

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

Dated 29th March, 2006

Petition No.84(C) of 2005

Star India Private Limited
205, Okhla Industrial Area
Phase-II
New Delhi – 110 020

...Petitioner

Vs.

Sky Sat Private Limited
22, II Floor
Kamaraj Salari
Pondicheery – 605 011

...Respondent

BEFORE:

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

For Petitioner : Mr.Gopal Jain with
Mr.Ashish Jha, Ms.Kanika Agnihotri,
Mr.Sarvesh Singh, Mr.Gaurav Vats,
Advocates for M/s Karanjawala & Co.

For Respondent : Mr.V.N.Subramaniam, Mr.P. Ramesh,
Mr.Rajiv Rufus, Advocates

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ORDER

This is a petition filed under Section 14 of the Telecom Regulatory Authority of India Act, 1997 (TRAI Act) for recovery of a sum of Rs.31,00,318.14 due from the Respondent towards the subscription charges payable by the Respondent for having received the signals of the petitioner broadcaster for the period between 1.1.2003 to 31.3.2005. There is also a prayer for grant of interest @ 18% per annum on the amount payable to the petitioner.

Brief facts necessary for the disposal of this petition are as follows:

The Respondent herein entered into a subscription agreement dated 31.12.2002 for the supply of signals for the period between 01.01.2003 to 31.12.2004 for a monthly subscription of Rs.7,05,000/-. It is contended by the petitioner that after the expiry of the said agreement on 31.12.2003 the supply of signals continued on terms of the earlier agreement but on a reduced premium of Rs.5 lakhs per month. This arrangement according to the petitioner continued till 31.12.2005 on an oral basis and Respondent has since surrendered the petitioner's decoders on 07.01.2005 and has not been receiving signals since then from the petitioner. The petitioner contends that for the period between 01.01.2003 to 31.12.2005 the Respondent has defaulted in paying the subscription due to an extent of Rs.31,00,318.14p which according to the petitioner stands substantiated by the statement of accounts produced by the petitioner along with the petition. Petitioner also submits so far as these dues are concerned, the same is admitted by the Respondent in many of its correspondence, copies of which have been produced along with the petition. It is also stated in the petition that if for any reason this Tribunal is not satisfied with the entire claim made in the petition, the petitioner is at least entitled to an order in the nature of a decree to the extent of above said admitted amount of Rs.22,30,000/- with interest on the basis of the admission of the Respondent.

On being notified of the petition by this Tribunal, the Respondent has put in its appearance and has filed its counter. In the counter filed by the Respondent apart from certain preliminary objections, it is contended that the agreement signed by the parties and produced as an annexure to this petition being oral for the period between 01.02.2004 to 31.01.2005 and the same being disputed cannot be the basis of a recovery petition. It is also contended that there is a conflict in the claim of the petitioner because in one place the petitioner has prayed for a

decree for a sum of Rs.38,35,781.41p and at another the claim is of Rs.22,30,000/-, hence, there being inconsistency in the claim the entire claim should be rejected. It is also stated that certain sum of money paid by cheques by the Respondent have not been accounted for. Hence, the amount claimed by the petitioner is not genuine. Respondent has also alleged that the agreement relied on by the petitioner is forged/fabricated. Respondent has also contended that the petitioner's claim is barred by limitation in view of the provisions of TRAI Act. It is also stated that the petitioner not being a service provider this Tribunal has no jurisdiction to entertain this petition. Respondent has also contended that in view of the Arbitration clause in the signed agreement between the parties, this petition is barred.

None of the parties have sought to lead any oral evidence.

Therefore, this Tribunal will have to proceed on the basis that the parties have no further evidence apart from pleadings already filed to rely upon in support of their respective cases. It is in this background, on the basis of the pleadings of the parties, following points for consideration are formulated for the consideration of the Tribunal:

- (i) Is the jurisdiction of this Tribunal barred in view of the arbitration clause in the agreement between the parties or for such other reasons mentioned in the counter affidavit by the Respondent?
- (ii) Is the petition barred by limitation in view of sub section 3 of Section 14A of the TRAI Act?
- (iii) Is the contract relied upon by the petitioner is forged or fabricated as contended by the Respondent?
- (iv) Is the petitioner not a service provider as contended by the Respondent?
- (v) Has the petitioner established its claim for a decree for a sum of Rs.31,00,318.41?
- (vi) If the petitioner's claim of Rs.31,00,318.41 is to be rejected then is the petitioner entitled to the alternate relief for a sum of Rs.22,30,000/-.
- (vii) What relief.

The Respondent in its counter affidavit has contended that the above petition is not maintainable in view of the arbitration clause in the agreement relied on by the petitioner. This contention of the Respondent has to be rejected in view of the earlier decision of this Tribunal dated 11.02.2005 in Petition No.6 of 2003-Aircel Digilink India Limited Vs. Union of India &

Anr. wherein this Tribunal has held that in view of the fact that this Tribunal has been constituted as an exclusive adjudicatory body to the exclusion of all other adjudicatory institutions, even an agreed arbitration clause between the parties cannot oust the jurisdiction of this Tribunal. Following the above judgement, this objection of the Respondent is rejected.

The Respondent has contended that this petition is barred in view of sub-section 3 of Section 14A of the TRAI Act which according to the Respondent has fixed a limitation period of 6 months. It is noted that this provision relied upon by the Respondent does not apply to original proceedings like the present one. That provision applies to appeals against the order of TRAI only. Hence, this plea is rejected.

The next objection taken by the Respondent is with regard to genuineness of the agreement signed between the parties which the Respondent contends is a forged and fabricated document. *Prima facie* this document bears signatures of the parties through their representatives and the genuineness of the signatures is not specifically denied by the Respondent. That apart, the burden of proving that the document in question is either forged or fabricated being on the Respondent and the same having not been discharged in any manner whatsoever this contention of the Respondent has to be rejected as not having been substantiated.

The Respondent then contended that the petitioner is not a service provider, therefore, this petition u/s 14 of the TRAI Act is not maintainable. This argument has to be rejected in view of the judgment of this Tribunal in **Sea TV Network Ltd. Vs. Star India Pvt. Ltd. [Petition No.41(C) of 2005 decided on 24.08.2005]**.

The petitioner in this petition contended that there was written subscription agreement between the petitioner and the Respondent which was current from 31.12.2002 for a period of one year as per which agreement the Respondent was liable to pay a subscription of Rs.7,50,000/- per month to the petitioner for the signals received by the Respondent for consideration. It is held hereinabove that the Respondent is not able to establish the fact that this agreement is not a genuine one. It is also the contention of the petitioner that after the expiry of

the said agreement, the same was continued orally between the parties on same terms, except that the monthly subscription payable was reduced to 5 lakhs of rupees. This stand of the petitioner is practically admitted by the Respondent in its pleadings in the counter affidavit at paragraphs 35 & 36. The averment of the Respondent shows that there was an agreement thought not written wherein it was agreed that subscription to be Rs.5 lakhs. That apart, a confirmation of accounts as seen from the letter dated 4.3.2004 shows that Respondent has admitted its dues to an extent of Rs.22,30,000/- while the petitioner has claimed Rs.38,35,718.41. Similarly, its letter dated 10.3.2004 the Respondent has admitted its arrears of Rs.22,30,000/- and had sought for installments to pay the sum and it is not the case of the Respondent that it has cleared the dues as per the installments sought. Thus, there can be no matter of doubt that so far as the claim of the petitioner to an extent of Rs.22,30,000/- is concerned, there is sufficient evidence which can be relied upon by this Tribunal to grant a decree for the said sum.

However in regard to the larger claim of Rs.31,00,318.41, though the petitioner has produced its statement of accounts it has not been proved by any evidence either by way of an affidavit or oral evidence of the concerned person. In the background of fact that the Respondent has disputed the correctness of the same the burden was on the petitioner to establish that the said statement is a correct statement. Therefore, I am satisfied that the claim of the petitioner to an extent of Rs.22,30,000/- (Rupees Twenty Two Lakhs Thirty Thousand Only) is liable to be decreed. Petitioner has claimed 18% interest on the same, but I am of the opinion that the interest claimed is excessive. Therefore, I confine the interest payable on the above sum of Rs.22,30,000/- at 10% per annum payable from the date of this order till the date of recovery.

For the reasons stated above, this petition partly succeeds and I hold that the petitioner is entitled to recover a sum of Rs.22,30,000/- (Rupees Twenty Two Lakhs Thirty Thousand Only) with interest at 10% from the date of this order till the date of recovery.

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

