

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

DATED 14th NOVEMBER, 2008

Petition No.15(C) of 2008

Sree Devi Master Media Systems
Rep. by its Proprietor I. Rama Krishna Raju,
B-8, Industrial Estate,
VISAKHAPATNAM, Andhra Pradesh.

...Petitioner

Versus

M/s ESPN Software India Private Limited,
Rep. by its Authorised signatory,
Having its registered office at 22, Pushp Vihar
Community Centre, New Delhi-110062.

...Respondent

BEFORE:

**HON'BLE MR. JUSTICE ARUN KUMAR,CHAIRPERSON
HON'BLE DR. J.S. SARMA, MEMBER
HON'BLE MR. G.D. GAIHA, MEMBER**

For Petitioner : Mr. Yoginder Handoo, Advocate

For Respondent : Mr. N. Ganpathy, Advocate

ORDER

By this petition, the Petitioner seeks a direction to the Respondent to reconnect/restore signals of its channels; to set aside the demand of Rs. 79,25,799/- as illegal and a direction to the Respondent to sign a subscription agreement with the Petitioner at a monthly subscription amount of Rs. 3 lakhs on reasonable terms and conditions.

2. The Petitioner is a Multi System Operator (MSO) operating in Visakhapatnam, Andhra Pradesh. Its case is that a service contract was signed between the Petitioner and the Respondent on 15.11.2006 valid for a period of one year under which it was agreed that the Petitioner would pay a monthly subscription amount of Rs. 2,52,940/- (inclusive of service tax) on a negotiated subscriber base of approximately 7000 subscribers. It is

alleged that the Respondent who was earlier issuing invoices for this amount, increased the subscription amount unilaterally to Rs. 4,20,000 (excluding taxes) from November, 2007 onwards. Even though the Petitioner protested against this change with the Respondent, the latter sent a letter in November, 2007 alleging non-signing of Agreement and default in payment of subscription fee on the part of the Petitioner and also claiming an arbitrary figure of 50,000 as the subscriber base. The Respondent proceeded to issue a public notice on 28.11.2007, following which, the Petitioner negotiated with an Agent of the Respondent for a monthly subscription amount of Rs. 3 lakhs, and also sent accordingly a cheque for Rs. 2,93,268/- which was duly received by the said Agent. But, the Respondent unilaterally disconnected signals of the Petitioner on 28.12.2007 and when requested to reconnect the signals, claimed an outstanding of Rs. 79,25,799/- including the outstanding from other entities.

3. Denying the allegations, the Respondent stated that the Petitioner had taken over two large cable networks – Excel Enterprises and Excel Media Private Limited and consequently was liable to discharge their liabilities to the Respondent. In so far as the Agreement with the Petitioner is concerned, the contention of the Respondent is that the original Agreement dated 15.11.2006 provided only for a bouquet comprising of ESPN and Star Sports and with effect from first week of July, 2007, a 3rd channel – Star Cricket - was also provided to the Petitioner on the basis of a Service Contract Requisition Form (SCRF) executed by the Petitioner on 5th July, 2007 wherein it had agreed to pay on a subscriber base of 7000 @ Rs. 60/- per subscriber per month (excluding taxes). However, the Respondent's invoicing system had not been upgraded which is why the invoice issued from July, 2007 onwards continued to show only two channels. The Respondent's contention is also that in May and June, 2007 the Petitioner had specifically agreed to pay a sum of Rs. 4 lakhs (including service tax). In the light of this, the Respondent contends that the Petitioner is liable to pay not only its dues but also that of Excel Enterprises and Excel Media Private Limited.

4. The issues that arise in this case are :-

(a) Whether the Petitioner is liable for dues of Excel Enterprises and Excel Media Private Limited.

(b) The subscriber base and the number of channels and hence the amounts due by the Petitioner to the Respondent, including for the Star Cricket Channel.

The pleadings having been completed, the matter was heard on 5.11.2008.

5. The learned counsel for Petitioner argued that his client does not have any liability towards the dues of Excel Enterprises and Excel Media Private Limited since taking over of these two firms was only at the proposal stage which did not subsequently materialise. The learned Counsel for Respondent agreed that in the light of the Petitioner's averment in the rejoinder affidavit that it had not taken over Excel Enterprises and Excel Media Private Limited, his client withdraws the demand from the Petitioner in so far as dues of these two firms are concerned. The Counsel for Respondent stated that, in the light of this, the dues owed by the Petitioner at the end of December, 2007, work out to Rs. 9,47,655/-.

6. The Counsel for Petitioner agreed that the 3rd channel – Star Cricket - was being received from July, 2007, but argued that it was an introductory offer and was being given free of charge by the Respondent. He argued that there was no Agreement regarding increase of subscriber base. Besides, his contention is that the SCRF is not an Agreement dated 5th July, 2007 and no sanctity can be attached to the same. In addition, his contention is that the Petitioner was only asked to sign blank SCRF in June, 2007 and all the details were filled up only by the Respondent. In support of this argument, the counsel for Petitioner referred to a blank, signed SCRF furnished by the Petitioner as part of its rejoinder affidavit.

7. The Counsel for Respondent refuted the argument of the Counsel for Petitioner that the SCRF is not an Agreement and stated that the very fact that the 3rd channel was being received from July, 2007, which is not denied, indicates that both the parties acted in pursuance of the SCRF. He also referred to the letters dated 18.5.2007 and 18.6.2007 wherein the Petitioner agreed to pay a sum of Rs. 4 lakhs “towards monthly subscription of Sree Devi Master Media Systems and Excel Cable Operators areas of operation”. He argued that this was enough indication that the Petitioner's area of operation had increased and hence the increased subscriber base which was agreed and incorporated in the SCRF.

8. We have carefully considered the matter. In so far as the dues of Excel Enterprises and Excel Media Private Limited are concerned, the liability, if any, does not fall on the Petitioner as conceded by the counsel for

Respondent. However, in so far as the amount of subscription fee and subscriber base is concerned, it is not denied by the Petitioner that it has been receiving Star Cricket since July, 2007. There is no evidence that Star Cricket was offered as an introductory channel free of cost. The lack of mention of Star Cricket in the invoices issued for the period 5th July, 2007 onwards is not very significant since it is reasonable to accept the Respondent's version that it has been on account of a snag in the invoicing system. The letters dated 18.5.2007 and 18.6.2007 written by the Petitioner to the Respondent are a clear indication that the number of channels / area of operation have increased. The fact that Petitioner executed SCRF on 5th July, 2007 agreeing to pay on as per subscriber base of 7000 @ Rs. 60/- per subscriber per month leads us to hold that the Petitioner is liable to pay on these terms from 5th July, 2007 onwards.

9. It is agreed by both the Parties that the Respondent has disconnected signals to the Petitioner on 28.12.2007. We do not accept the contention of the Respondent that since there was no Agreement, it had disconnected the signals without notice. Clause 8.1 of the Telecommunication (Broadcasting and Cable Services) Interconnection (Third Amendment) Regulation, 2006 (10 of 2006) reads as follows :-

“Parties to an interconnection Agreement for supply of TV channel signals shall begin the process of negotiation for renewal of existing Agreement at least two months before the due date of expiry of the existing Agreement.

Provided that if the negotiations for renewal of the interconnection Agreement continue beyond the due date of expiry of the existing Agreement then the terms and conditions of the existing Agreement shall continue to apply till a new Agreement is reached or for the next three months from the date of expiry of the original Agreement, whichever is earlier. However, once the parties reach an Agreement, the new commercial terms shall become applicable from the date of expiry of the original Agreement.

XXX

XXX

XXX”

10. The Agreement dated 15.11.2006 would have been in force till 14.11.2007. But, the Respondent is relying on the Service Contract Requisition Form, which we have held above to be valid. This SCRF is valid upto 5th June, 2008. In view of the provisions of Clause 8.1 above, the Agreement would have been in force for further 3 months, i.e., till 5.9.2008. Even as per the Agreement dated 15.11.2006, the Petitioner would have been entitled to receive signals till 14.2.2008 under the same terms as per the Agreement, as modified by the SCRF of July, 2007, i.e., 3 channels for a subscriber base of 7000 @ Rs. 60/- per subscriber per month. During this period, it was incumbent on the Respondent to follow the procedure by way of issuing notice under

Regulations 4.1 and 4.3 of the Regulations cited supra. We hold that the disconnection of signals by the Respondent to the Petitioner on 28.12.2007 is violative of the Interconnection Regulations.

11. In the light of the above, we direct the Respondent to reconnect signals to the Petitioner within one week from the date of this Order and continue to provide signals for a period of five months. We are fixing this period, which is about half way between the period of 2 months (from 28.12.2007 to 14.2.2008) and 8 months (from 28.12.2007 till 5.9.2008). This is being stipulated in view of the injury caused to the Petitioner by illegal disconnection of signals. The Petitioner will however pay @ Rs. 60/- per subscriber per month for 7000 subscribers from 5.7.2007 till 28.12.2007, the date of disconnection, and at the same rate from the date of reconnection pursuant to this Order till the period of five months is exhausted. In the meanwhile, the two parties may negotiate for a fresh Agreement, if they so desire.

12. The petition is accordingly disposed of. No costs.

.....J
(Arun Kumar)
Chairperson

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(J.S. Sarma)
Member

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(G.D. Gaiha)
Member