

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

**DATED 4<sup>TH</sup> MAY, 2009**

**Petition No.181(C) of 2008**

**Hathway Cable & Datacom Pvt. Ltd  
&  
Star Vision Cable Network**

**...Petitioners**

**Versus**

**M/s MSM Discovery Pvt. Ltd.**

**...Respondent**

**BEFORE:**

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

**CHAIRPERSON  
MEMBER  
MEMBER**

For Petitioners	:	Mr. Arun Kathpalia, Mr. Nasir Husain, Advocates
For Respondents	:	Mr. Gopal Jain, Mr. Kaushik Mishra, Advocates.

**ORDER**

This is a petition filed by M/s Hathway Cable & Datacom Pvt. Ltd and Another against a public notice dated 6.8.2008 issued by the Respondent, MSM Discovery Pvt. Ltd, threatening to disconnect the signals for taking unauthorized feed. The case of the 1<sup>st</sup> Petitioner- Hathway Cable & Datacom Pvt. Ltd -is that it had, on 26.2.2008, taken over the 2<sup>nd</sup> Petitioner -Star Vision Cable Network- with effect from 1.3.2008 and that the Respondent was duly informed by both the Petitioners requesting that the Integrated Reception Devices (IRDs) issued in the name of the 2<sup>nd</sup> Petitioner be transferred in favour of the 1<sup>st</sup> Petitioner. It was also indicated by both the Petitioners that while outstanding dues upto 29.2.2008, if any, would be paid by the 2<sup>nd</sup> Petitioner, all payments w.e.f. 1.3.2008 will be paid for by the 1<sup>st</sup> Petitioner. It is contended that the Respondent vide its e-

mail dated 1.4.2008 recognised the takeover of the Star Vision Cable Network by the 1<sup>st</sup> Petitioner. Subsequently, the Respondent had informed Star Vision Cable Network to pay a sum of Rs. 47,596/- which the 1<sup>st</sup> Petitioner paid itself although it was not required to do so.

2. The Petitioner's case is that while it had sought the Validation forms from the Respondent, the latter had informed it that these forms could only be sent after the transfer of the network was confirmed. According to the Petitioner, it had informed the Respondent 16.6.2008 that it had shifted the Headends from the premises of the 1<sup>st</sup> Petitioner. The Petitioner also stated that the Respondent continued to raise the invoices in the name of the 2<sup>nd</sup> Petitioner and moreover on 25.7.2008, issued a notice to the 2<sup>nd</sup> Petitioner that it has been unauthorisedly retransmitting the signals in the certain unauthorized areas of Lucknow city. The Respondent also issued notice dated 6.8.2008 in two newspapers threatening to disconnect the signals. The prayer of the Petitioner is to declare this public notice as illegal, null and void and to restrain the Respondent from switching off or disconnecting the signals and to pass such other orders as deemed fit.

3. The case of the Respondent is that it had a subscription Agreement with the 2<sup>nd</sup> Petitioner under which the latter was permitted to operate in Viram Khand 1,2,3,4,5, Vivek Khand 1.2.3.4. Vinay Khand 1,2, Virat Khand and Patrakarpuram. Subsequently, the 1<sup>st</sup> Petitioner is supposed to have taken over the 2<sup>nd</sup> Petitioner firm and started transgressing into other areas namely Alambagh, Wazirganj, City Station and Kaiserbagh, which were beyond the areas agreed to with the 2<sup>nd</sup> Petitioner. Despite being informed by the Respondent, the Petitioner continued to transgress into unauthorized areas leaving the Respondent with no option but to issue the notice for disconnection. The case of the Respondent is that this action of the Petitioner deprives the Respondent of the subscription revenue and accordingly, prays that the Petition be dismissed without granting any relief.

4. When the case came up for hearing on 14.1.2009, both the parties stated that settlement talks were going on. Time was given to file the pleadings and the Respondent was directed not to act on the public notice dated 6.8.2008. Again, when the matter was heard on 3.2.2009, the Petitioner agreed to pay to the Respondent on the basis of 5,144 subscribers w.e.f. 1.12.2008 without prejudice to the rights and contentions of both the parties and subject to the adjustment on the basis of final determination.

5. The matter having come up for hearing on 27.4.2009, counsels for both the parties were heard. The learned counsel for Petitioners, Mr. Arun Kathpalia, drew our attention to the letter dated 26.2.2008 of the 2<sup>nd</sup> Petitioner informing it of the sale of its network to the 1<sup>st</sup> Petitioner and stating that the 2<sup>nd</sup> Petitioner would be responsible for the balance payments, if any, till 29.2.2008 and that the 1<sup>st</sup> Petitioner will be responsible for paying the monthly subscription charges from 1.3.2008. The same was again confirmed by the 1<sup>st</sup> Petitioner to the Respondent on 7.3.2008. He also drew our attention to an e-mail dated 1.4.2008 from the Respondent to the 1<sup>st</sup> Petitioner enclosing two formats of the letters which are required to be furnished by the 1<sup>st</sup> Petitioner for the transfer to be effected and informing it that a new affiliation Agreement and validation forms were also to be signed between the two parties. Further correspondence took place between the two parties. It is not denied by the counsel for Petitioners that the 1<sup>st</sup> Petitioner had started operating in the areas of Alambagh, Wazirganj, City Station and Kaiserbagh in addition to the original areas of operation of the 2<sup>nd</sup> Petitioner, namely, Viram Khand 1,2,3,4,5; Vivek Khand 1,2,3,4; Vinay Khand 1,2; Virat Khand and Patrakarpuram. Its case, however, is that the Respondent having acknowledged the takeover of the 2<sup>nd</sup> Petitioner by the 1<sup>st</sup> Petitioner was not correct in issuing notices under Clauses 4.1 & 4.3 to the 2<sup>nd</sup> Petitioner and that these should have been issued in the name of the 1<sup>st</sup> Petitioner.

6. The counsel for Petitioners also argued that the Respondent should be directed to enter into an Agreement with the 1<sup>st</sup> Petitioner on reasonable terms. His contention is that settlement talks were initiated and based on discussions that took place on 22.10.2008, the Respondent had communicated a draft Memorandum of Understanding. While the draft MoU was not agreed to by the 1<sup>st</sup> Petitioner, the contention of the counsel for Petitioners is that this Tribunal must now intervene and ensure that the terms are reasonably settled and the Respondent cannot now revert to the situation at the time of the impugned public notice. In support of his contention that the Agreement should be on reasonable terms, the counsel pointed out that there are 4 major MSOs in Lucknow city and drew our attention to a detailed statement showing the number of Local Cable Operators (LCOs) affiliated to them and the percentage of their subscriber base, which is as follows :-

S. no	Name of the MSO	Number of LCOs	%age of Subscriber base in Lucknow City
1	DEN Enjoy	143	63%
2	Channel 9	90	30%

3	Hathway	26	7%
4	Vardaan Vision	NA	3%

7. The contention of the counsel for the Petitioners is that the draft MoU, communicated by the Respondent to the 1<sup>st</sup> Petitioner, states that the 1<sup>st</sup> Petitioner would be liable to pay a monthly subscription fee of Rs. 3,84,479(excluding taxes) and that if Channel 9 is deactivated or discontinues subscription, the 1<sup>st</sup> Petitioner would be liable to pay a subscription fee of Rs.8,91,779 (excluding taxes) and further that if the Den Enjoy and Vardaan Vision and another MSO - Gomti Cable Network Pvt. Ltd are also deactivated, the monthly subscription would be Rs. 17,14,540 (excluding taxes). The contention of the counsel is that the total subscription fee of Lucknow city thus being Rs.17, 14,540 (excluding taxes) and the 1<sup>st</sup> Petitioner's subscriber base being 7%, it can only be asked to pay a corresponding sum, which works out to Rs. 1.2 lakh (excluding taxes) or a maximum of double this amount i.e. Rs.2.4 lakh per month (excluding taxes). Assuming a subscription rate of Rs. 78 per subscriber per month (the counsel stated that this was the rate being paid to the Respondent in Delhi), its contention is that it would translate to a subscriber base of 1538 or a maximum of 3077 which is far below the subscriber base of 5,144 agreed to, as an interim measure, before this Tribunal on 3.2.2009.

8. The counsel for Respondent strongly refuted the argument of the counsel for Petitioner. His case is that it is an admitted fact that the Petitioner was transgressing into the other areas, beyond what was envisaged in the Agreement between the 2<sup>nd</sup> Petitioner and the Respondent. The counsel for Respondent pointed out that while the Respondent had acknowledged the receipt of letters from the 1<sup>st</sup> Petitioner regarding the takeover of the network, the necessary Agreements had not been signed. Without waiting for the formalities to be completed, the 1<sup>st</sup> Petitioner unilaterally moved the Headends to a different location which is not permitted under the Agreement. Secondly, it is an admitted fact that the 1<sup>st</sup> Petitioner had transgressed into areas beyond the areas agreed to between the 2<sup>nd</sup> Petitioner and the Respondent. Having so transgressed, the 1<sup>st</sup> Petitioner cannot now insist that the Respondent should enter into an Agreement regarding these transgressed areas on so called reasonable terms. He further stated that if the 1<sup>st</sup> Petitioner desires to extend its operation into any other area, this has to be a commercial arrangement arrived at through mutual negotiations between the two Parties.

9. We have carefully considered the contentions and arguments of both the parties. It is evident that both the Petitioners have informed the Respondent of the takeover of the 2<sup>nd</sup> Petitioner's network by the 1<sup>st</sup> Petitioner. There is also an Agreement between the 2<sup>nd</sup> Petitioner and the Respondent. This has been acknowledged by the Respondent in its letter dated 1.4.2008 addressed to the 1<sup>st</sup> Petitioner. The Respondent had also received from the 1<sup>st</sup> Petitioner a sum of Rs. 47,596 which was the outstanding amount as on March, 2008 due from the 2<sup>nd</sup> Petitioner. In the light of this, the takeover of Star Vision Cable Network by the 1<sup>st</sup> Petitioner cannot be denied. Since the Agreement exists between the 2<sup>nd</sup> Petitioner and the Respondent, automatically, the same would be deemed to apply to the 1<sup>st</sup> Petitioner. The territory in respect of this Agreement is undeniably Viram Khand 1,2,3,4,5; Vivek Khand 1,2,3,4; Vinay Khand 1,2; Virat Khand and Patrakarpuram. The 1<sup>st</sup> Petitioner and the Respondent will continue to be bound by this Agreement.

10. The question then arises regarding the other areas, namely, Alambagh, Wazirganj, City Station and Kaiserbagh. When the matter first came up for hearing on 26.8.2008, the parties' counsels pleaded that they will make an effort to resolve this matter amicably. It was only on 14.1.2009 that the counsel for Respondent stated that the settlement talks have failed. The case of the counsel for Petitioner is that the talks having been held for over a few months, the Respondent cannot take a strictly legal view of the issue but has to agree to its operations in these areas on reasonable terms. We do not agree with this view. While it is open to the parties to negotiate between themselves during the pendency of the proceedings, this is a matter entirely between them and this Tribunal cannot be asked to provide relief in the light of those talks particularly when they have failed. And we cannot also similarly take notice of any draft memorandum of understanding which has not been agreed upon and which has not been signed. As such, we do not propose giving any relief in respect of the areas admittedly transgressed upon.

11. As regards the notices under Clauses 4.1 and 4.3, these have admittedly been given in the name of Star Vision Cable Network. The case of the counsel for Petitioners is that this should have been given in the name of 1<sup>st</sup> Petitioner and not the 2<sup>nd</sup> Petitioner. We notice that while the Respondent had acknowledged on 1.4.2008 the receipt of the information regarding the takeover, the necessary legal formalities have not been completed. And till these legal formalities are completed, the name of the 2<sup>nd</sup> Petitioner continues to be valid. The counsel for

Petitioner has not been able to show any invoices raised in the name of the 1<sup>st</sup> Petitioner. As such we hold that there is no infirmity in the issue of notices given under Clauses 4.1 and 4.3.

12. Accordingly, this Petition is disposed of, without costs, with the following directions:-

- (i) Insofar as the areas of Viram Khand 1,2,3,4,5; Vivek Khand 1,2,3,4; Vinay Khand 1,2; Virat Khand and Patrakarpuram are concerned, both the 1<sup>st</sup> Petitioner and the Respondent will continue to abide by the provisions of the Agreement between the 2<sup>nd</sup> Petitioner and the Respondent. The operation of the 1<sup>st</sup> Petitioner in transmitting the signals of the Respondent in these areas is valid and the Respondent will henceforth raise all invoices and carry all correspondence relating to this area with the 1<sup>st</sup> Petitioner.
- (ii) In so far as the areas of Alambagh, Wazirganj, City Station and Kaiserbagh are concerned, the 1<sup>st</sup> Petitioner shall, within 3 days from the date of this Order, cease to operate in these areas.
- (iii) Since the 1<sup>st</sup> Petitioner has so far been operating in the area of Alambagh, Wazirganj, City Station and Kaiserbagh including by virtue of the interim Agreement before this Tribunal, it will pay to the Respondent at the rate of Rs. 117.62 per subscriber per month (notified rate of the Respondent for city of Lucknow) for 5,144 subscribers, which is the subscriber base agreed to by the Petitioner on 3.2.09. This payment will be made from the date of transgression till and including the date of cessation of operations. The amount so arrived at, minus the amount already paid, shall be paid by the 1<sup>st</sup> Petitioner to the Respondent within 7 days from the date of this Order.
- (iv) Both the parties shall enter into an Agreement for the year 1.4.2009 to 31.3.2010 within a period of 30 days from the date of this Order. It shall be open to both the parties to mutually negotiate between themselves any extension of the area of operations of the 1<sup>st</sup> Petitioner including in the areas of Alambagh, Wazirganj, City Station and Kaiserbagh.

.....J  
(Arun Kumar)  
Chairperson

.....

**(J.S. Sarma)**  
**Member**

.....  
**(G.D. Gaiha)**  
**Member**