

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**NEW DELHI****DATED 18th DECEMBER, 2009**

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Petition No. 198(C) of 2008

Dish TV India Ltd
B-10, Lawrence Road, Industrial Area
New Delhi-110 035.Petitioner
Vs.

Sun TV Network Ltd
4, Norton Road
Mandaveli
Chennai-600 018. ...Respondent

BEFORE:**HON'BLE MR. JUSTICE S.B.SINHA, CHAIRPERSON****HON'BLE MR. G. D. GAIHA, MEMBER**

For Petitioner : Mr. Yoginder Handoo, Advocate
Ms. Nitya Thakur, Advocate
Mr. Arjun Natarajan, Advocate for
Mrs. Pratibha M. Singh, Advocate

For Respondent : Mr. Ramji Srinivasan ,Senior
Advocate
Mrs. N.K. Sibal, Advocate
Mr. Sumesh Dhawan, Advocate

ORDER

The petitioner is a cable operator. It uses DTH signals. The respondent is a broadcaster. A public notice was issued on 26.8.2008 in terms of Regulation 4.3 of

Telecommunication (Broadcasting and Cable Services) Interconnection Regulations, 2003 (hereinafter called and referred to for the sake of brevity as the said Regulations).

2. Inter alia, questioning the said public notice, the action on the part of the respondent in switching off the supply of signals this petition was filed, praying inter alia, for the following reliefs:-

“(a) Directing the respondents to discharge its Statutory obligations under the interconnection regulation of TRAI dt. 03.09. 2007 read with TRAI Clarification dated 18.04.2008 and execute the Agreement dated 08.08.2008 already signed and made available to the respondent by the petitioner; and

(b) Any other order/s as this Hon’ble Tribunal may deem fit and proper in the facts as circumstances of the present case.”

3. The respondent herein filed its reply. Talks of compromise ensued. As endeavours for settlement by way of negotiations did not fructify, the parties agreed to a reference of the disputes and differences to Lt Gen D.P. Sehgal (Retd), a former Member of this Tribunal through the process of mediation.

4. Admittedly, the parties settled their disputes and differences through the intervention of the learned mediator. In terms of the said settlement, the parties were to execute a fresh agreement with effect from July, 2009 as would appear from the Order issued by this Tribunal on 26.8.2009. Pursuant thereto or in furtherance of the said settlement, a fresh subscriber agreement was entered into.

5. The respondent, however, filed a Miscellaneous Application on or about 15.7.2009 praying, inter alia, for a direction to the petitioner to enter into an agreement based on the RIO without any unilateral modification prior thereto. We may notice that in the agreement which was entered into by and between the parties herein, prior to the said settlement, which are at pages 42 and 119 of the paper-book, there was no provision for deposit of any security. For the first time, in respect of the agreement, for the year 2009-2010, being at page 359 of the paper-book, i.e., pursuant to the settlement arrived at

through the intervention of the mediator, a provision was made therefor; the relevant clause whereof reads is as under:-

“Security Deposit: The parties agreed to abide by the order of TRAI and TDSAT with regard to security deposit.”

Furnishing of such security deposit, however, was said to be subject to a decision of the TRAI or this Tribunal.

The petitioner herein, by a letter dated 25.6.2009 addressed to the respondent inter alia stated as under :-

“2. Security Deposit : In your Reference Interconnect Agreement, you have stipulated that a DTH operator has to deposit an Interest Free Security Deposit of Rs. 5 Crore. It is stated that such clause is in total and complete contravention of the TRAI Regulations hence not binding on Dish TV. The same being non-est, having no existence in the eyes of law, would deserve a statement on our behalf for its formal deletion from the draft RIO sent by you and which has been executed by us upon being brought in conformity with the requirements of law.”

6. The petitioner appears to have referred the said dispute to the Authority as it appears from its letter dated 30.6.2009, which reads as under:-

“This is in reference to the RIO agreement of Sun signed by Dish TV, after making necessary amendments to bring the same in line with the TRAI Regulations, copy of which has been marked to you for your perusal and records.

We would like to bring to your attention that Sun Network in its RIO had stipulated certain provisions which were contrary to the TRAI Regulations including the Interconnect Regulations dated 17.03.09. We have made the necessary and required changes in the RIO and signed the same, to be effective from 08.07.09 and two copies of which have been sent to Sun Network for their signature.

In our letter dated June 29, 2009, to Sun Network, (copy of which has been sent to your office for your information) we have amply clarified the above status.

As discussed with you, we are enclosing herewith a copy of the RIO of Sun sent to us by Sun which contains the clauses which are contrary to the TRAI Regulations, which have been removed by Dish TV while signing the RIO.

We shall be pleased to provide any further information as you may desire in this matter.”

Yet again, by another letter dated 19.8.2009, the petitioner stated—

“This has reference to our earlier letter dated 30.6.2009. We hope the same has been considered and we would request if TRAI could guide us on the subject matter of inclusion of certain clauses which are contrary to the TRAI regulations including the interconnect regulations dated 17.3.2009. We are herewith attaching our earlier letter dated 25.6.2009 and 30.6.2009 for your ready reference.

We would look forward to your kind guidance on the same.”

7. The Authority responded to the said letters of the petitioner in terms of its letter dated 25.8.2009 in the following terms:-

“2. M/s Dish TV has forwarded a copy of this letter along with their representation dated 30.6.2009 to TRAI in reference to Reference Interconnect Offer (RIO) of M/s Sun TV Network for supply of TV signals to Dish TV DTH platform. A copy of the representation dated 30.6.2009 containing a copy of signed RIO by M/s Dish TV is also enclosed herewith.

3. In both the references, M/s Dish TV has raised the concern on various terms and conditions of RIO of M/s Sun TV Network. Some of the concerns in reference to TRAI Regulation dated March 17, 2009 are as follows:

- i. Definition of Subscriber;
- ii. Security Deposit;
- iii. Anti Piracy;
- iv. Authorised Transmission and Security;
- v. Reports and Audit.

4. You are requested to look into the matter and submit the para-wise comments on the issues raised by M/s Dish TV in the enclosed references by September 9, 2009.”

Indisputably, the matter is pending before the Authority.

8. The facts narrated hereinbefore clearly demonstrate that the original dispute raised by the petitioner with the respondent has come to an end.

The dispute which is pending before TRAI is a fresh dispute. The petitioner has not filed any application for amendment of the petition. In this petition, this Tribunal is not concerned with the new dispute, if any, arising between the parties. As noticed hereinbefore, the petitioner itself has referred the dispute for consideration of the Authority. We, therefore, are of the opinion that no purpose would be served in keeping this proceeding pending before us.

9. The parties indisputably, may take recourse to such remedies which are available to them in law, i.e., so far as the dispute so far as furnishing of the security is concerned.

10. There cannot, however, be any controversy that so far as the dispute between the parties for which the present petition has been filed, would be governed by the agreement entered into by and between them through the intervention of the learned mediator.

11. This petition is disposed of with the aforementioned observations and directions with no order as to cost.

..... J
(S.B.Sinha)
Chairperson

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(G. D. Gaiha)
Member