

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

**Dated 29th March, 2006**

**Petition No.142(C) of 2005**

Indian Cable Net Co. Ltd. ... Petitioner

Plot XI-4, Block EP & GP  
Salt Lake Electronics Complex  
Sector V  
Kolkata – 700 091

Versus

Star India Pvt. Ltd.

205, Okhla Industry Estate  
Phase – III  
New Delhi – 110 020

Also at:

Star House ... Respondent  
Off Dr.E.Mosses Road  
Mahalaxmi  
Mumbai

AND

**Petition No.145(C) of 2005**

Star India Pvt. Ltd.

205, Okhla Industry Estate  
Phase – III  
New Delhi – 110 020

Also at:

Star House ... Petitioner  
Off Dr.E.Mosses Road  
Mahalaxmi  
Mumbai

Versus

Indian Cable Net Co.Ltd. ... Respondent

Plot XI-4, Block EP & GP  
Salt Lake Electronics Complex  
Sector V  
Kolkata – 700 091

**BEFORE:-**

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

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

**Petition No.142(C) of 2005**

For Petitioner : Mr.Maninder Singh with  
Mr.Yoginder Handoo and  
Mr.Tejeev Singh Bhatia , Advocates  
For Respondent : Mr.Gopal Jain, Ms.Kanika Agnihotri  
And Mr.Ashish Jha, Advocates

**Petition No.145(C) of 2005**

For Petitioner : Mr.Gopal Jain, Ms.Ruby Singh  
Ahuja, Ms.Kanika Agnihotri and  
Mr.Ashish Jha, Advocates  
For Respondent : Mr.Maninder Singh with  
Mr.Yoginder Handoo and  
Mr.Tejeev Singh Bhatia, Advocates

### **ORDER**

These two petitions are in the nature of claim and counter claim between the respective parties arising out of same set of facts. Since petitioner in one petition is the respondent in the other petition and vice versa in the connected petition, to avoid confusion in the narration of facts, the petitioner in Petition No.142(C) of 2005 shall be referred to as ICNL and petitioner in Petition No.145(C) of 2005 shall be referred to as Star for the purpose of disposal of these petitions.

2. Brief facts as could be noticed from the Petitions and replies thereto are as follows:-

3. Star India had entered into a Distribution Agreement on 13th November, 2003 with one M/s RPG Netcom Ltd. for Star's signals in the

territory of entire Kolkata Metropolitan Development Area in the State of West Bengal. During their business relationship with Star, M/s RPG Netcom Ltd. admittedly owed certain amount towards the payment of subscription to Star. It is further stated that subsequently there was a change in the name of RPG Netcom Ltd. to Indian Cable Net Co.Ltd. (ICNL). In May, 2005 there was a change in the management of ICNL and the same was taken over by the present management with all the liabilities of the old company. Since the previous management did not pay up its dues, Star had issued a letter dated 23rd March, 2005 threatening to terminate the agreement for supply of its signals w.e.f. 1st April, 2005. On receipt of the said letter, ICNL under its old management had replied to Star India by its letter dated 23.04.2005 expressing its difficulties in collecting the outstanding dues from various cable operators and, therefore, while requesting for reconciliation of the dues also sought time for payment of the agreed dues. It is the case of ICNL in its petition that Star thereafter wrote a letter dated 05.05.2005 stating that the subscription fee due to it was Rs.1,56,90,000/- on a subscriber base of 5,23,000 which coupled with the other dues, totalled to a sum of Rs.11,37,67,608/- as on 31st March, 2005. The said letter also warned ICNL that if the total sum due is not paid on or before 9th June, 2005 signals of Star channels will be disconnected. It is also stated that Star had filed a petition before this Tribunal in Petition No.42(C) of 2005 for the recovery of the above-mentioned amount against ICNL.

4. It is at that stage on 8th June, 2005 that ICNL approached Star and an amicable settlement was arrived at wherein Star India agreed to reduce the amount demanded from Rs.11,37,67,608/- to Rs.7.5 crores on the condition that ICNL pays a sum of Rs.2.5 crores upfront and the balance amount to be paid in equal instalments of Rs.33,27,600/- per month within a period of next nine months, last of which payment was to be made on 31st March, 2006. ICNL in its petition has stated that it has been complying with the said terms of the agreement.

5. It is further stated that a fresh subscription agreement was entered into between ICNL and Star on 08.06.2005 to be effective retrospectively w.e.f. 1.4.2005 on a subscriber base of 1,50,000 subject to reconciliation of number of subscribers, based on the actual figures to be determined on a report known as Subscriber Line Report (SLR). Both the parties have stated that this is a system followed in that part of the State of West Bengal among all the service providers because of the prevalent practice of subscriber migration in that area. In this practice, it is stated that each month, the signal provider and the signal receiver would agree upon the subscriber base for

that month based on the SLR and the signal provider would raise an invoice on the said subscriber base arrived on the basis of the SLR and demand the subscription on the agreed sum per subscriber which the receiver of signal is bound to pay. Consequent to the above settlement between the parties, Petition No.42(C) of 2005 filed before this Tribunal came to be withdrawn.

6. From the material on record, it is noticed that timely reconciliation of subscriber base has not really been done between ICNL and Star and number of documents produced in these petitions establish that fact. While both the parties to these petitions have agreed that SLR is the basis for determining the subscriber base, ICNL contends that the agreed subscriber base in the agreement dated 08.06.2005 will get reduced in the event of SLR indicating a reduced subscriber base and it is liable to pay subscription on that reduced subscriber base. Star, however, contends that if SLR indicated an increase in the subscriber base then ICNL had to pay the subscription on that increased subscriber base. But if the subscriber base decreases then the subscription will have to be paid on the agreed subscriber base indicated in the Agreement dated 09.06.2005.

7. ICNL also contends that as per the subscription agreement dated 08.06.2005, per subscriber payment was priced at Rs.30/- but Star in its first invoice itself has unilaterally hiked the said agreed price from Rs.30/- to Rs.32.10p per subscriber which is an increase of 7% over the agreed rate which it contends is a unilateral act of Star and states that it is not liable to pay this increased rate.

8. Star counters this argument by stating that w.e.f. 1st January, 2005 the Regulator, namely, Telecom Regulatory Authority of India (TRAI) has permitted the broadcasters to increase the existing rate as on 31st December, 2004 by 7% and, therefore, it is entitled to claim this increase of 7% over and above the agreed subscription.

9. Next, ICNL in its petition has contended that the demand of Star towards the so-called arrears due from it, is without taking into consideration the agreed available credit period of 120 days. While Star contends that it is incorrect to state that it had agreed to give a credit of 120 days to ICNL. It contends that actually, in regard to the past dues of ICNL's predecessor, as a special concession, a credit period of 120 days was given but so far as the current subscription is concerned, it is contended that the same had to be paid at the beginning of the month itself. Alternatively, it contends that as is the business practice in the cable sector in Kolkata, ICNL in the least is bound to pay these dues within 60 days.

10. ICNL then contends that it was receiving a second bouquet from Star on a trial basis without any payment for a period of three months and at the end of the said period of three months, the choice was given to ICNL to receive the signals of second bouquet if it felt the same was acceptable and pay for the same; otherwise it had the choice of refusing to receive the said signals. Star India per contra contends that it is on the basis of an agreement that in the month of September, 2005, ICNL sought signals of its second bouquet for which payment on agreed basis was due, but no payment was made nor any intimation was sent refusing to receive the same, nor were the decoders of the second bouquet returned by it upto December, 2005. Therefore, it is liable to pay subscription for the second bouquet.

11. The next contention of ICNL is that on the request of Star India it had agreed to place signals of Star and certain affiliates of it on a priority basis on prime band for which Star was liable to pay to ICNL carriage fee as was agreed between the parties which has not been paid till date. Hence, ICNL is entitled to seek adjustment of the said sum. Star in reply has submitted that the placement of signals of those broadcasters was not on the request of Star and those broadcasters are independent entities and it is for ICNL to take such action as is permissible in law to recover the said sum and it cannot seek to deduct the said sum from the amount due to Star.

12. Lastly, it is contended by ICNL that it has paid a sum of Rs.41 lakhs towards the dues of one of its former affiliates by the name; M/s Manthan, which amount the Star is bound to give credit to ICNL since Star has collected the said amount from M/s Manthan. This allegation is denied by Star India which has contended that ICNL was bound under the agreement to collect and pay the amount due from M/s Manthan and it is because of this obligation that ICNL paid the said amount due to Star. Star has denied collecting this amount from M/s Manthan. Star contended that amount collected by it from M/s. Manthan pertains to their business relationship with M/s. Manthan and it has nothing to do with ICNL.

13. From the above contentions of the parties raised in their respective pleadings, the following points arise for our consideration:-

- (i) What actually is the subscriber base on which ICNL is liable to pay monthly subscription?
- (ii) What is the rate at which Star India could demand monthly subscription for the signals supplied to ICNL?
- (iii) What is credit period agreed between the parties for the payment of monthly subscription?

- (iv) Was ICNL bound under the contract to accept the second bouquet of Star India and pay for the same for the period mentioned in the petition?
- (v) Is star India liable to collect the sum of Rs.41 lakhs due from M/ s. Manthan from ICNL?
- (vi) Is Star India liable to give credit to ICNL towards the payment of carriage fee, which ICNL contends is due from Star India's subsidiaries?

14. Since the parties have not chosen to lead any evidence and have presented the case on the basis of the pleadings and other documents produced along with it, we have proceeded to hear this Petition accordingly.

Re:-What actually is the subscriber base on which ICNL is liable to pay monthly subscription?

15. There is no dispute that in the metropolitan area of Kolkata, in the cable sector the subscriber base of an MSO is determined monthly on the basis of a report known as 'Subscription Line Report' (SLR). Various documents produced in the petition originating from either side indicate the existence of this practice. It is seen from the settlement agreement dated 8th June, 2005 between Star and ICNL at para 2 that the parties have mutually agreed that ICNL should provide the SLR and on that basis the parties should enter into a standard subscription agreement on mutually agreed terms. In the letter of Star India dated 12th August, 2005 addressed to ICNL, produced in the petition of ICNL as Annexure 'P', Star India has stated:-

"The subscriber numbers against each operator in Section A & Section B are plotted on the basis of previous SLRs and payments made for them."

16. Subsequently in its letter dated 1st September, 2005 Star India has stated:-

"We would like to state that the subscriber numbers in the "SLR" are based on the "SLR" and the payments we were receiving from ICNCL till March,05 and also our subsequent field surveys."

17. The above documents clearly indicate that parties have accepted SLR as the foundation for fixing the subscriber base. There is material to show that the other broadcasters are also adopting similar practice and it is an industrial norm. During the course of the argument this prevailing practice is not disputed on behalf of Star. On the contrary what is contended is that SLR is used for determining the monthly subscriber base and if there is

increase in the said subscriber base ICNL will have to pay subscription on that higher subscriber base, and if the subscriber base decreases then ICNL will have to pay subscription on the subscriber base fixed in the agreement. In other words, if SLR indicates a reduced subscriber base, ICNL is not entitled to pay the reduced subscription. In support of this contention, on behalf of Star it is stated that the agreement entered into between the parties dated 8th June, 2005 had fixed the subscriber base at 1,50,000 subscribers. According to the learned counsel for Star what is mentioned as subscriber base in the agreement is a minimum agreed subscriber base, therefore, it is not open to ICNL to contend that in the event of a decrease it is liable to pay subscription only on actual SLR subscriber base and not on the figure mentioned in the agreement. The learned counsel for ICNL, however, contended that since it is an admitted fact that the calculation of the subscriber base based on SLR is an industry norm and Star having recognized the same, any term contrary to the agreed industrial norm will actually be unreasonable and in violation of Regulations 3.1 and 3.2 of Interconnection Regulation.

18. We find sufficient force in this contention of ICNL. Regulations 3.1 and 3.2 mandate the broadcasters to give signals to the seekers of signals on a reasonable and non-discriminatory manner. In the normal course, terms of the agreement between the parties would be binding on them. But in cable sector the agreements will have to be in conformity with Interconnection Regulations which had the status of a subordinate legislation. Therefore, any clause in the agreement which gives an unfair advantage to one party would certainly amount to an unreasonable clause. In the instant case, Star India admits that if SLR indicates an increased subscriber base, ICNL is liable to pay subscription at the increased rate which even ICNL agrees, but Star India further says that if SLR indicates a reduced subscriber base, then ICNL is liable to pay the subscription on the basis of the subscriber base in the agreement. It is an admitted fact that in the Kolkata metropolitan area there is a peculiar phenomenon of monthly subscriber migration and therefore, parties across the industry rely on SLR for computation of subscriber base. In this background, we think Star cannot rely on SLR only for its benefit. Therefore, either Star should accept the SLR as the basis for calculating monthly subscriber base for all purposes or rely on the subscriber base mentioned in the agreement and it cannot rely on the subscriber base in the agreement as a minimum subscriber base and when SLR indicates an increase in subscription base it may demand higher subscription from the ICNL. Therefore, the interpretation given by Star for the use of SLR, in our opinion, is arbitrary and such one-sided benefit cannot be accepted as a reasonable

term. Therefore, in our opinion Star India should either agree to collect subscription on the negotiated figure in the agreement or on the basis of SLR.

**Re:-What is the rate at which Star India could demand monthly subscription for the signals supplied to ICNL?**

19. This point refers to the dispute between the parties in regard to the actual subscription payable for signals of bouquet No.1 supplied to ICNL by Star. The contention of ICNL is that as per the agreement it was liable to pay Star a monthly subscription of Rs.30 per subscriber for bouquet No.1 whereas in the first invoice raised by the Star, contrary to the agreement, it has charged subscription at the rate of Rs.32.10 per bouquet per subscriber which ICNL contends is contrary to the agreement. The learned counsel for Star contended that by the time the parties entered into an agreement TRAI has w.e.f. 1st January, 2005 permitted the broadcasters to increase the subscription amount by seven per cent from what was being charged for the previous year. Since Rs.30/- per bouquet per subscriber was the rate which was prevailing prior to 1.1.2005 it is entitled to a raise it by seven per cent. Therefore, demand for payment of Rs.32.10 per bouquet per subscriber was permissible under the above said tariff fixed by TRAI. The learned counsel for ICNL, however, submits that the Regulation empowering the increase in subscription fee was only an enabling provision and is not an ipso facto binding provision. If Star wanted to charge the enhanced subscription then it should have done so at the time of agreement itself in consultation with ICNL. Since the same was not done on the date of agreement, subsequent unilateral increase by Rs.2.10 which is equal to seven per cent over the previous year's subscription cannot be justified. We are in agreement with the learned counsel for ICNL on this issue. Star India was aware that it could charge Rs.32.10 on the date of the agreement but for some reason or the other it agreed to the rate of Rs.30/- per subscriber in the agreement for bouquet No.1 and having agreed to this rate, it could not have raised the subscription by Rs.2.10 unilaterally. Even though it had the power to increase the subscription since the agreement had been entered with, the increase subsequently should have been done with the consent of the ICNL. Since the same was not done, for the current subscription year, it is not open to Star India to charge Rs.32.10 per bouquet per subscriber. In our view it can only charge Rs.30/- per subscriber for bouquet No.1.

**Re:- What is the credit period agreed between the parties for the payment of monthly subscription?**

20. The learned counsel for ICNL submitted that as per the Agreement between the parties in regard to the past dues of ICNL (RPG), the ICNL was liable to make a down payment of Rs.2,50,00,000/- and a monthly installment of Rs.33,07,600/- for which ICNL has issued post dated cheques realizable within a credit period of 120 days. According to the learned counsel for ICNL, the same was the agreement in regard to the subsequent monthly subscription due from ICNL to Star but in regard to those monthly payments Star is demanding advance subscription which is contrary to the agreement. The learned counsel for Star submitted that as per the agreement between the parties in regard to the monthly subscription payable, there was no credit period available and ICNL had to pay the subscription in advance. He, however, submitted that in regard to earlier dues of ICNL (RPG), Star has shown some consideration by giving a credit of 120 days which is not available to ICNL for its monthly payments. However, the learned counsel alternatively pleaded that it is the business norm to allow 60 days credit to its subscribers. Therefore, for the monthly subscription at the most ICNL can claim only 60 days credit. On this issue we are in agreement with the learned counsel for Star. ICNL has not been able to establish to our satisfaction that 120 days credit was given even in regard to subsequent monthly subscription. We are satisfied that 120 days credit period was given only in regard to the past arrears of ICNL (RPG) and future subscription is payable under the agreement (which is w.e.f. 1st April, 2005) within a period of 60 days of its becoming due).

**Re:-Was ICNL bound under the contract to accept the second bouquet of Star India and pay for the same for the period mentioned in the petition?**

21. It is an admitted fact that Star India was giving its second bouquet to ICNL w.e.f. September, 2005. But it is the case of ICNL that the same was offered free for the first time for a period of three months i.e. upto November, 2005 as a promotional offer and since its affiliate cable operators did not accept the second bouquet of Star India after the end of the trial period it has returned the decoder to Star and the Star is not liable to demand any money towards second bouquet. In support of its contentions ICNL has produced a copy of the agreement in regard to bouquet-II which is signed only by ICNL and not by Star. ICNL contends that this was done because of the understanding between the parties that this agreement would come into force only from the month of November and that too if ICNL wanted to take the second bouquet. ICNL contends that since it did not want the second bouquet the same was not signed by Star. On behalf of Star it is

contended that the second bouquet was given to the ICNL not on any trial basis but with an understanding of payment of the same which was Rs.1,32,152/- plus service charges as monthly subscription for the said bouquet. Since ICNL has not paid for this for the months of September, October and November, 2005 it is liable to pay for the same. From the material on record, we are unable to see any concluded agreement between the parties to give and receive the second bouquet on an agreed consideration. On the contrary, from the industry practice it is noticed that quite often when a new bouquet is introduced the same is given on trial basis for some time and in that background it is reasonable to accept the contention of the ICNL that the second bouquet was given only on trial basis. Therefore, we are of the opinion that Star is not entitled to collect any sum towards subscription for the second bouquet.

**Re:-Is Star India liable to collect the sum of Rs.41 lacs due from M/s. Manthan from ICNL?**

22. The above point for consideration involves a sum of Rs.41 lacs which was originally payable by a service provider called Manthan who was at one point of time affiliated to ICNL. It is an admitted fact that during that period Manthan defaulted in the payment of subscription amounting to Rs.41 lacs, for which Star demanded payment from ICNL and ICNL issued cheques to Star amounting to Rs.41 lacs which have since been encashed by Star. In this petition it is contended that it is not a due of the ICNL hence, the amount paid by it to Star should be given credit. It also contends that Star India has initiated separate proceedings against Manthan and has received the said sum from Manthan. Star India disputes these facts. It has contended that the amount was payable by ICNL and it is only because of this fact that ICNL issued cheques which have since been realized by Star and Star has not realized the same from Manthan. Therefore, ICNL cannot claim credit for this amount out of its dues. In our opinion, since ICNL has paid this sum of money voluntarily it cannot seek adjustment. That apart, ICNL has a separate cause of action against Manthan and the said sum should be recovered by ICNL by a procedure known to law. This Tribunal cannot give adjustment to the said sum also because Manthan is not a party to this petition and Star has denied that it has received amount separately from Manthan.

**Re:-Is Star India liable to give credit to ICNL towards the payment of carriage fee which ICNL contends is due from Star India subsidiaries?**

23. It is the contention of ICNL that as per the industry norms a

broadcaster if it desires its channels to be put on prime-band it has to pay a carriage fee as agreed to between the parties. According to ICNL, Star India had requested ICNL to place channels of Star India viz. National Geographic Channel, Star News, Star Ananda, Star Plus, Star Gold and Star World in a prime band which request was accepted by ICNL. Star India in its reply has stated that the above mentioned channels are independent channels, hence it is not liable to pay for the carriage fee payable, if any, for the placement of those channels. In the absence of any material to show either that Star had agreed to pay for the placement of those channels or that these channels are owned by Star, we are unable to decide this issue in this petition. We think that for deciding this issue, the presence of the broadcasters of those channels before this Tribunal is necessary. Therefore, we leave this issue open to be agitated by ICNL in a separate petition in which all concerned parties are impleaded.

24. For the reasons stated above, we direct the parties to reconcile the subscriber base of ICNL by either adopting the SLR basis as understood by this Tribunal or on the basis of the agreement. We also declare that ICNL is liable to pay subscription on Bouquet-I only at Rs.30/- per subscriber per month for the period of the agreement. We further hold that ICNL is entitled to a credit period of 60 days only from the due date. Star is not entitled to charge for the Bouquet-II, and ICNL is not entitled to adjust Rs.41 lacs paid towards the dues of Manthan. So far as the carriage charges of various other channels claimed by the ICNL are concerned, we leave the issue open along with the issue of dues of Manthan to be decided in any other proceedings in which all necessary parties are impleaded

25. Since claim made in Petition No.145(C) of 2005 is also based on the same set of facts, the order in this petition will also govern the said petition.

26. Petitions disposed of accordingly.

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(N. Santosh Hegde)  
Chairperson

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(Vinod Vaish)  
Member

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