

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

**Dated 16<sup>th</sup> May 2006**

**Petition No.135 (C) of 2005**

M/s Amogh Broad Band Services Pvt. Ltd  
No.2/3 Aragini Bhavana  
Abhimani Building,5<sup>th</sup> Floor  
Dr Rajkumar Road  
Rajaji Nagar, Bangalore-500 010

...Petitioner No.1

M/s MSV Network Pvt. Ltd.  
No.22/24, Manjunatha Kupa  
Amruthahalli, Bangalore 560052

...Petitioner No.2

Vs.

M/s Zee Turner Limited  
NH-8, New Delhi-110 037.

...Respondent Floor, Raddison Plaza

**BEFORE:**

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

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

For Petitioners	:	Mr.Vipin Sanghi,Senior Advocate with Mr.Prashant Kumar, Ms.Triveni Potekar, Ms.I Bimola Devi, Advocates
For Respondent	:	Mr.Maninder Singh with Mr.Yoginder Handoo and Mr.Tejeev Singh Bhatia,Advocates

**ORDER**

Petitioner No.1 claims to be a Multi System Operator (MSO) engaged in the business of distribution of various television channels in the state of Karnataka through the cable operators. It is a private limited company said to be incorporated on 26/2/2004 under Company's Act 1956. Petitioner No.2, MSV Network Pvt. Limited, is stated to be a private limited company whose business as Multi-System Operator has been taken over by Petitioner No.1 w.e.f. 30/7/2004. Petitioner No.2 had originally signed an agreement with the respondent, namely M/s Zee Turner Ltd for subscribing to its TV channels. The first agreement in this regard was signed between the Petitioner No.2 and the respondent in 2002 and it was subsequently renewed and the last renewal of the subscription agreement is dated 29/1/2005.

2. This petition has been filed pursuant to the disconnection by the respondent of its signals with effect from 7/11/2005 which according to the petitioners is in violation of Telecommunications (Broadcasting and Cable) Services Regulations.

3. The relief sought in the petition is primarily for a direction to the respondent to immediately restore the signals to Petitioner No.1 as it is suffering huge financial loss apart from irreparable loss of reputation and goodwill and depletion of its subscriber base. A prayer is also made for issue of an interim order pending final decision on the petition, directing the respondent to immediately restore the signals to Petitioner No.1.

4. On 18/11/2005, learned counsel for the respondent Shri Maninder Singh pointed out that the respondent does not recognize Petitioner No.1 as MSO and that it continued to recognize only Petitioner No.2 as its MSO who, it was pointed out, is also in arrears to the extent of Rs.18.5 lakhs to the respondent as on September 2005. He also stated that Petitioner No.2 had been given the right to telecast the respondent's signals in Bangalore rural areas only. The learned senior counsel for the petitioner Shri G L Sanghi who was then appearing for the Petitioner pointed out that right from the day Petitioner No.1 took over from the previous MSO i.e. in July 2004, it had been paying subscription by way of cheques to the respondent. He also stated that if there were some arrears to be paid as stated by the learned counsel for the respondent, his client was prepared to pay the amount subject to the reconciliation of the accounts. As an interim measure in the interest of the subscribers and without prejudice to the contentions of the parties in this petition, the Tribunal directed Petitioner No.1 to deposit a sum of Rs.5 lakhs by way of Demand Draft by 19<sup>th</sup> November 2005 and it was directed that on receipt of the same, by the evening of 21/11/2005 the respondent would restore the signals, as were being given on the date of disconnection. Both parties were directed to file statement of accounts by 21/11/2005. On 30/11/2005 when the matter was taken up for hearing, the Tribunal in modification of its order dated 18/11/2005 directed the petitioner to deposit a further sum of Rs.12 lakhs with the respondent within two weeks subject to final determination of the subscription amount payable and the amount due to each of the parties. This was without prejudice to the contentions of the parties. It was further directed that subject to payment of the said amount within two weeks there shall be no disconnection of the signals by the respondent. The parties were also directed to sit across the table and try to reconcile the accounts and if that was not possible they were directed to file their statement of accounts before this Tribunal supported by relevant documents before the next date of hearing. The parties were asked to file additional documents if any and it was made clear that the subscription payable for the future months during the pendency of the petition, as well as the subscription base of the petitioner, will be determined later on by the Tribunal based on the material provided.

5. As already mentioned, Petitioner No.1 is stated to have entered into an agreement with Petitioner No.2 to take over the entire business of the latter on July 30, 2004 including the office and premises at Manjunath Kripa Building, Amruthahalli, Bangalore where all the equipments including the IRDS, (i.e. decoders supplied by the respondent to the Petitioner No.1 for the various TV channels) were installed. The Petitioner No.1 has admitted that it was stipulated in the said agreement that the entire business will be taken over with effect from the date of signing of agreement itself for the purpose of running the business whereas all the assets shall stand transferred if the entire consideration was paid by March 2005. As stated in the petition, up to the month of January 2005

payment was being made by the petitioners to the respondent for 50 operators at the rate of Rs.3000/- per month approximately and a list of 50 cable operators as on January 2005 has been disclosed in the pleadings. In the month of March/April 2005 an increase in the number of cable operators took place on account of migration of certain cable operators from what is called ICE Network to the petitioner. According to the Petitioners, in April 2005 through negotiations between the petitioners and Respondent it was agreed that an amount of Rs.2,09,000/- would be paid on account of 50 existing operators and six additional operators from ICE Network plus four other cable operators from the Siti Cable Operators Network, bringing the total operators connected by the petitioner to 60. It is at this time, according to the Petitioners, that Petitioner No.2 MSV Network Pvt. Ltd. signed on three blank subscription agreements which were made effective from a back date i.e. 29/1/2005 and according to petitioners this was done as per the practice adopted in this regard by the respondent. It is alleged by the Petitioners that the entire figures pertaining to subscription have been filled by the respondent arbitrarily in the respective forms whereas the commitment it had taken from the petitioners was only towards a negotiated sum relatable to a list of operators which the petitioners had submitted to the respondent. Subsequently, in April 2005 12 operators from Hanumanthnagar Cable Network from Bangalore urban area were added and it was agreed that the petitioner would pay a further sum of Rs.42,000/- on account of these 12 additional operators with effect from April 2005 and the increased subscription fee came to Rs.2,56,550/-. However, the respondent continued to reflect the old amount in its invoices, although it continued to receive its monthly payments of the amount of Rs.2,56,550/- According to the petitioners they were never provided copy of the agreements signed with them. In the pleadings it is further stated that Petitioner No.1 continued to make payments on the above basis to the respondent. In September 2005 when Petitioner No.1 wanted to shift to a new premises, as the earlier premises in Amruthahalli was becoming congested, it formally informed the respondent that the business of Petitioner No.2 had been sold to Petitioner No.1 and a request was made to the respondent to transfer all the decoders to Petitioner No.1 and it was stated that after the grant of this request the decoders would be shifted to Petitioner No.1 at the new premises. According to Petitioner No.1, the said letter was duly acknowledged by the Regional Manager of the Respondent Mr. Gurumurthy, who agreed to the arrangements and on September 11, 2005 the petitioners shifted the decoders to the new premises. However, Mr. Gurumurthy soon after resigned from the respondent company and one Mr. Imtiyaz joined in his place who when approached in October 2005 by Petitioner No.1 gave a handwritten note indicating the list of documents to be submitted to formalize the new arrangements. According to Petitioner No.1, the respondent did not raise any objection in October 2005 to the decoders being shifted or to the business being run by it. It was only in November 2005 after a communication was addressed by the Petitioner No.1 to the respondent seeking expansion of network that the channels were abruptly and arbitrarily switched off without any notice whatsoever. In the pleadings it is further pointed out on behalf of the petitioners that with effect from 1<sup>st</sup> June 2005 all MSOs were asked in Bangalore District and region to make payments to M/s Siti Cable Network, also known as Dakshin Communications Private Limited, as the latter was appointed as distributor by the respondent for these areas. According to the petitioners this entity is a sister concern of the respondent and it has been pointed out that while earlier there was no clash of interest as far as the Respondent Company and their distributor/MSOs were concerned, with effect from 1/6/2005 with the said M/s Dakshin Communications Pvt Ltd. coming into the picture as Distributors of the respondent in Bangalore, the situation of vested interest in terms of protecting the monopoly of the said distributor has arisen and it is due to this the request for expansion of network made by the petitioner in

November 2005 met with the coercive and illegal action of disconnection of the signal feed being supplied by the Respondent to the Petitioners.

6. The respondent on the other hand, has taken the stand that it had an agreement with Petitioner No.2, namely MSV Network Pvt. Ltd..which is dated 29/1/2005 for supplying signals of its TV channels to be distributed by MSV Network Pvt. Ltd. in the rural areas of Amruthahalli, Bangalore. This agreement was on the basis of a subscription base of 2500; the subscription agreement was signed on 29/1/2005 between the respondent and MSV Network Pvt. Ltd..for Bouquet-I and Bouquet-II . The Respondent had also on promotional basis provided decoders to MSV Network Pvt. Ltd. for its Bouquet-III channels from July 2004. The monthly subscription fee for Bouquets-I and II mentioned in the agreement was Rs.1,47,125/- and Rs.62,500/-respectively. For Bouquet-III, it is mentioned in the pleadings that the monthly negotiated amount was Rs.15,000/-. In regard to the transfer of decoders from Petitioner No.2 to Petitioner 1, the Respondent has drawn our attention to the contents of Article 3.6 and 5.1(d) of the subscription agreement dated 29/1/2005 which is reproduced as under:

“3.6 Non Transfer of IRD(s)

- a) Except in accordance with the provisions hereof, not to transfer, temper, alienate or part with possession of the IRD(s) to and in favour of any third party and any transfer of IRD(s) without prior written approval of the company shall be illegal and impermissible; and
- b) Not to change the location of keeping IRDs/Viewing cards without the prior written approval of the company.
- c) In case the IRD boxes are transferred to any other location in contravention to the terms of the agreement, this agreement will be deemed to be terminated without prejudice to any other rights of the company .....

5.1(d)the subscriber shall not without the prior written consent of the company remove or shift the equipment from the agreed address as wet out in the subscriber data form .....

According to the respondent, the above provisions contained in the agreement dated 29/1/2005 clearly created a prohibition against transfer of decoders received by MSV Network Pvt. Ltd from the respondent to anyone else. However in complete breach of the agreement, MSV Network Pvt. Ltd. in an unlawful and illegal manner had transferred the decoders of the respondent company to Petitioner No. 1 i.e. M/s Amogh Broadband Services Pvt. Ltd. According to the respondent this transfer of decoders is completely illegal and Petitioner No.1 herein is not entitled to claim or get any permission for using those decoders of the respondent company and is obliged to immediately return the decoders to respondent Zee Turner Ltd. However, according to the respondent, as per the above mentioned provisions, the agreement even with MSV Network Pvt. Ltd. had come to an end on the day M/s MSV Network Pvt. Ltd illegally and unlawfully transferred the decoders to the petitioner herein and it was under these circumstances, the respondent company was compelled to discontinue the supply of signals of its TV channels to MSV Network Pvt. Ltd. on 8/11/2005. On this reasoning the respondent claims that MSV Network Pvt. Ltd. is not entitled for any restoration of the supply of signals of its TV channels to the respondent company. The Respondent further points out that no arrangement or agreement exists between the Respondent and Petitioner No.1 and neither has Petitioner No.1 ever approached the

respondent for entering into an agreement for supply of signals of its TV channels to it in accordance with the provisions of the TRAI Regulation 2004.

7. We are therefore, required to address ourselves first of all to the issue whether in terms of the agreement between the respondent and Petitioner No.2, there has been any breach of the same which gives the respondent the right to terminate the said agreement forthwith and the right to also disconnect the related signals without any notice.

8. On behalf of the petitioner, an attempt has been made to show that the respondent by its conduct had shown acquiescence and acceptance to the transfer of business to Petitioner No.2 by Petitioner No.1 and also to the transfer of decoders. In support of this contention, it is mentioned that Petitioner No.1 has been making all the payments in terms of the said agreement which have been accepted by the respondent. It has also been put across to us that the respondent did not take any objection to the said transfer of business and also to the proposed transfer of decoders when the representative of Petitioner No.1 approached Mr. Gurumurthy, the Regional Manager of respondent or even when Petitioner No.1 met the successor of Mr. Gurumurthy, Mr. Imtiyaz. If we go by the language of the subscription agreement, there is no room for any doubt that it provides for prior written approval of the respondent before transfer of decoders to any third party by Petitioner No.2. Prior written approval is also required for changing the location of IRD(s). There is also a clear stipulation that in case the decoders are transferred in contravention of the above terms, the agreement will be deemed to be terminated without prejudice to any other rights of the company. Under these circumstances it appears that the case of Petitioner No.1 is quite weak in regard to the disconnection of signals that took place on 7/11/2005. There is absolutely no evidence of prior approval having been given or acceptance of this arrangement by the respondent. Although the petitioner has tried to take the line that the respondent did not object to the transfer of decoders during the oral discussions or even by any communication in writing addressed to Petitioner No.2, this does not in any way take care of the specific stipulation in the agreement that prior written approval of the respondent was required before transfer or change in location of the decoders. We hold therefore that the Petitioner No.1 has definitely committed breach of the written agreement dated 29/1/2005. Although it has been stated that the signature of Petitioner No.2 was taken on blank agreement form, the fact remains that the stipulation prohibiting the transfer of decoders without prior written approval of the respondent is very clearly contained in the printed text of the agreement and having signed the same it would be deemed that it was fully aware and had committed to abide by this stipulation when it signed the form even though it may have been left blank at some other places. The Petitioner No.2 cannot justifiably take the stand that if the portion in the agreement where the numbers and description of the decoders was supposed to be given was left blank, the bar on transfer would not apply as it is not the petitioners' case that it did not receive the related decoders.

9. Learned counsel for the petitioner strongly argued that the respondent by its various actions had given indications that it was willing to go along with the transfer of business from Petitioner No.2 to Petitioner No.1 and in spite of having received information about the said transfer of business had not conveyed any objections. It was also mentioned that right from July 2004 it was Petitioner No.1 who was corresponding with the

respondent on behalf of Petitioner No.2. All payments were also being made by Petitioner No.1 on behalf of Petitioner No.2. When representative of Petitioner No.1 met the Regional Manager of respondent sometime in September Mr. Gurumurthy he had conveyed his oral acceptance to the said transfer of business. Soon after Mr. Gurumurthy left and one Mr. Imtiaz Ahmed came in his place. He also, on being contacted, orally asked for fulfillment of certain formalities and gave a list of documents needed from Petitioner No.1 for grant of formal approval to the said transfer. These circumstances were cited to show that there was acquiescence on the part of the respondent to the new arrangement.

10. Learned counsel cited the following case law in his favour.

- (i) 1978(1) SCC para 24 page 520
- (ii) 1981 (1) SCC para 17 page 80
- (iii) 1988 (3) SCC para 43 page 263

In its reply the respondent stated that the cases cited do not cover the situation in hand and submitted that none of judgments relied upon by the petitioners anywhere lay down or support any such contention or proposition of law sought to be raised by the petitioners before this Hon'ble Tribunal. In none of the judgments cited on behalf of the petitioners there was any illegal transfer of articles, being the subject matter of an agreement between A & B, to C by one of the parties of the agreement and the Hon'ble Supreme Court accepting the user of the articles by C on the basis of the contentions of conduct raised by C and which being clearly contrary and in the teeth of written agreement between A and B.

Learned counsel of the respondent cited the judgment of the Hon'ble Supreme Court in Roop Kumar vs Mohan Thedani (2003) 6 SCC 595 paras 16,17 & 18 in support of his contention.

11. We have carefully gone through the arguments in this regard. We are of the view that in spite of the fact that some payments were being made by Petitioner No.1 on behalf of Petitioner No.2 during the term of the contract between Petitioner No.2 and the Respondent, this would not by itself amount to any right being conferred on Petitioner No.1 vis-à-vis the Respondent. We have noted in this regard that the agreement dated 29/1/2005 with the Respondent has been entered into by Petitioner No.2, namely MSV Network Pvt. Ltd. and not by Petitioner No.1. There is nothing on record to show that any representative of the Respondent at any point of time gave any kind of approval to the said transfer of business. The burden was on Petitioner No.1 to furnish proof in regard to the same if it wanted to rely on any such approval. A mere handwritten sheet given by the Regional Manager of the Respondent indicating a list of documents to be furnished for the grant of formal approval does not amount to grant of permission or approval as has been very strenuously argued on behalf of Petitioner No.1. The rulings cited on behalf of the petitioner do not cover the facts and circumstances of the case before us and we are inclined to agree with the arguments of the learned counsel for the respondent that the judgments relied upon by the petitioner have no application to the present case.

12. In the light of the above, we therefore conclude that Petitioner No.2 committed breach of the written agreement of 29/1/05 by the said transfer of decoders to Petitioner No.1 in September 2005 without the prior permission of the Respondent and the terms of the said agreement gave the right to the Respondent in these

circumstances to terminate the said agreement and also therefore the right to disconnect the related signals without prior notice

13. We have now to determine the amount that Petitioners No.1 & 2 became liable to pay to the Respondent in the background of our orders of 17/11/2005 and 18/11/2005 whereby the signals were restored and Petitioner No.1 has continued to avail of the same during pendency of the Petition.

In this regard the Respondent has also filed a counter claim against Petitioners 1 & 2. According to the counter claim, as on 31/7/2005 an amount of Rs.3,83,030.10 was due and for the period thereafter, according to the Respondent, Petitioner No.1 is liable to pay for a higher number of subscribers as after the transfer of decoders, the signals of the Respondent were being made available to a larger network. According to the Respondent the Petitioner was paying to Star TV on the basis of 8000 subscribers and to Gemini TV for 15000 subscribers. The Respondent has claimed that Petitioner is liable to pay for 15000 subscribers for the period after 31/7/2005. In any event the Respondent has submitted 3 sets of calculations for the three scenarios post 31/7/05 namely with subscriber base of 15000, 8000 and 5000 with total claims on this basis as on 31/1/2006 of Rs.86,16,563.90, Rs.37,71,513.90 and Rs.16,95,063.90 respectively.

Petitioners have refuted these claims.

14. On going through the facts presented before us we find that there is really no logical basis for the Respondent drawing a cut off date of 31/7/2005 for the purpose of calculating the liabilities of the Petitioners. Since the actual transfer of decoders took place in September 2005, at best the cut off date would be 31/8/2005. We have thereafter tried to address this matter by first of all taking up the issue of outstanding liabilities as on 31/7/2005 and we have thereafter considered the question of liabilities for the subsequent period.

According to the Respondent upto the period ending 31/7/05, the agreements of 29/1/05 would hold good. Respondent has calculated the liability for the period as Rs.452185.10 on the basis of a subscriber base of 3000 for Bouquets I & II and 600 for Bouquet- III. As already indicated above we see no reason why the dividing line should be 31/7/2005 and we would duly take this into account while further addressing this matter.

We have seen the copies of the Agreement produced by the Respondent. These do not indicate the figure of 3000 subscribers. The agreements indicate number of subscribers as 2500 and subscription rate of Rs.58.55 for one bouquet and the same number of subscribers with subscription rate of Rs.25/- for the second bouquet. Copy of agreement for Bouquet-III has not been produced. Petitioner No.1 has stated that number of subscribers namely, 2500 was filled up later on by the respondent on a blank agreement form signed by Petitioner No.1 and given to the respondent sometime in April 2005 which was given a back date of 29/1/05. At the time of signing of the agreement the amount agreed to be paid was Rs.2.09 lakhs monthly. This included the amount payable on account of increased connections from the ICE network. Subsequently, the operators from Hanumanthnagar also got added and petitioner started paying at the monthly rate of Rs. 2,56,556/-.

According to the Respondent the figure of number of subscribers would go upto 3000 with the addition of the subscribers mentioned above and in its computations has calculated the liability of the petitioner on this basis from January 2005 onwards but Petitioner had disputed these calculations. We have in this context seen the invoices issued for the month of June 2005 dated 25/7/05. We find that the number of subscribers has been mentioned as 2500 for Bouquets-I & II and 600 for Bouquet-III.

In the absence of any indication in writing about the number of subscribers having gone upto 3000 and with the invoices as mentioned above of June showing number of subscribers as 2500, we should have on this basis normally concluded that during the period upto 31/8/05, the subscriber base should be taken as 2500 for Bouquets-I & II and 600 for Bouquet-III. However, we need to take care of the fact that the petitioner himself has stated that it started paying at the rate of Rs.2,56,556/- per month from April 2005 onwards. This amount is higher than the amount payable on the basis of 2500 subscribers for Bouquet- I & II and 600 for Bouquet-III. We had asked the learned counsel for the respondent to give us a statement of outstanding amount upto March 2006. In this statement the monthly billing for the three bouquets on the basis of 3000 subscribers is also shown as Rs.1,76,550 plus Rs.75,000 plus Rs.15,000 which also comes to Rs.2,56,550/-. This is the amount which the petitioner also admits to have agreed to pay from April '05 onwards. We therefore accept the computation of the respondent made on the basis of subscriber base of 3000 subscribers for Bouquet I & II and 600 for Bouquet III from April 2005 to July 2005 and this computation would also be applicable for August 2005. However for the period Jan to March we would need to go by the terms of the written agreement and the invoices issued and we hold that for this period the subscriber base is to be taken as 2500 for Bouquet-I & II and 600 for Bouquet-III.

15. There is a clear indication available in the written agreement regarding the rates and these are mentioned as Rs.58.85 for Bouquet-I and Rs.25/- for Bouquet-II. The invoices for April also show the rates as Rs.58.85, Rs.25/- and Rs.25/- for the 3 Bouquets respectively. The monthly subscription fee at these rates was Rs.1,47,125/- Rs.62,500/- Rs.15000/- based on invoices at pages 178, 176, 177 (Volume I) totaling Rs.2,24,625/- Thus for the months of January, February and March, payments are to be at Rs.2,24,625/- per month and for the period April to August at Rs.2,56,556/-. In this context the Petitioner has however stated that the subscription amount was based on a rate of Rs.3500/- per cable operator per month. Respondent has however denied the existence of such a rate. There is also no written agreement nor any exchange of letters in this regard. As such we find it difficult to accept this contention of the petitioner.

As regards the amount paid we have seen the statements submitted by the parties. There is some mismatch between the two sets of statements as brought out below:

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Payments made during 1/1/05 to 31/8/05

S.No.	Month	Amount (In Rupees)	
		As per Petitioner ( <i>Annexure A-6, p-188, Vol I</i> )	As per Respondent

			(Annexure A, p-10-12, given along with written submissions))
1	January	2,80,000	1,37,500 + 15,000
2	February	15,000	2,04,000
3	March	1,37,500	2,41,925
4	April	4,95,925	
5	May	2,45,265	5,90,530
6	June	1,00,000	
7	July	2,95,265	2,59,625
8	August	3.11.351	16,086
	TOTAL	17,80,306	14,74,666

We propose to accept the figure of amount paid as Rs.17,80,306/- which is as per statement of petitioner on affidavit. On this basis the computation of the amount due as on 31/8/2005 would be as follows:-

S.No.	Period	Amount (Rs.)
1.	January to March 05	$2,24,625 \times 3 = 6,73,875$
2.	April to August 05	$2,56,550 \times 4 = 10,26,200$
3.	Total amount due for January to Aug 05	17,00,075
4.	Balance	$17,80,306 - 17,00,075 = 80,231^*$

*\*Excess Amount*

The amount due on the above basis (Rs.80,231/-)represents excess amount paid.

16. As regards the period post 31/8/05, respondent has claimed that the Petitioner should be charged on the basis of a subscriber base of 15000. It has stated that the Petitioner has disclosed a subscriber base of 8000 to Star TV and 15000 to Gemini TV. Also in its petition, the Petitioner has while asking for restoration of signals stated that over 5000 households would be affected.

The petitioners have tried to explain their point of view in regard to each of these contentions. As regards the claim made on behalf of the petitioners that over 5000 households would be affected if the benefit of restoration of signals was not given it stated that a larger number of cable operators had expressed their desire to shift over to the network of Petitioner No.1 for getting better quality of signals and the number of subscribers has been assessed as 5000 on this basis although in reality they were much less. As regards the higher subscriber bases disclosed to Star and Gemini the petitioners have stated that the subscriber base negotiated differs from broadcaster. to broadcaster. The example of another MSO, namely, Siti Cable was cited which was allegedly a sister Company of the Respondent, who had disclosed a subscriber base of 50,000 to 60,000 for 300 operators to M/s Star but had disclosed a subscriber base of only 10,000 to 15000 for the same 300 operators to the Respondent.

In this context it has also come to our notice that during Dec '05 during the pendency of the matter before us, Petitioner No.1 admits to have added a few more cable operators to its network for which it admits

that a higher subscription fee would be payable and it has computed the total monthly subscription payable on this basis as Rs.297500/- plus service tax.

Petitioner No.1 has stated that it had no other cable operators in Bangalore other than those related to the business transferred to it by Petitioner No.2. This has not been denied by the Respondent.

We find that the Respondent has not been able to provide any cogent basis to show why a subscriber base of 8000 or 15000 should be adopted merely because the decoders were got transferred from Petitioner No.2 to Petitioner No.1. Even the figure of 5000 is based on the assertion made by the Petitioner in its petition before us that these number of households would be getting affected by the disconnection of signals on which an explanation has been given by Petitioner in its reply to the counter claims. In the totality of circumstances if a higher subscriber base is to be assumed it should be from December onwards when the petitioner admits to have added cable operators to its network. We see no reason why the subscriber base should not be taken as 5000 for the period from December onwards. We will treat this as the subscriber base for Bouquets I & II and for Bouquet III the existing base of 600 would be continued. On this basis the computation of liability of the Petitioner per month would be  $(5000 \times 64.85 + 5000 \times 27.55 + 600 \times 27.55) = 4,78,530$ .

For the period after 31/8/2005 we are therefore of the view that the liabilities would need to be computed on the basis of same subscriber base as was existing on 31/8/2005 for the period until 30/11/2005 with due account being given to the period of disconnection of 15 days during November and for the period from December 05 until 22/5/2006 (the date until which we propose to extend the applicability of our interim order regarding continuation of signals) the liability would be on the basis of monthly subscription fee of Rs. 4,78,530/-

On this basis the computation of liability for the period 1/9/2005 to 15/5/2006 would be as follows:

Sept'05 to Nov-05 <i>(2 ½ month period @ Rs.2,56,550 / month)</i>	Rs.6,41,375
Dec'05 to May '06 <i>(5 ¾ month period @ Rs.4,78,530 / month)</i>	Rs.27,51,548
Total	Rs.33,92,923

For this period also there is a mismatch between the information provided by the two sides regarding the payments made as brought out below:

-  
Payments made during 01/8/05 and afterwards

S.No.	Month	Amount (In Rupees)	
		As per Petitioner <i>(Annexure A-6, p-188, Vol</i>	As per Respondent

		<i>I)</i>	<i>(Annexure A, p-10-12, given along with written submissions))</i>
1	September	2,00,000	85,699.97
2	November	5,00,000	5,00,000.00
3	December	12,00,000	12,00,000.00
	TOTAL	19,00,000	17,85,699.97

Subject to any reconciliation that that may be carried out by the parties in this regard, we see no reason why the figures of payments indicated by the petitioner on affidavit be not accepted.

Thus the total liability for the period September'05 to 22-5-2006 gets computed as.

Total subscription fee for this period - Rs.33,92,923/-

Amount paid for this period – Rs.19,00,000/-

Amount due – Rs,14,92,923/-

17. The total liability of the Petitioners gets calculated as:

(1) For the period upto 31/8/05 - - (Rs.80,231)

(2) For the period post 31/8/05 till 22/5/06 - Rs. 14,92,923/-  
(Rs. 32,73,290 – Rs, 19,00,000)

(3). Outstanding amount as on 22/5/2006 - Rs14,12,692/-

The Petitioners are directed to pay the above amount forthwith to the Respondent, and not later than 22/5/06, after which they would be liable to pay interest at 12% per annum for the period of delay after 22/5/06. Our interim orders regarding supply of signals would prevail until 22/5/2006 during which period the petitioners are free to apply to the respondent for continued supply of signals on such terms as may be negotiated between the two parties taking into account the provisions of the Interconnect Regulations. Subject to any agreement being reached during this period between the parties, the petitioners are directed to return the decoders to the respondent on the expiry of the above time limit.

This petition together with the related counter claim of the respondent are disposed of accordingly.

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

.....  
(Vinod Vaish)  
Member

.....

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