

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**NEW DELHI****DATED 28th MAY, 2010****Petition No. 147(C) of 2010**

Wire & Wireless India Pvt. Ltd.

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Petitioner

Vs.

MSM Discovery Pvt. Ltd.

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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. Tejveer Singh Bhatia, Advocate
Mr. Yoginder Handoo, Advocate
Mr. Arjun Natrajan, Advocate
Mr. Nitya Thakur, Advocate

For Respondent : Mr. Meet Malhotra Advocate
Mr. Ravi S.S. Chauhan, Advocate

ORDER**G.D. Gaiha, Member**

1. The present petition has been filed by the petitioner, which is a public limited company and is a MSO carrying on the business of supply of signals of various 'Free to Air TV Channels' and 'Pay Channels' through its various distribution companies to its affiliate cable operators throughout the country.

2. The petitioner has entered into an agreement with M/s Grand Bhatia Entertainment Pvt. Ltd. and has control room/head-end at Adarsh colony, Dayalband Nagar, Near Bank of India, Bilaspur.
3. The respondent is a broadcaster and has exclusive rights of broadcasting One Alliance Bouquet of channels which has been requested to be made available to the petitioner.
4. The petitioner claims that the agreement has been signed for supply of decoder boxes of the TV channels of the respondent after due negotiations for Bilaspur, Chattisgarh after a meeting of its representative Mr. Amrit Sharma, GM (Operations) with Mr. Makarand Palekar, Senior Vice President, Sales and Affiliate Relationship of the respondent on 12.05.2010 in the Bombay office.
5. The learned counsel for the petitioner would submit that an understanding in respect of the following issues has been arrived at during the meeting were as follows :

 - i. Rs. 5 lakhs per month subscription fees inclusive of service Tax. The subscription charges would be Rs. 4,53,300/- per month and rest was on account of service tax.
 - ii. Area of operation is Bilaspur.
 - iii. The period of agreement is 8 months from May, 2010 to December, 2010.
4. This agreement which has been signed was duly stamped affiliation agreement bearing no. 1011/CAT/D/13042 with the above conditions stipulated in it.
5. The same was sent to the office of respondent through Mr. Samodh Kumar on 12.05.2010 at 6.20 pm. The visit of Mr. Samodh Kumar supported by the visitor pass and the entry made in the Register maintained for visitors at serial no. 2 from the bottom as shown in the photocopy of the register maintained for visitors is placed with the petition.

- 6.** Alongwith the agreement following documents have been annexed :
- i. The certificate of Incorporation of the petitioner company.
 - ii. Letter of authority of Mr. Neeraj Soni who has signed on behalf of the petitioner.
 - iii. PAN no. of Mr. Neeraj Soni as issued by the Department of Income Tax who has signed the agreement on behalf of the petitioner;
 - iv. List of cable operators alongwith their subscriber base totalling to figure of 1403.
 - v. 3 cheques as detailed below :
 - (a) Cheque No. 171478 dated 12.05.2010 for Rs. 4,89,990/- subscription fee for the month of May 2010.
 - (b) Cheque No. 17149 dated 12.05.2010 for Rs. 97,99,800/- advance for 20 months subscription fee for the period of June 10 to January 2012.
 - (c) Cheque no. 171480 dated 12.05.2010 for Rs. 30,000/- for decoders.
- 7.** The second cheque was towards advance payment for 20 months as claimed to be demanded by the respondent from the petitioner during the process of negotiations.
- 8.** The learned counsel for the petitioner would contend that the respondent has imposed an unreasonable discriminatory condition for payment of 20 months as advance towards subscription fees for giving signals of TV channels to the petitioner. The petitioner in order to start its operation effectively in the city of Bilaspur had to pay approximately Rs. 1 crore as advance. The scanned copy of the subscription agreement signed by authorised representative of the petitioner's company was sent to Mr. Prashant Jha and Mr. Sureshwar Sinha for issue of IRD boxes immediately through e-mail on 13.05.2010.

- 9.** The main grievance of the petitioner is that even after entering into the subscription agreement and also agreeing to the condition of payment of advance amount for 20 months, the respondent has failed to provide decoder boxes to the petitioner and, therefore, the following prayer is made as an interim measure:

“issue the decoder boxes immediately, activate the same and direct it to ensure that the signals are transmitted to the petitioner without any impediment”

The petitioner has made the following prayers in the petition:

- (a) Direct the respondent to give to the petitioner duly signed copy of the Affiliation agreement dated 12.05.2010 executed between the petitioner and the respondent;
- (b) Direct the respondent to act in accordance with the Affiliate Agreement dated 12.05.2010;
- (c) Issue the decoder boxes immediately, activate the same and direct it to ensure that the signals are transmitted to the petitioner without any impediments;
- (d) Hold that the precondition of 20 months advance subscription fee deposit stipulated by the respondent as unreasonable, arbitrary and discriminatory.

- 10.** At the time of admission of the petition Mr. Meet Malhotra, the learned counsel appearing for the respondent was requested to take instructions as to whether the respondent has received a copy of the agreement signed by the petitioner and/or the cheques referred to in the petition at page 36.

11.

On 24th May, 2010 an affidavit has been filed by the respondent in which it has been mentioned that no agreement has been signed and the visit of Mr. Amrit Sharma was only a friendly visit to Mr. Markand Palekar, the representative of MSM Discovery Pvt. Ltd. On 12th May, 2010. In a passing reference the discussions were held for the purpose of signing the agreement with M/s. WWIL. It was also mentioned that the issue of signing agreement was not taken up as a main issue and the cheques were handed over only to one Mr. Subodh who accepted these cheques without any authority.

- 12.** The deponent of the respondent Mr. Markand Palekar, has further stated that the whole exercise of submitting the agreement form alongwith cheques is the result of an undue advantage taken by Mr. Amrit Sharma on account of earlier relationship with him and, therefore, he has reprimanded Mr. Amrit Sharma from his mobile no. 9819695444 to his mobile no. 9819701818 and warned him about his conduct about and also misusing his acquaintance with him in the manner in which it has been done. It is also stated by the deponent that petitioner has not submitted all the informations and, therefore, there was no possibility of execution of any agreement. The deponent has further alleged that Mr. Amrit Sharma has acted in an unethical manner and over clever manner if not in an illegal manner, irrespective of what has transpired, we are prepared to

consider the request of WWIL after furnishing of the further information sought by our legal office.

- 13.** In response to this affidavit the learned counsel for the petitioner vehemently contended through an affidavit dated 24.5.2010, filed on 26.5.2010 by Mr. Amrit Sharma that the meeting was held in the office of the respondent at Malda West, Mumbai on 12.5.2010 with Mr. Markand Palekar for discussing the arrangement and get decoder for Bilaspur. Mr. Makrand proposed a subscription fee of Rs. 5 lakhs per month and also stipulated the condition of an advance of Rs. 1 crore subscription fee for giving decoders to WWIL. The deponent Mr. Amrit Sharma has further stated that the amount of advance subscription fee of approximately Rs. 1 crore should be reconsidered since the agreement is only for a period of 8 months from May, 2010 to December, 2010 and the total payment for 8 months itself will be approximately 40 lakhs vis-à-vis advance of Rs. 1 crore which is being demanded. Thus pleaded as a very unreasonable amount for the purpose of providing signal and also discriminatory hence no other service provider has ever paid an advance of subscription to obtain signals. However, Mr. Markand emphasized and maintained that the advance subscription fee is a pre-condition of giving decoders of One Alliance Bouquet to WWIL, for Bilaspur area and this issue is not negotiable. The deponent Mr. Amrit Sharma has stated that Rs. 1 crore cheque was therefore paid on the next day i.e. on 13.5.2010 on the basis of

the discussion held for 25 minutes during the meeting with Mr. Markand on 12.5.2010. On the strength of this meeting and signing of the agreement by WWIL and submission of cheques, a request was made to Shri S.P. Sinha, Area Manager, MSM Discovery, Chattisgarh for signing the agreement on behalf of the respondent and arranging the decoders for starting the transmission of signals in Bilaspur. The mobile no. of Mrs. Rashmi, 09910010298 was also given to Mr. Amrit Sharma, the deponent to follow-up the matter in this regard. She assured me that she will arrange a person to go to Noida office for signing the agreement and asked certain documents that would also be required to be given alongwith the signed agreement and also the cheques for the payment of advance subscription fee, current subscription fee and security for decoders. The exchange of SMSs was stated in detail and the person who has deposed this affidavit is Mr. Amrit Sharma was present in the Court. The learned counsel for the petitioner offered the mobile phone of the deponent i.e. Mr. Amrit Sharma to see the exchange of the messages which categorically suggests that the meeting had taken place for the purpose of obtaining decoders from the respondent. The mobile telephone was offered during the hearing to take it as an evidence as the exchange of messages. The messages which were verified in the cellular phone are as follows :

May 12, 2010 16:18:38

“Will call u in a while”

May 12, 2010 16:14:00

“Sir, prashant is on leave. Cud you pl let me know any of uor delhi team member who arrange for someone to go to noida and get the agreement signed. I will accordingly coordinate”

May 12, 2010 16:53:04

“Hi please give de noida office address.”

May 12, 2010 17:02:21

*“Wire And Wireless India Ltd.
Building No. FB 19, Gate no. 3,
Sector 16A, Film City, Noida (UP)-201304”*

May 13, 2010 10:19:43

*“Thank you Rashmi. Really appreciate the efforts.”
Amrit*

May 13, 2010 10:23:41

“Ur welcome”

May 13, 2010 12:44:03

*“Dear Markand ,
Ystrdy our agreement got signed and we have made the current pymnt and
advance pymnt of rs. 1 Cr also. Kndly arrange for instruction/ note to SP
Sinah in Raipur to gv us the IRDs and activate them.
Looking fwd to this.
Regards,Amrit
CC: Mr. Sudhir”*

- 14.** The exchange of messages as mentioned above is a clear indication that a purposeful meeting between the petitioner and respondent has taken place on 12th May, 2010 on the strength of which the signals may be granted to the petitioner and agreement should have been signed as per the negotiated terms and conditions. We, therefore, feel that the affidavit from Mr. Makrand Palekar of the respondent on oath is not truly reflecting the

discussions and negotiations which took place between the respondent and petitioner and we are inclined to make our opinion that the petitioner has submitted his case and also stated the facts of the case in proper perspective which merit consideration for directing the respondent to provide signals to be broadcast in Bilaspur purely as an interim measure as per the agreement which has been signed by the petitioner and submitted to the respondent on 13.5.2010 alongwith the cheques of the requisite amount to be paid to the respondent for providing signals.

- 15.** As an interim measure, therefore, we direct the respondent to provide signals of One Alliance Bouquet to the petitioner as per the terms and conditions mentioned in the agreement signed by the petitioner and submitted to the respondent on a purely provisional basis for six weeks. This is without prejudice to the rights and contentions of the parties and after the reply is filed by the respondent, rejoinder be filed by the petitioner within 2 weeks time. The matter may be listed for hearing on the various issues raised in the petition and the reply to be submitted by the respondent, on 15th july, 2010. The respondent may encash the cheques given by the petitioner without prejudice to the rights and contentions of the parties.

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

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(G.D. Gaiha)
Member

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(P.K. Rastogi)
Member