

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

DATED 27TH MARCH, 2006

PETITION No. 109(C) OF 2005

C.H. Entertainment Pvt. Ltd. ...Petitioner
 Vs
 Star India Priavte Limited & Anr. ...Respondents

BEFORE:

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

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

For Petitioner : Mr.Vineet Bhagat,Advocate

For Respondent No.1-Star : Mr.Prateek Jalan with
Ms.Simran Brar,Advocates for
Karanjawala & Co.

For Respondent No.2-Softreach : Mr.Yoginder Handoo for
Mr.Maninder Singh,Advocates

ORDER

The petitioner in this petition was receiving signals of the first respondent under a subscription agreement on a monthly subscription payable @ 1.5 lakhs. On 22.2.2005 the first respondent informed the petitioner that it had appointed the second respondent as its agent for the limited purpose mentioned in the said letter and that the said letter also indicated that the petitioner should pay the monthly subscription in terms of the subscription agreement directly to the second respondent by way of demand Draft to be drawn in favour of the second respondent. Five months later i.e. on 22.7.2005 the first respondent informed the petitioner that it has terminated its agency with the second respondent. Therefore, it should make payments directly to the first respondent from the month of July,2005. Since the first respondent did not receive the subscription due for the months of July, August and September it issued a notice of termination for non payment of the dues to the petitioner threatening disconnection of the signals.

2. Petitioner challenged the above disconnection by way of this petition wherein among other prayers it prayed for direction to the first respondent not to disconnect signals of the petitioner. It was also prayed that in the event of disconnection if they have done already the same should be reactivated. The second prayer was made seeking a direction to the first respondent for refund of a sum of Rs.10.28 lakhs allegedly made by the petitioner to the second respondent as being a payment in excess of the amount really due to the first respondent. It is curious to notice the fact that even though the petitioner alleges that most of the payments made during this period between February and July were to the first respondent as directed in the letter of the first respondent dated 22.2.2005. No prayer seeking the prepayment of the said amount is made against the second respondent.

3. Second respondent has appeared in pursuant to the notice issued by this Tribunal and has filed its counter and has stated that there was a separate agreement between the petitioner and the second respondent in regard to certain other facilities tendered by it to the petitioner and the amount shown in the annexures to the petition are the amount payable towards such facilities rendered by the second respondent. It also contends that some more money is due from the petitioner to the second respondent. But we are not concerned with that issue because that is not before us as on today.

4. When the petition was filed before this Tribunal, the Tribunal by its order dated 28.10.2005 directed the first respondent to reconnect the signals which were supplied to the petitioner on a condition that the petitioner keeps paying the amount due to the first respondent regularly. We are told that from the date of the direction of the Tribunal the signals are being received by the petitioner and the petitioner is making payments for the same.

5. Be that as it may, learned counsel for the second respondent submits that for the notice period i.e. for the months of July, August and September 2005 the petitioner has not paid the subscription and the first respondent is entitled to recovery of the same. We reiterate our stand that this is not an issue that is pending before us because this amount even according to the first respondent had become due prior to the filing of the petition and the relief the petitioner got by virtue of the interim order. Petitioner submits that it is not pressing the said prayer. Therefore, the only prayer left to be considered in this petition is the second prayer that is for a direction to the first respondent to pay a sum of Rs.10.28 lakhs most of which is paid to the second respondent. Second respondent has denied the due as claimed by the petitioner and has made a counter claim of Rs.1.85 lakhs which

issue we have said that we are not deciding in this petition and even that was a decision conveyed to the first respondent which is also substantially admitted by petitioner that most of the payments have been made to the second respondent. We think it is open to the petitioner to claim this amount from the first respondent.

6. For the reasons stated above we find no merit in this petition. However, there are certain issues that have been raised before us like claim of the first petitioner to recover e subscription amount due for the months of July, August and September, 2005 and claim of the second respondent as against the petitioner for a sum of Rs.1.85 lakhs which of course is subject to reconciliation as also the claim of the petitioner of access amount allegedly paid to the first respondent are left open to be decided in such proceedings as may be initiated. In this petition we do not think there is sufficient cause of action for the petitioner to claim any amount either from the first respondent or from the second respondent.

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

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(Vinod Vaish)
Member

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(D.P.Sehgal)
Member