

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

DATED 11th MARCH, 2010

Petition No. 196(C) of 2009

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M/s. Variety Entertainment Pvt. Ltd. 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. Balaji Srinivasan, Advocate

For Respondent : Mr. Aditya Narain, Advocate

ORDER

- 1.** In this petition directions were issued vide our Order dated 1.10.2009 that the parties should meet on 23.10.2009 in the office of the respondent for settling their dispute and differences. The meeting, as directed, was held and the minutes were issued. It appears from the minutes of the meeting that no settlement could be arrived at on the issues between the parties.
- 2.** The petitioner has filed an affidavit on 17.2.2010 in which the details of the daily call sheet and the summary statement of the joint survey has been submitted. As per this joint survey report the total number of subscriber arrived at is 4004. The respondent, however, has alleged that the joint survey is only partly completed upto 10.2.2010 and the call sheet upto 10.2.2010 has been signed by both the parties. However, there is no endorsement that the joint survey has been completed. It is, therefore, still a dispute whether the joint survey has been completed or not and the report submitted on affidavit by the petitioner can be taken as a representative figure for ascertaining the subscriber base.
- 3.** The learned counsel for respondent would contend that even on 17.2.2010 when the respondent was directed by this Tribunal to submit its objection to the joint survey conducted by both the parties, the respondent has deputed its representative to the office of the petitioner on different dates.
- 4.** The respondent would contend that the petitioner refused to co-operate for completion of the joint survey. The non-cooperation on the part of the petitioner was mentioned in the e-mail dated 25.2.2010 from respondent to the petitioner.

5. The learned counsel for petitioner would contend that in response to the e-mail dated 25.2.2010, petitioner has sent an e-mail on 2.3.2010 in which it has asked from the respondent, the details of the specific areas where the joint survey is proposed to be conducted.
6. From the events which have taken place so far, it can be inferred that the joint survey report submitted by the petitioner is contested by the respondent, and, therefore, no useful purpose has been served for arriving at a subscriber base for the purpose of signing of the agreement between the parties for supply of signals.
7. The learned counsel for respondent would further contend that the petitioner is pirating the three channels, Headlines Today, VH-1 and NDTV India of which the petitioner is the sole distributor w.e.f. 1.4.2009.
8. The learned counsel for the petitioner would contend that as per their affidavit dated 14.12.09, respondent has already disclosed that Headlines Today is being broadcasted by obtaining the IRD boxes and Viewing card from VEPL, who was the authorised distributor of TV Today channels.

In the same way TV channel NDTV India is being broadcast by taking the IRD boxes and viewing card from PNG Enterprises, Bhubaneshwar, who were the authorised representative. Similarly VH1 channel has been obtained by the petitioner from M/s. Zee Turner Ltd. who was the authorised distributor in the year 2007. The learned counsel would contend that there was no piracy and he has disclosed the complete details as to how the petitioner is transmitting these channels.

9. The learned counsel for petitioner would further contend that the IPL series of matches is going to be broadcast from 12th March, 2010 to 24th April, 2010 and, therefore, the signals may be provided to the petitioner before 12.3.2010. The head-end of the petitioner has already been inspected by the representative of the respondent as per our directions and the shortcomings found in the control room of the petitioner have already been rectified.

The signals which should be transmitted through the head-end of the petitioner are, therefore, going to be quality signals.

- 10.** The learned counsel would further contend that in case the signals are no of good quality, his clientele would not be able to accept the transmission of these channels and he won't be able to make any business out of it and, therefore, the issue of quality of signals is as important to him as to the respondent. The three channels which have been asked for are Sony, SetMax and AXN.
- 11.** The submissions of Mr. Aditya Narain that the petitioner is prima facie guilty of piracy is a mater, which, in our opinion, can be determined at a later stage. We may, however, place on record that according to the petitioner, the decoder boxes for three channels, namely Headlines Today, VH1 and NDTV India, have been procured by it from the broadcasters directly. Our attention has been drawn to an e-mail issued by the representative of the respondent, from a perusal whereof, it would appear that the broadcasters had issued a letter in regard to the absence of any agreement by and between them and the petitioner herein, in identical languages, as had been asked for. It may be true that in terms of the Regulations as amended by TRAI in March, 2009, written agreements are insisted upon, but if the petitioner has not entered into any written agreement with the broadcasters, the same is a matter between them and thus we need not enter into the aforementioned controversy. However, in our opinion, the very fact that the broadcasters have so far not taken any action against the petitioner is itself a pointer to the fact that the contention of the petitioner may be correct.
- 12.** We have been assured by Mr. Balaji Srinivasan that the petitioner shall render all cooperation in the joint survey, in the alleged remaining areas which may be pointed out by the respondent.
- 13.** So far as the question that on the headend inspection of the petitioner, it was purported to have been found that the quality of signal was not good, is concerned, the same, in our opinion, may not be of much relevance as

transmission of signals by the petitioner in respect of the channels in question is yet to take place. The petitioner, however, contends that the equipments installed by it, meets the BIS Standards. Different broadcasters prima facie are required to supply their signals to the headends of the petitioner. If by reason of any defect in its equipments, petitioner is not in a position to maintain quality control, it shall itself suffer, therefore, in terms of consumer satisfaction.

- 14.** We may also notice that this Tribunal in Petition No. 177(C) of 2009, M/s. Variety Entertainment Pvt. Ltd. Vs. Star Den Media Services Pvt. Ltd., by an order dated 8.12.2009, directed supply of signals to the petitioner for the town of Bhubaneswar on the basis of 4,000 subscribers.
- 15.** The contention of the learned counsel of respondent is that the subscriber base is much higher than the figure arrived at by the joint survey i.e. 4004.
- 16.** Since the matter is pending before this Tribunal for a long time and the respondent has not been able to provide the signals for one reason or the other, as an interim measure let the signal be supplied for a subscriber base of 5000 till the issue of joint survey is sorted out. In case the final determination of subscriber base is higher than 5000, the petitioner will pay arrears to the respondent and in case the subscriber base finally determined is less than 5000, the payments made by the petitioner will be adjusted in future monthly subscriptions to be paid to the respondent by the petitioner.
- 17.** 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.

- 18.** The joint survey will also be completed in two weeks during IPL series and report submitted by 25th March, 2010.

These orders shall not prejudice any of the parties at future stage of the proceedings and it is made clear that the equities between the parties shall be adjusted at a later stage.

List for directions on 08.04.2010.

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

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(G.D. Gaiha)
Member