

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

**DATED 30<sup>th</sup> JULY, 2010**

**Petition Nos. 94(C) of 2010**

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Sikka Star Satellites ..... Petitioner  
Vs.  
Hathway Cable & Datacom 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. Tony Sikka, in person  
For Respondent : Mr. Nasir Husain, Advocate

**JUDGEMENT**

**G. D. Gaiha**

1. The petitioner in this petition has inter alia prayed for the following reliefs :

*"to allow the present petition and direct the Respondent to restore the signals of STAR DEN Media Services Pvt. Ltd. immediately for 500 subscriber base."*

The said prayer had been made, purported to be, relying on or on the basis of the observations made by Hon'ble Supreme Court of India in order dated 23.10.2010 in Civil Appeal No. 1958 of 2010 arising out of this Tribunal's Order dated 21.5.2010 passed between the parties in Petition no. 189(C) of 2008.

The order issued by the Apex Court is as follows:

*"Respondent may indicate the entire amount which is due and payable by the petitioner to it and in case the petitioner makes payment of the same the matter may be considered by the authority concerned."*

2. The petitioner in compliance of the order of the Apex Court informed the respondent thereabout vide its letter dated 26.03.2010 and annexed a draft of Rs.25,000/- in its favour vide DD No. 471150 from ING Vysya Bank, Lucknow dated 26.03.2010 as the subscription fees for signals from it for 500 connections.
3. It was also mentioned by the petitioner that the respondent may indicate any other amount which is payable by it for restoring the stopped signals of STAR DEN Media Services Pvt. Ltd. as per observation of Hon'ble Apex Court.
4. The main grievance of the petitioner is that neither any reply has been received from the respondent nor the said draft of Rs.25000/- has been returned back to it. The petitioner contends that a reminder dated 3/4/2010

for restoring the aforementioned signals was again sent to the respondent while the respondent has neither replied to the petitioner's requests nor restored the signals and, therefore, the present petition has been filed.

5. The learned counsel for the respondent would contend that the petition has been filed in a dubious manner with malafide intention to mislead this Tribunal.
6. The learned counsel for the respondent would further contend that the petitioner is wrong in stating that the Order dated 22/03/2010 of the Hon'ble Apex Court has not been complied with by the answering respondent.
7. It was urged that the petitioner has failed to provide the respondent with the correct and complete details of the subscriber base alongwith the No Objection Certificate from other MSOs (Digi Cable, WWIL and DEN).
8. It is further contended by the learned counsel for the respondent that the Hon'ble Supreme Court has in no way in the order directed that the signals of the petitioner may be restored.
9. The learned counsel of the respondent would also contend that the petitioner has wrongfully stated that they are having a subscriber base of 500 subscribers, whereas it has come to the knowledge of the respondent from the market sources that the subscriber base of the petitioner is more than 3000 and this amounts to concealment of vital information by the petitioner and, therefore, the petition is liable to be dismissed with heavy cost.
10. The total monthly subscription as per the assessment of the respondent is Rs. 7,50,000/- for 3000 subscribers @ Rs. 250/- per subscriber.

11. It is further stated by the learned counsel for the respondent that at present the petitioner is not in a position to provide Star bouquet of channels as vide order dated 21.5.2010 this Tribunal dismissed the petition No. 189 of 2008 under which the respondent was providing the Star bouquet of channels to its consumer. After this judgment the Star Den Media Pvt. Ltd. has disconnected the Star channels from its network on 21.05.2010 itself. The negotiations for obtaining the Star bouquet of channels is going on with Star Den Media and, therefore, till the respondent is in a position to get this back, it will not be possible for the respondent to provide the same to others which includes the petitioner also.
12. The respondent it appears, by its letter dated 10/04/2010 in response to the petitioner's letter dated 03/04/2010 has given all details with regard to outstanding amount to which the petitioner has not replied. A copy of the letter sent by the petitioner has been placed by respondent on record. The relevant contents of the letter are quoted below :-

*"As already communicated to you, that for a very brief period in the year 2008 the cable feed was provided to you and when we requested you to provide the correct and complete details of your subscriber base etc. alongwith NOC from other MSOs (Digi Cable, WWIL and DEN), and broadcasters ZEE Turner Limited, MSM Discovery Pvt. Limited, ESPN Star Sports and Star Den Private Limited regarding no outstanding for the purpose of entering into Franchisee Agreement with you and also determining the true subscriber base for the purpose of raising invoice accordingly but you never provided us the said information and thereafter as you also showed any interest in entering into Agreement with us the signals were switched off.*

*As far as the restoration of signals is concerned the Hon'ble Supreme Court has nowhere in their order dictated that the signals of the Appellant may be restored however, the Hon'ble Supreme Court has*

*directed that the Respondent may indicate the entire amount which is due and payable by the Appellant and in case the appellant makes the payment of the same, the matter may be considered by the authority concerned.*

*In view of the aforesaid observation of the Hon'ble Supreme Court so that the actual figures for raising the invoice may be arrived at we again seek your correct and true subscriber base. We have come to know from the market information that your subscriber base is more than 3000 and not 500 as stated by you in your letter under reply. We are also ready for a joint survey for ascertaining your actual subscriber base as on date.*

*We also inform you that the subscription charges per subscriber is Rs. 250/- per month and the subscription amount calculated @ Rs. 250 per subscriber for 3000 subscribers comes to Rs. 7,50,000/- per month excluding the taxes. With regard to the past outstanding we state that the same has to be determined and arrived at after the true information is provided by you with regard to subscriber base etc. it is also stated that we have never supplied feed of one particular broadcaster to any operator. We can only provide the consolidated feed containing channels of various broadcasters as it is not possible to provide signals of one particular broadcaster.*

*Therefore, we again request you to provide us all the details of your subscriber base alongwith the NOCs from other MSOs (Digi Cable, WWIL and DEN), and broadcasters ZEE Turner Limited, MSM Discovery Pvt. Limited, ESPN Star Sports and Star den Private Limited and other broadcasters.*

*Nevertheless we are willing to resolve the issues with you and are ready to negotiate for better clarity and understanding.*

*Kindly let us know your convenient dates and time when our representatives can meet with your representatives at our Delhi office."*

The proof of receipt of this letter on 16/04/2010 has also been annexed with the reply by the respondent.

13. The respondent has therefore, given an offer of meeting the petitioner for resolving all the issues and has expressed its desire for better clarity and understanding on various issues.
14. The learned counsel of the respondent would further contend that :
  - (i) NOC from all the agencies including any of the broadcaster has not been submitted by the petitioner;
  - (ii) Postal Registration Certificate has also not been submitted.
  - (iii) The subscriber base quoted by the petitioner is historical subscriber base which may be prevailing in the year 1999 and has no relevance as on date.
  - (iv) In September, 2008 when the signals were disconnected no documents were given by the petitioner to the respondent at that point in time. The invoices which have been filed by the petitioner have no connection about the subscriber base. These invoices are also in the name of Jolly Sky Brothers as distributor (1.9.2008 to 30.9.2008, 1.10.2008 to 31.10.2008) and then in the name of Gomati Cable Network Pvt. Ltd. for the same period in the year 2008.
  - (v) In response to the above Mr. Sikka, who has represented the case by himself, said that he has changed the name because of the service tax issues and asking for NOC is also irrelevant.

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15. The core question which arises for consideration is as to whether the petitioner can obtain the benefit of the order of this Tribunal directing the respondent to supply the signal to it. The main dispute between the parties appears to be the subscriber base. Whereas according to the petitioner its subscriber base is only 500, according to the respondent, it is 3000.
16. The petitioner has not only failed and/or neglected to file any proof to show as to what was its real subscriber base, but also failed to file any SLR as is mandatorily required under Regulation 9 of The Telecommunications (Broadcasting and Cable services) Interconnection Regulation 2004, as amended from time to time.

The petitioner, therefore, in our opinion has not complied with the statutory requirements.

17. It would, in our opinion, not be correct to contend that the petitioner is entitled to a relief only on the basis of the observations made by the Supreme Court of India. The observations might have been made keeping in view the submissions made by the petitioner, but before this Tribunal is called upon to issue a direction upon the respondent to comply with the 'must provide' clause as contained in clause 3.2 of the Interconnection Regulations, the provisions of the Regulations must be complied with.

The Tribunal is furthermore required to satisfy itself that the applicant is not a defaulter. It may be true that there exists a dispute as regards the quantity of the amount required to be paid by the petitioner to the respondent.

18. It is, however, not denied or disputed that the petitioner had availed the supply of signal from the respondent for a month. If that be so, it was for the petitioner to satisfy the respondent in regard to its subscriber base. According to the respondent even if the subscriber base is 500, the rate of subscription being Rs. 250/- per subscriber, a sum of Rs. 1,25,000 would be due from the respondent to the petitioner. The petitioner has merely tendered a sum of Rs. 25,000/- to the respondent.
19. Furthermore, as the respondent has contended that Stardien Media Pvt. Ltd. has disconnected the Star channels from its network on 21.5.2010, it is for the petitioner now to make a renewed offer to the respondent as to whether during pendency of the negotiations, it would like to obtain signals of other broadcasters (other than the Star Channels).
20. We are, therefore, of the opinion that the petitioner should approach the respondent afresh with a request for supply of signal of various broadcasters, which must be considered by the respondent in accordance with law and within the time specified in the regulations.
21. As has been offered by the respondent itself in its letter dated 10.4.2010, the parties may also hold a joint survey.
22. This petition is dismissed with the aforementioned observations and directions. In the facts and circumstances of the case, there shall be no order as to costs.

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

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