of the petition.

4. According to the petitioner, it has been paying the monthly subscription regularly and without any default, including the subscription fee of August 2005, and according to it there is no amount outstanding to be paid to the Respondent. The petitioner has also stated that in spite of requests made by the Petitioner for clarification regarding the wrong and inflated demands no explanation or clarification was received from the Respondent.

The petitioner claims to have furnished to the Respondent the detailed list of subscribers at the time of entering of the agreement and has also informed the respondent of the changes that have taken place in the subscriber base. The petitioner has filed details of the subscribers as well as the subscription rate as on 31/3/2005 along with the petition as Annexure GG.

5. According to the Petitioner the cause of action has arisen in its favour and against the Respondent on various dates when wrong inflated invoices were raised and also when the letter dated 30/08/2005 claiming arrears of Rs.13,14,519/- was sent to the Petitioner. It also arose on various dates when the Petitioner requested for rectification of Invoices and reconciliation of accounts. It also arose on 09.09.2005 when the Petitioner furnished to the officials of the Respondent all relevant details regarding the Subscription Base and the Respondent has refused to furnish any clarification, nor has it come forward for reconciliation of Accounts.

6. The Petitioner has enclosed with the petition as Annexure D a "Statement of Accounts" for the period January 2003 to August 2005. This indicates monthly payment of Rs.1,07,800 during the period January 2003 to May 2003. In July payment of Rs. 1,21,000 was made in two installments and monthly payments at this rate were continued till December 2003. From mid December 2003 till mid March 2004 CAS had become operational as such no payments were made during the period January 2004 to February 2004. Thereafter from March 2004 till April 2005 monthly payments have been made @ Rs.1,00,100/- and thereafter from May 2005 to

August '05 @ Rs.1,07,107/-, (the last payment rate was stated to be inclusive of the 7% increase demanded by the Respondent).

The Petitioner has explained in the petition that w.e.f. Jan '04 payments were made by it on the basis of a subscription base of 1820 subscribers as one of the Cable Operators, namely KD Network with a base of 380 subscribers had moved away from the Petitioner w.e.f. 14/1/2004 and Petitioner is stated to have informed the Respondent about it by his letter of 26/3/2004 which is Annexure-C to the petition. According to the petitioner, the respondent agreed to accept the change in the subscriber base and accordingly received the monthly subscription on the reduced connectivity of 1820 subscribers. However, the Respondent has totally denied this contention of the Petitioner and has challenged the unilateral action of the petitioner of reducing the subscription fee without taking prior consent of the Respondent.

7. In its reply to the petition the respondent has stated that initially the petitioner had entered into a subscription agreement dated 7/3/2002 with the respondent on a declared subscription base of 2200. Thereafter another agreement dated 1/1/2003 was signed with a declared subscription base of 2200. The respondent has annexed as R-1` a statement of account for the period 1/2/2002 to 25/10/2005 indicating an outstanding amount of Rs.14,65,871.70. This is stated to be on the basis of the declared subscriber base of 2200. According to the Respondent the petitioner was having an outstanding of Rs.69,636.77 as on 15/4/2003. Further it has been stated that w.e.f 1/1/2005 a second bouquet was given to the petitioner for transmission which was charged @ Rs.25/- and a copy of challan cum issue note intended to show the issue of IRD (decoder) boxes to the petitioner of the channels comprising the second bouquet, has been annexed as Annexure R-2 with the counter affidavit. According to the Respondent the petitioner was duly notified about the change in the structure of the bouquets of the respondent vide its letter of 11/11/04.

8. The respondent has along with its reply also submitted a counter claim on the basis that the Petitioner has admitted in its petition that it has a listed subscriber base of 3837 as on 31/3/2005 whereas it was only paying for 1820 subscribers. With effect from March '05 under declaration of 1637 subscribers (3837 minus 2200) has been assumed and at the rate of Rs.58.50 for Bouquet I and Rs.25/- for Bouquet II up to 15/6/2005 and for the period beyond at Rs.64.85 for Bouquet I and Rs.27.50 for Bouquet II, an additional liability has been computed of Rs.11,60,715/-. This has been added to the amount stated to be outstanding on a declared subscriber base of 2200 for the period up to 25/10/2005 and total liability has been computed as Rs.26,26,586.70. The respondent has further prayed that this amount be decreed along with interest @ 18% till the date of actual payment in favour of the Respondent and against the Petitioner.

9. In its rejoinder to the reply affidavit and reply to the counter claim, the Petitioner has denied having subscribed to Bouquet-II. It has challenged the Statement of Accounts annexed with the counter affidavit. It has reiterated the justification for reducing the subscription base from 2200 to 1820. As regards Annexure-GG in which it has disclosed a subscriber base of 3837 the Petitioner states that these figures have been provided for the purpose of initiating negotiations and for arriving at a fresh written agreement at commercially viable and reasonable terms.

10. Significantly, in regard to Bouquet-II the Petitioner while categorically denying that it has never entered into any agreement for distribution of the Bouquet-II channels of the Respondent, has also specifically denied that challan-cum-issue note with respect to the IRD (integrated Receiver Decoder) boxes was ever issued to the Petitioner and it has also denied that it received the said IRD boxes. Further it has been stated that it has also not been distributing the signals of the new channels of Bouquet-II. Since the Petitioner has never executed any agreement for receiving the Bouquet-II and it has not distributed the signals of the new channels of Bouquet-II, it has been contended that the Respondent has wrongly charged @ Rs.25/- per subscriber for the second bouquet w.e.f. 1/1/2005.

In regard to the counter claim, the Petitioner has specifically denied that it has been illegally providing signals to 1637 extra subscribers. According to the Petitioner it has been paying monthly subscription as per the prevailing negotiated and agreed terms. It has denied that it is liable to pay to the Respondent for anything over and above 1820 subscribers as of today. It has denied that the Petitioner is liable to pay for 3837 subscribers as is being claimed by the Respondent and has specifically denied that it is liable to pay the amount of Rs.11,60,715/- for the under declaration.

11. The parties have chosen to present their case for decision on the basis of their pleadings. We will therefore base our decision on the material placed before us. On the basis of these pleadings for the purpose of deciding the matter before us, we need to consider the following issues:-

- (i) what should be the subscriber base for the purpose of computing the monthly subscription fee to be paid by the Petitioner to the Respondent.
- (ii) Is the petitioner liable to pay for Bouquet-II?
- (iii) Is there any merit in the counter claim of the respondent in which he has demanded a sum of Rs.14,65,871.70 on a subscriber base of 2200 as on 15/10/2005 and a sum of Rs.11,60,715/- for the under declaration
- (iv) What is the relief that can be given to the petitioners.

12. We have heard the learned counsels and based on the arguments and the pleadings we now deal with each of these issues.

As regards the subscriber base we would like to rely on the clear assertion made in this regard by the respondent in para-3 of its counter affidavit which we reproduce below:

“It is denied that the subscription agreement dated 1/1/2003 is valid and subsisting today. The aforesaid agreement dated 1/1/2003 expired on 31/12/2003. After the expiry of the terms of the agreement on 31/12/2003, the arrangement of the payment by the Respondent on the same subscription base had continued, on the premise that the petitioner had believed the declaration made by the Petitioner to be true. It is submitted that during this period there was a clear understanding between the Petitioner and the Respondent that the payments for the bouquet of the petitioner will be made by the respondent as per the rates prevailing during the aforesaid period on subscription base of 2200”.

We are not inclined to accept the contention of the Petitioner justifying the reduction made by it in the said subscriber base from 2200 to 1852 on the ground that one of the cable operators had migrated to another MSO. This figure of 2200 of the subscriber base is an agreed figure and could not have been unilaterally modified by the petitioner. In the face of the clear denial by the Respondent that it had ever agreed to the said reduction, as stated by the Petitioner, and for want of any evidence to corroborate the assertion of the Petitioner in this regard, we reject the contention of the Petitioner. We would not like to go into the question as to who is to be blamed for the failure to arrive at a written agreement for the supply of signals for the period beyond 31/12/2003 which is the date of expiry of the agreement dated 1/1/2003. In the absence of any written agreement in regard to the subscriber base for the period beyond 31/12/2003 and in the light of the fact that signals have been continued during this period, we would rely on the understanding referred to by the respondent in para-3 of its counter affidavit and hold that the subscriber base would be taken as 2200 and subscription fee would be payable at the rates prevailing during the said period. In fact we consider it appropriate to direct that this position would prevail for a further period of 30 days from the date of this order as we intend to give to the parties this period of time to sit across and negotiate the terms of a fresh agreement on terms which should be reasonable and fair.

13. In regard to Bouquet-II we find that there is no evidence to indicate that the Petitioner had ever agreed to subscribe to the channels contained in the said bouquet. On the other hand in a number of letters the Petitioner has objected to his being charged for Bouquet-II and has been clearly stating that it is not transmitting the signals of the said bouquet. The communications including the challan regarding issue of decoders are all documents originated by the Respondent and there is nothing to indicate that any kind of consent was obtained from the

petitioner. We therefore, reject the contention of the respondent and accept the position taken by the petitioner that it is not liable to pay for Bouquet-II.

14. As regards the counter claim made by the Respondent we are of the view that this is a clear case of afterthought and deserves to be rejected outright. From the large number of letters exchanged between the two sides it is abundantly clear that no attempt was made by the respondent to explain to the petitioner the basis of its invoices and it appears that the details in this regard were made known for the first time during the pendency of the petition before us. We are inclined to hold that the respondent was duty bound to explain to the petitioner the basis of its demand of Rs.13,14,519/- which we find it failed to do and as such we question the validity of the impugned notice of 30/ 9/2005. We would however, like to clarify at the same time that, as already mentioned earlier, the petitioner would be liable to pay at the prevalent subscriber rate for the said bouquet on a subscriber base of 2200 till the expiry of 30 days after the date of this order. For the subsequent period a fresh agreement as already mentioned would need to be negotiated and entered into between the parties. It goes without saying that the accounts would need to be reconciled by both sides sitting across the table and during this exercise our findings in this petition would be duly taken into account. This exercise should be completed within the period of 30 days from the date of our order. The Petitioner is directed to discharge during this period of time his liabilities that arise from this accounting exercise as we have noticed from the accounts submitted by the respondent that the petitioner has been paying a sum of Rs. 1,04,704/- monthly during the period of this petition which may be falling short of the amount that he would be liable to pay in terms of our present order. During the course of hearing we asked the respondent to give to us a statement indicating the outstanding amount on the basis of 2200 subscribers for Bouquet-I and as on 31.1.2006 this amount is stated to be Rs. 6.97 lakhs and the monthly billed amount is Rs. 1.42 lakhs. Thus on this basis the outstanding amount should be approximately Rs. 8.11 lakhs on the date of this order which we direct the petitioner to pay forthwith (in any case not later than 7 days from the date of this order) to the respondent, pending final settlement of accounts. Subject to this stipulation we direct that signals would be continued to be provided by the respondent to the petitioner for a period of 30 days from the date of this order to enable the parties to settle the accounts in terms of this order and also in the mean time complete their negotiations and arrive at an agreement for supply of signals in the future.

15. In the light of our above determinations, we do not consider it necessary to give any other relief to the petitioner.

16. The petition is disposed of accordingly with no order as to costs.

.....J
(N. Santosh Hegde)

Chairperson

.....
(Vinod Vaish)
Member

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