

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

DATED 22nd APRIL,2010

Petition No. 80(C) of 2010

Grand Bhatia Entertainment Pvt. Ltd.

...Petitioner

Vs.

Star Den Media Services Pvt. Ltd.& ors

...Respondents

Petition No. 82(C) of 2010

Grand Bhatia Entertainment Pvt. Ltd.

...Petitioner

Vs.

MSM Discovery India Pvt. Ltd. & Ors

...Respondents

Petition No. 83(C) of 2010

Grand Bhatia Entertainment Pvt. Ltd.

...Petitioner

Vs.

Zee Turner Ltd. & Ors

...Respondents

BEFORE:

HON'BLE MR. JUSTICE S.B.SINHA, CHAIRPERSON

HON'BLE MR. G. D. GAIHA, MEMBER

HON'BLE MR. P.K. RASTOGI, MEMBER

For Petitioner

: Mr. C. S. Vaidyanathan, Senior
Advocate

Mr. Sonal Jain, Advocate

- For Respondent No. 1 (Star Den) : Mr. Gaurav Juneja, Advocate
- For Respondent No. 1 (MSM) : Mr. Kaushik Mishra, Advocate
- For Respondent No. 1(Zee) : Mr. Maninder Singh, Senior Advocate
Mr. Arjun Natrajan, Advocates for
Mrs.Prathiba M. Singh, Advocate
- For Respondent No. 2 & 3 : Mr. Navin Chawla, Advocate
Mr. Sharath Sampath, Advocate

ORDER

G.D. Gaiha, Member

By our order dated 08.04.2010, we upon hearing the counsel for the parties at some length declined to pass an interim order in favour of the petitioner. We hereby assign reasons in support thereof.

- The present petition has been filed by the petitioner for seeking directions against the respondent No. 1 to maintain the continuous and uninterrupted supply of signals to the cable TV network of the petitioner, as it has been facing an imminent threat of disconnection of signals to its cable TV network. The petitioner has placed a lease agreement with the Respondent No. 3 signed on 26.5.2008 for a minimum period of five years on record, whereby it agreed to pay a lease rental for a sum of Rs. 5000 per month. By reason thereof the lessee was to have the right of acquiring the network, if the lessee desired to acquire the network within a period of one year from the date of this agreement, for a consideration not exceeding 40% of the investment already made in assets of the network, so acquired.

- 2.** The petitioner, which is a private limited company having three partners designated as party member 2, party No. 3, party No. 4, have 50% share, equally divided between the three partners that is 16.66% with each one of them. The party No. 2,3 and 4 have initially contributed a sum of Rs. 25 lakhs on 4.8.2009 as capital investment, required for business, from time to time.

The salient features of the said partnership deed are as follows:

- (A)**All partners shall have equal rights in respect of the conduct and management of firms business in all matters.
- (B)**The said partnership business shall be deemed to have commenced from the fourth day of August 2009 and the firm shall be governed by the Indian Partnership Act, 1932.
- (C)**The business of the partnership shall be providing cable TV network/ maintenance operation etc. and/or such other business or businesses as the partners may agree upon from time to time.
- (D)**The firm shall be responsible for timely collection of subscription revenue from the franchisees and feed charges from its sub operator.
- (E)**The partners shall maintain accounts in properly kept account books, regularly kept for the business. These books of accounts with all deeds, securities should be kept at the principal place of business and shall be open to the inspection of all the partners and their authorised agents in this behalf in the office of the partnership.
- (F)**The partner No. 2,3 and 4 have contributed a capital of Rs. 25 lakhs, as required of business from time to time.
- (G)**The partner No. 2,3 and 4 have agreed to work in partnership firm as working partners who will be devoting their time and attention in the conduct of the affairs and day-to-day management of the firm as the circumstances and business needs may require.

3. The party No. 1 in this partnership deed is the respondent No. 2. It has been shown that it entered into a business management agreement with Respondent No. 3 for carrying on cable TV networking business vide notarised agreement dated 30.5.2008. It had 49% equity participation in Bilaspur town in the said business.

4. The learned counsel for the petitioner would contend that by this agreement, the respondent No. 2 became responsible and accountable for various activities on the ground including collection of payments from the subscribers, whereas the respondent No. 3 was responsible for dealings with the various broadcasters in the said area.

5. The petitioner has also annexed photocopies of the cheques paid to respondent No. 2 as detailed below.

Cheque dated 4.8.2009 for Rs. 25lakhs

cheque dated 7.9.2009 for Rs. 25 lakhs.

It has also annexed photocopies of the following cheques Which indicate payment to MSM Discovery.

Cheque dated 9.10.2009 for Rs. 18 lakhs.

Cheque dated 30.11.2009 for Rs. 20 lakhs.

cheque dated 7 .11 .2009 for Rs. 22 lakhs.

cheque dated 31.12.2009 for Rs. 15 lakhs.

The learned counsel for petitioner would contend that because the respondent No. 3 was accountable and responsible for dealing with all the broadcasters for supply of their pay channel signals, the respondent No. one issued decoder boxes in the name of respondent No. 3 and both the respondent Nos. 2 and 3 started operating their cable business successfully in the areas of the Chattisgarh including Bilaspur by setting up its control room and its head end.

- 6.** Learned counsel for petitioner would further contend that in the year 2009 the respondent No. 2 started feeling difficulties in the ground situation in Bilaspur and, therefore, to come out of the said difficult situation approached the petitioner with an offer for operating in the area of the Bilaspur and its adjoining areas.
- 7.** The learned counsel for the petitioner would also contend that petitioner entered into a partnership deed dated 4.8.2009 vide which it was agreed between the parties that the total share of the petitioner shall be 50% of total 49% of what respondent No. 2 was sharing with respondent No. 3. The learned counsel for the petitioner would submit that in spite of this partnership deed the decoder boxes are still in the name of respondent No. 3.
- 8.** The learned counsel for the petitioner would further contend that petitioner used to collect money from the ground and used to pay to the broadcasters as mentioned in para 4 as above.
- 9.** The learned counsel for the petitioner also brought to our notice that on the insistence of the respondent No. 2, the petitioner formed another company to buy the remaining shares of the respondent No. 2 were for a consideration of a sum of Rs. 1 crore and Rs. 70 lakhs was paid to the respondent No. 2 vide various cheques in instalments.
- 10.** The petitioner would, however, admit that it shifted the control room to its own place and for this, it gave an advance information to the station house officer, Civil Lines, Bilaspur.
- 11.** The petitioner has filed a miscellaneous application on 7.4 2010 submitting that petitioner has not less than 55 local cable operators and even if a single day disconnection during the season takes place, various crucial cricket matches and crucial games of international interest will occur which will create law and order problem in the area of operation of the petitioner.
- 12.** The learned counsel for the respondent would argue that it has no privity of contract with the petitioner and the petitioner had shifted the head-end without the consent of respondent. According to it the decoders have never been

supplied to the petitioner . The learned counsel would further state that the decoders had been switched off only at the instance of respondent No. 3 with whom respondent No. 1 has a privity of contract.

- 13.** During the course of argument the learned counsel for respondent in the Petition No.83(C) of 2010 brought on record a photocopy of the subscription agreement dated 10.2.2010 respondent no.1 and respondent No. 3 valid up 31st March 2010 to our notice; specifically the clause 3.6 which speaks about the non-transfer of IRD boxes.
- 14.** The main contention of the respondent is that neither there is a privity of contract with the petitioner nor any permission has been granted by the respondent to shift the control room as has been done by the petitioner.
- 15.** The contention of Mr. Vaidyanathan that irrespective of any privity of contract, the broadcasters having regard to the provisions of clauses 4.1 and 4.3 of the Regulation, cannot disconnect the supply of signals in view of the interest of the consumers cannot be accepted for more than one reason.
- 16.** In absence of any contract, prima-facie the petitioner has no legal right to obtain supply of signals from the broadcasters. Admittedly the relationship of supplier and receiver of signals is by and between the broadcaster and the respondent no. 3. No transfer of the said agreement is permissible without the approval of the broadcasters. Except making some payment in favour of MSM Discoveries, no payment has also been made in favour of other broadcasters. Such payment to MSM discovery has been made on behalf of the existing licensee and not by the petitioner on its own behalf. No relationship by and between the petitioner with any of the broadcasters, this has come into being.
- 17.** Prima-facie on interpretation of clause 3.2, 4.1 and 4.3 of the Interconnect Regulations, it is difficult to hold that even a trespasser or a person without any legal right would be entitled to an interim order from this Tribunal.

An interim order can be granted provided the applicant establishes a prima-facie case in its favour. The petitioner has failed to do so.

Even assuming that the petitioner could validly enter into an agreement with one of the partners of respondent no. 2, it could not have acquired more than 20% share in the said business.

- 18.** Prima-facie the recitals of the agreement dated 30.5.08 do not appear to be correct in so far as share of the 2nd party having been mentioned at 49% is concerned as he had only 40% share in the Respondent No. 2.

It is not in dispute that the petitioner has no relationship with the respondent No.3. If the Respondent No. 3 had asked the broadcaster to stop supply of signals to its head-end, the broadcaster prima-facie had no other option but to comply the same. If the said act is illegal, the petitioner may sue them for damages.

- 19.** So far as the alleged interest of the consumers is concerned, it is stated before us by Mr. Chawla that signals would be supplied to it by the broadcasters. If that be so, we are satisfied even the consumers would not suffer.

We may furthermore mention that an order of status quo was passed only in the case of 'Star', but no such order was passed in the case of Zee Turner and MSM Discovery, but unfortunately the same was wrongly recorded in the proceeding sheet dated 06.04.2010. We recall that part of the order. It is, however, stated that the disconnection of the supply of signals had already been effected. Mr. Vaidyanathan also only prayed for restoration of supply of signal.

In view of our findings aforementioned, we are of the opinion that no case for grant of an interim order is mandatory form by us has been made out.

In view of our findings aforementioned, no interim relief can be granted to the petitioner at this stage. Reply be filed within three weeks, rejoinder if any be filed within two weeks thereafter. List on 18th May for directions.

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

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

.....
(P.K. Rastogi)
Member