

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

DATED 22nd APRIL, 2010

Petition No. 53(C) of 2010

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Den Narmada Network Pvt. Ltd.

..... Petitioner

Vs.

MSM Discovery Pvt. Ltd.

..... Respondent

BEFORE :

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

For Petitioner : Mr. Navin Chawla, Advocate

For Respondent : Mr. Harsh Kaushik, Advocate

ORDER

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Sh. G.D. Gaiha , Member

- 1.** By this petition, the petitioner is seeking redressal from this tribunal against public notice issued by the respondent on 27th of February 2010 in the Nav Bharat Times newspaper in the name of M/s. Sanskardhani Cable Network Ltd. on the ground of non-payment of subscription dues. Besides the above notice the respondent has also been continuously running a scroll on its Set Max channel threatening disconnection of the Sony bouquet of channels provided by it to the petitioner on the same ground of non-payment of subscription amount. The learned counsel for the petitioner would submit that because of arbitrary action on the part of the respondent, various cable operators are threatening to desert it and move to other Multi System Operators. The learned counsel for the petitioners would further contend that that this action of the respondent is on account of upcoming IPL 20-20 series which is to be aired exclusively by the respondent channel that is Set Max.
- 2.** The learned counsel for the petitioner would further submit that it has been operating as a multi system operator in the area of Jabalpur initially in the name of a firm known as M/s. Sanskardhani Cable Network. The learned counsel for petitioner would further contend that some time in the month of September 2008, a joint venture company was formed between M/s. Sanskardhani Cable Network and DEN networks Ltd. to form the petitioner herein, i.e. Den Narmada Network Private Ltd. (Petitioner) and all the assets of the of the SANSKARDHANI CABLE NETWORK were transferred to it.
- 3.** The learned counsel for the petitioner would contend that the erstwhile M/S SanskarDhani cable network and the respondent had certain disputes and differences in relation to the subsisting subscription agreement in the year 2005.

The learned counsel for petitioner has also brought to our notice that petition number 143 (c) of 2005 and petition number 201(C) of 2007 which have been filed in this tribunal for arbitrary and unlawful disconnection of signal by the respondent without complying with the regulations and for claiming recovery of alleged dues owed by M/S.

Sanskardhani Cable Network to the respondent, wherein a Chartered Accountant was appointed to finalise the accounts of the parties, vide its order dated 7.2.2008.

The learned Chartered Accountant as Commissioner appointed by this Tribunal opined that a sum of Rs.1635795/- was due and payable by M/s. Sanskardhani Cable Network to the respondent. The petitioner would contend that the respondent and M/s.. Sanskardhani Cable Network has met on several occasions to settle their disputes and differences in terms of the report by learned Chartered Accountant as Commissioner.

4. The petitioner would further submit that M/s. SANSKARDHANI CABLE NETWORK and the respondent in the present petition entered into a memorandum of understanding and agreement dated 8.5.2009, wherein the terms of settlement were recorded. The learned counsel for the petitioner also brought to our notice that this memorandum of understanding was to remain valid from 1.4.2009 till 31.3.2010. As per the terms of the MOU, earlier dues which were subject matter of the above referred petitions were settled at Rs.10.00 lakhs payable in three installments. Further, M/s. Sanskardhani cable network was to pay a sum of Rs.93143.00 to the respondent from the date of activation of signals till 14.6.2009 and subsequently a sum of Rs.4.00 lakhs from 15.6.2009 till 31.3.2010. The copy of the said MOU dated 8.5.2009 has been annexed to their petition. The learned counsel for the petitioner would contend that this MOU is in force and on the strength of this MOU only, the signals were activated by the respondent on 26th May, 2009.
5. The learned counsel for the respondent, on the other hand, would contend:
 - (i) That there exists a subscription agreement between SANSKARDHANI CABLE NETWORK and the respondent which has been signed on 8.5.2009, and as per the latest validation form signed, the subscriber base with effect from 15.6.2009 is 2877 and the subscription fee was payable @ Rs. 139.02 i.e. a total sum of Rs. Four Lakhs monthly.

- (ii) The respondent denies the letter dated 8.5.2009 purported to have been written by M/s. Sanskardhani Cable Network to the respondent, informing that M/s. Sanskardhani Cable Network has transferred, sold, conveyed and assigned all rights, assets, and interest of whatsoever nature in and over the MSO's business in favour of the petitioner in the present petition.
- (iii) The respondent is in agreement with the petitioner for signing the memorandum of understanding and to the terms of settlement between M/s. Sanskardhani Cable Network and the respondent on 8.5.2009. The main crux of this agreement is that M/s. Sanskardhani Cable Network will make a payment of Rupees 10 lakhs in three installments to the respondent as a full and final settlement of outstanding dues and M/s. Sanskardhani Cable Network would pay minimum guaranteed term fees on a monthly basis over a period of 11 months as enumerated in annexure to validation forms being signed by and between the parties. The terms and conditions settled in this meeting would govern the relationship up to 31st March, 2010.
- (iv) That there is a provision of increasing the term fees as per commitments made, by virtue of the same, M/s. Sanskardhani Cable Network would agree to increase the minimum guaranteed monthly subscription fees on account of change/increase in the subscriber base of the affiliate beyond the minimum guaranteed subscriber base on the basis of the affiliates correct subscriber base. The affiliate agrees to provide the monthly subscriber statement in terms of the regulations giving complete details of its territory, franchisees/sub operators, and their declared subscriber base effective May, 2009. The said subscriber statement shall be accepted by respondent or distributor only after necessary verification/scrutiny.
- (v) That the respondent also is in agreement that it has received some cheques by some entity other than M/s. Sanskardhani Cable Network however the receipt thereof would not in any way create any

relationship with that entity, such as an agreement for providing signals as it had been providing signals to M/s. Sanskardhani Cable Network.

(vi) The notice issued is valid and legal.

6. We, as at present advised, however, need not go into the legality or otherwise of the notice issued by the respondent on M/s. Sanskardhani Cable Network.

The main question which arises is as to whether in the facts and circumstances of the case, the petitioner is entitled to any relief from this tribunal or not?

An application has been filed on behalf of the petitioner to implead one Mr. Devendra Dubey, who was proprietor of M/s. Sanskardhani Cable Network. The said application was filed on the premise that even if no order in favour of the petitioner is possible to be passed, the same may be passed in favour of newly impleaded petitioner. We would proceed on the basis that the said application may be allowed. However, as would appear from the discussions made hereinafter, in our considered view, it would not be possible for this Tribunal to grant any relief as has been prayed for in this petition.

No privity of contract exists by and between the petitioner No.1 and the respondent. The public notice was issued in respect of supply of signal by the respondent to the network belonging to the petitioner no. 2. It is neither in doubt nor in dispute that the petitioner no. 1 being a new entity, it was necessary for the parties to enter into a fresh agreement and/or only in the event the name of the petitioner no.1 is mutated in the records of the respondent, the petitioner no. 2 having transferred all his right in favour of the petitioner no. 1, it does not own any network to which any supply of signals can be affected.

Only because the petitioner no. 2 is a Director of the petitioner no. 1, the same in law would not be very material as having regard to the well known concept of a company being a separate juristic person. The petitioner no. 1 must be held to be a separate person, (*See Lee Vs. Lee's Air Farming Ltd. 1960(3) All E.R. 420.*) The Company cannot be identified with its directors or shareholders.

There does not, therefore, exist any legal relationship between the petitioner herein and the respondent. We are, thus, of the considered opinion that the petitioners are not entitled to any relief in the present form.

In view of our aforementioned findings, we are of the opinion that it is not necessary for us to enter into the merit of the matter.

- 7.** The public notice has been issued as per Regulation 4.3 of the Regulations on 27.2.2010 in the name of M/s. Sanskardhani Cable Network and the cause of action for disconnection is non-payment of dues. The present petition of course also has been filed by Mr. Devendra Dube who had signed the MOU with the respondent for and on behalf of M/s. Sanskardhani Cable Network, but he has filed the petition in the capacity as a director of the petitioner company in the present petition and not as a proprietor of the said concern.
- 8.** We however, in the present circumstances, where the receipt of the letter dated 8th May 2009 from M/s. Sanskardhani Cable Network has been categorically denied by the respondent and M/s. Sanskardhani Cable Network not been able to produce any convincing proof for delivery thereof, and there being no instrument of agreement or relationship of the respondent with the present petitioner in law, we are of the opinion that the petitioner no. 1 does not have any locus standi in the dispute between M/s. Sanskardhani Cable Network and the respondent.
- 9.** It is also pertinent to mention that just before the end of arguments the learned counsel for the respondent brought to our notice that the present petitioner does not have any certificate from the postal authorities of being a

cable operator in terms of the Cable TV Networks(Regulation) Act 1995.

The Act provides for a mandatory registration of the cable operators desiring to operate a cable TV network, with the postmaster of the area within whose territorial jurisdiction the office of the concerned cable operator is situated.

- 10.** In the facts and circumstances of the case we cannot restrain the respondent in any manner from deactivating or disturbing the supplies of signals of the TV channels to the petitioners as per the regulations in the absence of any legal relationship with the petitioner and, therefore, we cannot put the public notice dated 27th February 2010 on hold. The respondent as per the agreement and also the MOU signed by between the parties that is with M/s. Sanskardhani Cable Network may settle its disputes in terms of the said document.

This petition is dismissed accordingly, however, there cannot be any doubt or dispute that the parties herein would be entitled to enter into a fresh agreement upon negotiation.

No order as to cost.

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

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(G.D. Gaiha)
Member

