

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

DATED 13th MAY, 2010

PETITION NO. 40(C) OF 2010

Indus Ind Media & Communications Ltd.

.... Petitioner

Vs.

Star Den Media Services Pvt. Ltd.

.... Respondent

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. Maninder Singh, Senior Advocate
Ms. Kanika Agnihotri, Advocate
Mr. Vaibhav Agnihotri, Advocate
Mr. Aseem Chaturvedi, Advocate

For Respondent : Mr. Gopal Jain, Advocate
Mr. Gaurav Juneja, Advocate

ORDER

G.D. Gaiha, Member

1. The petitioner herein is a Multi Service Operator. The respondent is a broadcaster.

2. Disputes and differences having arisen with regard to payment of subscription fee, this petition has been filed.
3. The petitioner is said to have entered into a MoM with respondent no. 2 in terms whereof 60% of the subscriber of the former has been taken over by the later and, thus, the petitioner is, not bound to pay the stipulated amount of subscription to the respondent no. 1.
4. According to the petitioner a sum of Rs. 29,61,366/- was due from it upto February, 2010; wherein the subscription fee having been calculated at 40% of the total subscribers for the months of December, 2009 to February, 2010.
5. This Tribunal having regard to the aforementioned contentions, in its order dated 24.2.2010 directed as under :-

“The learned counsel has handed over cheques for a sum of from Rs.29,61,366/- towards the subscription amount payable to the Respondent No.1, which has been accepted by Mr. Jain. However, having regard to the facts and circumstances of the case, we are of the opinion that interest of justice would be subserved if the Respondent No.1 is restrained from giving effect to the public notice dated 3.2.2010 subject to the petitioner’s paying a further sum of Rs.30 lakhs for the time being by 15.03.2010. The petitioner shall also continue to pay the monthly subscription fee from February, 2010 onwards.”
6. Admittedly the said order was not complied with as the payment of a sum of Rs. 30 lakhs was not tendered to the respondent by 15th March, 2010 and it was tendered only on 31st March, 2010. However, we did not modify our interim order having regard to the fact that Mr. Maninder Singh, learned senior counsel appearing on behalf of the

petitioner had assured us that the order of the Tribunal would be complied with by 5.4.2010, which has been recorded by us in our order dated 1.04.2010.

7. However, it stands accepted that apart from the aforementioned sum of Rs. 30 lakhs, no other or further sum has been tendered.

8. The respondent in the aforementioned situation has filed M.A. No. 79 of 2010 praying inter-alia for the following reliefs :-

“(a) allow the present Application;

(b) direct the Petitioner to forthwith make the payment of Rs.56,46,960/- to the Applicant and pass appropriate directions for imposition of penalty and punishment in terms of Sections 19, 20 and 30 of the Telecom Regulatory Authority of India Act, 1997(as amended);

(c) pass such further/ other Order(s) as may be deemed just and necessary in the facts and circumstances of the present case.

9. In the said application it was stated that apart from the subscription fee for the month of April, 2010 a sum of Rs. 56,46,960/- has become due to it in terms of orders of this Tribunal.

10. A reply to the said application has been filed today before us, wherein inter-alia it was stated as under :-

“4. The Respondent No. 1 also sought to allege that payments towards subscription fee towards the month of February and March, 2010 have not been made. It was further submitted on behalf of the petitioner that

payments if due to the Respondent no. 1 shall be made by the 15th April, 2010. It was argued on behalf of the Respondent no 1 that the subscription fee for a month becomes due of the 05th of the month. The Petitioner undertook to pay any amount due by the 05th April, 2010.”

*“6. After the year closing, the Petitioner reconciled its accounts to conclude that infact no further payments were due from the Petitioner to the Respondent No.1. It also came to light that the Petitioner has infact paid in excess. A reconciled statement of account is annexed hereto and marked as **ANNEXURE-P1.**”*

- 11.** Mr. Maninder Singh, the learned senior counsel appearing for petitioner would contend that as the aforementioned sum of Rs. 29,61,366/- was inclusive of the subscription fee for the month of February, 2010, the petitioner cannot be asked to pay the said sum once over again.
- 12.** Mr. Gopal Jain, learned counsel appearing on behalf of respondent would contend that the petitioner must be held to have not complied with this Tribunal's order.
- 13.** Before proceeding further, we may notice that the parties are at variance as to when the amount of subscription falls due for a month; whereas according to Mr. Gopal Jain the same will become payable by 5th of the next succeeding month, according to Mr. Maninder Singh the same would become due only at the end of the month. It is, however, not disputed that admittedly the amount of subscription fee for the month of March, 2010 has not been paid. If the petitioner had any reservation with regard to the interim order passed by this Tribunal, it should have approached us for variation/modification thereof.

It does not lie in its mouth, in our opinion, to contend that after reconciliation of its own account on 31st March it has come to learn that an excess amount has been paid. It could not have done so unilaterally.

- 14.** Indisputably an agreement was entered into between the parties which had been executed on 1.4.2009 for a period up to 31.12.2009 for three bouquets that is bouquet-I for 11,883 subscribers @ Rs. 50.08 per subscriber, 10703 subscribers for bouquet-III @ Rs. 44.51 per subscriber and 7500 subscribers for bouquet-IV @ Rs. 17.12 per subscriber had been agreed upon to be paid by the petitioner with effect from 1.10.2009 till 31.12.2009. As per this agreement the monthly subscription to be paid by the petitioner is Rs. 1199891.17 per month. The petitioner has asked for renewal of this agreement vide its letter dated 19.11.2009 and in this letter itself it has also asked for dropping of bouquet-III and bouquet-IV from the list of channels being currently shown into Udaipur. The respondent had replied to this request of the petitioner vide its letter dated 7.12.2009 in which it has been categorically mentioned that as per the Regulations, the bouquets being provided for cannot be dropped. It is provided in the Regulation that “if the negotiations for renewal of interconnection agreement continue beyond the due date of expiry of the existing agreement, than the terms and conditions of the existing agreement shall continue to apply till a new agreement is reached on for the next three months from the date of expiry of the original agreement, whichever is earlier. However, once the parties reach an agreement, the new commercial terms shall become applicable from the date of expiry of the original agreement. In the instant case negotiations have started as per the regulations but no accord had been reached between the parties and, therefore, the terms and conditions of the existing agreement shall be applicable upto 31st March, 2010. The unilateral decision on the part of the petitioner to reduce the subscriber base to 40% with effect from Dec, 2009 of the existing subscriber base and also to drop bouquets III & IV with effect from 15.10.2009 will be violation of the Regulation. In view of the above inference which is in accordance with the Regulations, as an interim measure we would like to impose the terms and

conditions of the annexure-C of the agreement dated 1.4.2009 for the period from 1.10.2009 till 31.12.2009 and direct petitioner to make good the arrears with effect from 1.10.2009 till 31.3.2010. As per agreement the nett liability for six months from 1.10.2009 till 31.3.2010 without dropping bouquet-III and IV with effect from 15.10.2009 and reducing subscriber base by 40% with effect from 11.12.2009 is the amount payable, so far as per our orders dated 24.2.2010 that is Rs. 29.61366 lakhs and 30 lakhs. The net amount is Rs. 12.3798 lakhs (Rs. 71.99347 – 59.6366) upto 31.3.2010 in case Rs. 29.6366 lakhs and Rs. 30 lakhs stand paid by the petitioner as on 10.2.2010 and 10.3.2010 respectively. For the month of April, 2010 we direct the payment on a monthly basis a sum of Rs. 11.99891 lakhs. Total amount payable till April, 2010 is Rs.24.35578 lakhs as per the agreement which expired on 31.12.2009. However, as an interim measure, 60% of this amount i.e. Rs. 14 lakhs be paid within a week. This amount is also justifiable even on the basis of 40% of the number of subscribers since the total subscriber base of Udaipur is 30000 subscribers and for 12000 subscribers which is very near to the subscriber base of 11883 as per agreement. For bouquet-I @ Rs. 50.08 and the same proportion the Bouquet-III and Bouquet-IV as mentioned in the agreement the subscription amount can be taken to be as Rs. 119989.71 as per mutual agreement.

- 15.** We, however, having regard to the fact that the doors of the parties have been kept open for negotiations, direct that the petitioner should pay a further sum of Rs. 14.00 lakhs to the respondent within one week from 13.5.2010. The petitioner shall also continue to pay the monthly subscription fee @ Rs.5,95,101/- for bouquet-I till further orders. The parties will, however, meet for reconciliation of their account, if any, one week from now.

The payment of the said sum would be subject to the ultimate result of this petition and/or till any order or further order is passed on determination of the subscriber base.

16. Put up for further directions on 25th May, 2010.

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

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

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(P.K. Rastogi)
Member