

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

Dated 17th January, 2006

**Petition No.44(C) of 2004
(MA No.252 of 2005 and MA No.197 of 2005)**

Star India Pvt. Ltd.
205-206, Okhla Industrial Area
Phase-III
New Delhi –110 020

.....Petitioner

Vs

Indusind Media & Communications Ltd.
71/1, 2nd Floor, Shivaji Marg
Najafgarh Road
Moti Nagar
New Delhi – 110 062

....Respondent

BEFORE :

**HON'BLE MR.JUSTICE N. SANTOSH HEGDE
CHAIRPERSON
MR.VINOD VAISH, MEMBER
LT.GEN.(RETD) D.P. SEHGAL, MEMBER**

For Petitioner : Mr.Harish Salve, Sr. Advocate with
Mr.Gopal Jain, Ms.Ruby Singh Ahuja
Ms.Kanika Agnihotri and Mr.Ashish
Jha, Advocates.

For Respondent : Mr.Arun Kathpalia, Advocate with
Mr.Gohan, Advocate

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ORDER

The parties to this petition will be referred to in this order by their names. Both of them are service providers in the cable industry. Star India Pvt. Ltd. (Star) is a broadcaster while IndusInd Media Communications Ltd. (IMCL) is a multi-service operator (MSO). Certain disputes arose between the parties in their relationship as service providers. Consequently, both Star and IMCL almost simultaneously approached this Tribunal for redressal of their grievances.

IMCL's petition came to be numbered as Petition No.41(C) of 2004. In the said petition, following reliefs were sought:-

- “(a) Direct Star i.e. Respondent No.1 herein to restore the signals to IMCL's Delhi network;
- (b) Direct Star i.e. Respondent No.1 herein not to disconnect the signals of any centre of IMCL in India;
- (c) Direct Star to pay damages suffered by the Petitioner due to said disconnection;
- (d) To pass ex-parte / interim / ad-interim orders in respect of the above prayers; and
- (e) Pass such other and further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

Star's petition came to be numbered as Petition No.44(C) of 2004 wherein it prayed for following reliefs:

- “(a) issue a direction to the respondent to enter into and execute a subscription agreement, a copy of which was handed over to the Respondent and duly acknowledged on 11th August, 2004;
- (b) issue a direction to the Respondent to pay damages to be quantified by the Petitioner:-
 - (i) for breach of agreed terms of business;
 - (ii) for unauthorisedly giving/using/receiving signals of the Petitioner;
 - (iii) for giving signals of the Petitioner in areas in respect of which the Petitioner had other subsisting agreements with other cable operators;

- (c) to pass any and further appropriate orders which may deem fit and proper in the circumstances of the case including a direction to the Respondent:-
- (i) to give a list of its operators with effect from December, 2003;
 - (ii) to declare the exact number of subscribers from whom it received and collected subscription fee;
 - (iii) to specify the area and territory in which it supplied signals;
 - (iv) to disclose whether the Respondent has given signals to cable operators/ sub-operators in areas such as Pamposh Enclave, Nehru Enclave, Kalkaji;
 - (v) to disclose whether the Respondent has received signals after 24.09.2004 and if so from whom.”

This Tribunal in the petition of IMCL made an interim order directing Star to forthwith reconnect its signal which was earlier disconnected by Star. This interim order was made on 13th October, 2004.

Being aggrieved by that interim order, Star approached the Hon’ble High Court of Delhi by way of a Writ Petition (C) No.16851/2004 questioning the correctness of the said interim order.

The learned Single Judge of the High Court in the said Writ Petition on 15.10.2004, while issuing notice to the respondent, issued the following interim direction:-

“Till the next date of hearing, it is directed that as an interim arrangement, the respondent shall execute the agreement with the petitioner as provided for by the petitioner subject to the condition that the clauses objected to by the respondent in terms of pages 173-174 shall not operate against the respondent. The interim order of the Tribunal stands modified to that extent.”

That interim order of the learned Single Judge was taken up in appeal by IMCL before a Division Bench of the High Court which ultimately agreed with the

interim order made by the learned Single Judge and directed the same to be in operation till the main petition was finally disposed of by this Tribunal.

By virtue of the directions of the learned Single Judge, parties entered into an agreement which according to Star is only an interim arrangement subject to the final decision of this Tribunal.

When the Petition No.41(C) of 2004 came up before this Tribunal for final disposal, this Tribunal by its order dated 22nd July, 2005 held that the disconnection of signals by the Star was in contravention of Clause 7 of the agreement dated 11th August, 2004 which was then current between the parties and which clause mandatorily required Star as a broadcaster to give a minimum of seven days notice before deactivating/suspending its services. This Tribunal also held that it was examining only the limited question of validity of termination of signals and it made it clear that it was not going into other questions raised in the said petition. While so directing the reconnection of signals, it was also observed that the said order did not come in the way of Star disconnecting the signals in future if it had a cause of action to do so but same may be done only by complying with the terms of the agreement if any, and provisions of Para 4 of the Telecommunication Broadcasting & Cable Services (Interconnect Regulations), 2004 (for short "Interconnect Regulations 2004") which had, by then, come into force. With the above direction Petition No.41(C)/2004 of IMCL stood disposed of.

Now, Petition No.44(C) of 2004 filed by Star has come up for hearing. As noted above, in this petition Star has sought a number of reliefs. Shri Harish Salve, learned senior counsel appearing for the petitioner submitted that for the limited purpose of the disposal of this petition and without prejudice to Star's contention in

regard to other prayers sought in the petition, he would confine his plea only to a direction to be given by this Tribunal to IMCL to enter into and execute a subscription agreement copy of which according to the learned senior counsel was handed over to IMCL on 11th August, 2004. He further submitted that after coming into force of the Interconnection Regulations 2004, it has become mandatory for the parties concerned to enter into a written subscription agreement and, therefore, it is necessary that IMCL should enter into such an agreement if it still wanted the signals of Star and it cannot continue to receive signals by virtue of an interim order or from an interim agreement made consequent to an interim order of a court. He also contended that even the final order of this Tribunal dated 22nd July, 2005 made in Petition No.41(C) of 2004 will not come to the aid to the IMCL to contend that it is entitled to receive Star's signals without a proper agreement. Shri Salve submitted that his clients have sent a draft agreement for the approval of IMCL but IMCL has not agreed to many of the terms therein hence it seems that a negotiated agreement is not possible. In spite of the same, IMCL is insisting on receiving Star's signals solely because of the interim order made by the High Court and this Tribunal which has come to an end. According to the learned counsel, the signing of the agreement being mandatory even if the terms proposed by the Star are not acceptable for any reason to IMCL it is for the latter to take steps as is permissible in law for the redressal of its grievances and not compel Star to give signals by unilaterally claiming that certain terms are either unreasonable or discriminatory. It is for IMCL to approach this Tribunal for redressal of its grievances in regard to the terms offered by Star without which it cannot expect to receive signals from Star.

Shri Arun Kathpalia, learned counsel for IMCL submitted that by virtue of the interim directions made by the Hon'ble High Court of Delhi the parties have entered

into an agreement and that agreement is binding on Star and it is obliged to supply signals to IMCL on the basis of the terms mentioned in the said agreement. He submitted that the said agreement is still current and binding on the parties and hence it is not open to Star to challenge the terms of the said agreement. He alternatively submitted that since the entire matter is before this Tribunal and parties have joined issues on the validity of the terms proposed by Star, this Tribunal should adjudicate on the same and decide whether IMCL is obliged to enter into a fresh agreement with Star. He pointed out from the order of this Tribunal dated 22nd July, 2005 that this Tribunal had left all those issues open in the earlier petition.

We are not inclined to accept the arguments addressed on behalf of IMCL for more than one reason. The agreement on which IMCL relies as current agreement is an agreement which was entered into by virtue of an interim direction made by the Hon'ble High Court which order itself had directed that agreement to be current till the final disposal of the petition. Therefore, in law that agreement came to an end when Petition No.41(C) of 2004 was finally disposed of by this Tribunal. It is also relevant to note that neither the High Court nor this Tribunal have decided on the reasonableness or otherwise of the fresh terms proposed by Star which can be agitated only in a properly instituted petition and not by way of a collateral proceedings. We are also in agreement with learned counsel for Star that as per the Interconnect Regulations 2004, it is mandatory for the parties to enter into an agreement, copy of which actually has to be registered with the Telecom Regulatory Authority of India or authorised officer as per regulations framed by it.

We also notice the fact that IMCL is now basing its right on an agreement which was entered into between the parties by virtue of the interim direction of the High Court. Terms of this agreement have been accepted by Star only because of

the interim direction of the High Court and not voluntarily. A party to the contract cannot unilaterally discard some terms of the proposed contract and still demand the fruits of the contract. Though supply of signals is mandated under the Regulation, on reasonable terms, the Regulation does not stipulate what that reasonable term should be. Therefore, if a dispute arises between two contracting parties in regard to reasonableness of a term it has to be decided by an authorised forum like this Tribunal and not by any single party to the contract. Even the question of the right of a party to receive signals during the pendency of the dispute is a matter to be decided by an independent authority and not by any one of the contracting parties. Therefore, it is not open to IMCL to decide for itself that it will keep on receiving the signals on its own terms without challenging the terms not acceptable to it. Therefore, in cases where the parties are unable to agree on terms of a contract, either of the party cannot take the law on its own hands instead the aggrieved party should approach this Tribunal which is authorized under law to adjudicate such disputes between the parties and during that adjudication proceedings is also authorised to make such interim arrangements depending upon fact of each case, bearing in mind the law applicable and the public interest involved.

This raises another question as to who has to approach this forum for the redressal of its grievance.

Shri Salve contends that it is the signal seeker who should approach this forum while Shri Kathpalia contends that it is the broadcaster who should approach the Tribunal if the receiver of signals disagrees with the terms of the agreement.

We do not find much difficulty in deciding this issue. The broadcaster is the owner of the signals. If any of the other service providers seeks his signals,

normally it should be on agreed terms. The right to propose the terms is with the seller but this right is regulated by the Interconnect Regulations which mandates the owner of the signals to supply signals on a “must provide” basis and on reasonable terms. At the same time, the Regulations governing the subscription agreement require a written agreement being signed before the supply of signals. On a perusal of these regulations we are of the opinion that seeker of the signal must negotiate with the supplier of signals and if such negotiations fail he should approach this Tribunal for redressal of his grievances. In such cases if the seeker of signals wants immediate signals or his current signals not to be disrupted, it can always pray for an interim arrangement being made by this Tribunal and the Tribunal may in a given case protect the interest of both the parties by making suitable interim orders.

In the above view, we hold in the instant case, IMCL being the seeker of the signals, if the terms proposed are not acceptable on grounds of unreasonableness it may challenge the same and in a petition so challenging it, may seek such interim order as it may think necessary.

If this procedure is not followed it is likely that many a service provider who is receiving signals, would by virtue of an interim order made by this Tribunal or other forums, in one or other earlier case, may refuse the terms of fresh agreements as and when due and can continue to receive signals under those interim orders.

We will now advert to the last argument of the learned counsel for the respondent whereby it is contended that now that the matter is before this Tribunal and the draft agreements proposed by Star is on file as also the grounds of attack by IMCL to some of the terms of the said agreement, this Tribunal should embark upon an enquiry as to the validity of the terms of the agreement in this petition itself.

We cannot accede to the above request. If a party is aggrieved by any one of the actions of the other party, the aggrieved party should approach this Tribunal based on that cause of action. May be in some exceptional case and on certain set of facts, to avoid multiplicity of proceedings this Tribunal if it thinks fit and convenient and in the interest of justice, may embark upon such an exercise. But in the present case, we are not satisfied that such an extraordinary procedure should be adopted by this Tribunal by holding an enquiry in a petition where the petitioner has not challenged the terms of the agreement, thereby converting this petition as that of IMCL's petition to grant it relief in a petition filed by Star. We think on the facts of this case adopting a procedure suggested by IMCL would only send wrong signals to the litigants. Therefore, if IMCL still remains aggrieved by the terms proposed by Star, it shall if so advised, challenge the unacceptable terms on whatever ground it think it should be challenged. For the reasons stated above, we hold that:-

- (i) the interim agreement signed by the parties by virtue of the directions issued by the High Court of Delhi was valid only till the final disposal of the Petition No.41(C) of 2004 by this Tribunal;
- (ii) under the Interconnect Regulations 2004, parties are bound to sign written agreement; and if a fresh agreement is required under the Regulations same should be finalised at least 30 days prior to the expiry of the old agreement;
- (iii) if terms proposed in the agreement are not acceptable to any party, it is for the party which is seeking signals to approach this Tribunal for the redressal of its grievances.

We note and record that on the basis of the submissions by Shri Salve, we have confined our consideration only in regard to Prayer (a) made in the Petition i.e.

in regard to a direction to IMCL to sign the subscription agreement. The other prayers of the Star raised in this petition are not considered by us.

For the reasons stated above, we direct IMCL either to enter into a subscription agreement within 30 days from the date of receipt of this order with Star for the receipt of their signals if need be under protest or without prejudice and if still aggrieved, challenge the terms of agreement before this Tribunal or without signing the agreement challenge the terms of the agreement before this Tribunal.

On facts of this case, however, we direct Star not to disconnect the signals that are being supplied to IMCL as on today for a period of 30 days from today on the ground that as on date there is no subscription agreement.

Petition allowed. 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