

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

DATED 11th MARCH, 2010

Petition No. 211(C) of 2009

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M/s. Shivam Cable Network Petitioner

Vs.

M/s. 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. Vineet Bhagat, Advocate
Ms. Neha Jain, Advocate

For Respondent : Mr. Gopal Jain, Advocate
Mr. Kaushik Mishra, Advocate

ORDER

- 1.** In this petition as per our Orders dated 17th December, 2009 a joint survey was to be conducted expeditiously so that the subscriber base could be determined. In the same order we had also directed that as an interim measure the signals may be provided for a subscriber base of 2000. In the said order we had also mentioned that according to the petitioner the actual subscriber base is 800 and respondent's figure of 4760 is not correct. On the said premise on a provisional basis a figure of 2000 was considered reasonable for providing signals to the petitioner. However, the survey could not be completed upto 17th Feb, 2010 and as a last indulgence further directions were issued to the parties to conduct the joint survey which was to commence on 19th Jan, 2010 and to finish within two weeks' time thereafter. The report of joint survey was directed to be filed by 5th March, 2010.
- 2.** In the meantime, the respondent however, has conducted a survey of its own and a copy of the same has been filed alongwith the reply to M.A. No. 6 of 2010 on 25th Jan, 2010. The figures arrived at by the respondent is 4728.
- 3.** The learned counsel for petitioner contends that the figures are not realistic and he has pointed out that in Sector-20 the figure as per the survey conducted by the respondent is 811 while in the joint survey 214 connections only were found.
- 4.** This Tribunal also directed a payment of Rs. 306678/- towards one month subscription fees in advance to be paid to the respondent.
- 5.** The petitioner would further contend that the directions may be issued to the respondent to supply limited number of channels (7 channels only) comprising of bouquet-1 and Colors channel only, pending finalisation of the

present petition. He has supported his claim of asking limited number of channels vide original application placed in the petition at running page 28.

6. Mr. Gopal Jain, the learned counsel for the respondent would contend that the petitioner has not followed the directions of this Tribunal and has not made payment of Rs.306678/- as it had sent only a Demand Draft of Rs.176960/-. The contention of the petitioner is that this Tribunal has directed to make the payment for one month subscription charges which happens to be Rs. 176960/- only for the channels which have been asked for in its application dated 31.7.2009 and the same could have been accepted by the respondent.

Submission of Mr. Jain that the petitioner has not complied with the order of this Tribunal having not deposited the amount and/or made a wrong representation in respect thereof, in our opinion, need not be gone into at this stage.

It is true that the petitioner had asked for not only bouquet-I but also bouquet-II and Colors Channel in the petition but from his application filed before the respondent, it would appear that he had asked for supply of signals of seven specific channels.

It will also not be correct to contend that the petitioner has not filed any application for modification of the order dated 17.12.2009. It must have been filed by the petitioner having regard to the difficulties he had been facing for taking supply of the entire bouquet-I, bouquet-II and Colors channel.

We, as at present advised, would think that it is only with that point in view he had asked the respondent to supply him the signals for limited channels and not with a view to misinterpret the order of this Court for the said

purpose. We, however, as noticed hereinbefore, would assume that he has technically not complied with the order of this Tribunal but he has also not taken any advantage in respect thereof.

- 7.** It is furthermore difficult to accept the submissions of Mr. Jain that in case the Order dated 17.12.2009 is modified, the same would confer any commercial advantage over the respondent. We do not see any reason as to how the respondent shall be in a commercially disadvantaged position. Its business with the other subscribers would not decrease if it supplies signals to the petitioner.

On the other hand, the petitioner shall remain bound even to make payment in future on the basis of the subscriber base in terms of a joint survey which is being carried out. This order passed by us, is without prejudice to the rights and contentions of any of the parties and subject to adjustment of equities.

These directions, we think, are fair and equitable to both the parties.

- 8.** We had given a detailed hearing to the learned counsel for the parties and after giving due consideration to the arguments, we feel that the ends of justice will be met if the signals are provided as an interim measure on the basis of 3000 subscriber to the petitioner subject to the final figure to be arrived at after the joint survey. Let joint survey be completed within a fortnight to arrive at the proper subscriber base. In case the subscriber base arrived at after the joint survey is more than 3000, the petitioner will have to make payment for the balance amount to the respondent. In case the subscriber base arrived at is less than 3000, the payment made by the petitioner shall be adjusted in future payments due to the respondent.

9. The petitioner will also pay deposit of two months subscription amount as an advance to the respondent, which will not be adjusted till the disposal of this petition and will remain as a security with the respondent. Grant of signals shall be subject to furnishing of such payment.

Supply of signals shall be made within 24 hours of the deposit being made.

List for directions on 08.04.2010.

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

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(G.D. Gaiha)
Member