

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

Dated 21st May, 2010

Petition No.189(C) of 2008

Hathway Cable & Datacom Pvt. Ltd. & Anr.

... Petitioners

Vs.

Star Den Media Services Pvt. Ltd.

... Respondent

BEFORE:

HON'BLE MR. JUSTICE S.B.SINHA, CHAIRPERSON

HON'BLE MR. G. D. GAIHA, MEMBER

For Petitioner

: Mr. S.Ganesh, Senior Advocate
Mr. Vikram Mehta, Advocate
Mr. Nasir Husain, Advocate
Mr. Abhinav Agnihotri, Advocate

For Respondent

: Mr. Ramji Srinivasan, Senior
Advocate Mr. Gaurav Juneja,
Advocate
Mr. Prateek Kumar, Advocate
Mr. Vinoba Bhoopathy, Advocate
Ms. Garima Sharma, Advocate

JUDGMENT

S.B. Sinha

The first petitioner is a Multi Service Operator (MSO). The second petitioner (SVCN) is also a MSO. It had entered into a subscription agreement with the respondent on or about 27.12.2006 on a negotiated subscriber base of 1495 on a monthly subscription fee of Rs.47,989.50p, for Bouquet-I channel only; the area of operation being Viram Khand, Gomti Nagar in the town of Lucknow for the period 01.01.2007 and 31.12.2007.

2. A purported Asset Transfer Agreement was entered into inter se between the petitioners herein in terms whereof the first petitioner took over 'SVCN' network including its rights under all the agreements entered into by it with various broadcasters.
3. It is stated that both the petitioners informed the respondent thereabout and requested it to transfer the IRDs in the name of the first petitioner with effect from 01.03.2008.
4. Admittedly the said request was not complied with by the respondent.
5. It, however, stands admitted that the Regional Manager of the respondent offered the first petitioner its Bouquet 2 channels at a monthly subscription of Rs.25,000.60 by an E-mail dated 2.6.2008, stating:

“This is regarding your required for PK 2 of STAR DEN channels for your recently acquired Lucknow unit. Please note that the same can be given at a monthly subscription of Rs.25001.60/- (excluding service tax) for the current area served by your Lucknow unit).

Please make a payment of Rs.4500/- for IRDs charges. Kindly confirm by return mail as to the signing of the agreement and payments.”

6. The petitioner accepted the said offer by its e-mail on the same date.

It reads as under:

“This refers to your below mentioned mail.

We are OK with this.

You are requested to kindly give and activate the IRDs for package 2 on immediate basis.

As our signing authority Mr. Alok Govil is out of country. The agreement for the same will be signed along with the other agreements for North once he is back in India.

Kindly do the needful.”

7. The first petitioner shifted its headend from Viram Khand to 3rd Floor, 14A/5, Thapar Premises, Indo Gulf Fertilizers Building, Park Road, Lucknow which fact is said to have been communicated to the respondent by an e-mail dated 16.6.2008. It was also requested to sign the new agreement. Again, indisputably the said request was not complied with.

8. A purported subscription agreement was entered into by and between the first petitioner and the respondent on or about 28.06.2008, for the town of Lucknow for both Bouquet I and Bouquet II at a negotiated number of subscribers of 2490 on a monthly subscription fee of Rs.71,546/-.

9. It was to remain valid for the period 01.03.2008 and 31.12.2008.

10. It is alleged that the stamp paper was also purchased in the name of the respondent herein.

11. The respondent, however, contends that the said purported agreement is a forged and fabricated document.
12. The respondent on or about 24.07.2008 issued a notice to the petitioner that SVCN had unauthorisedly been retransmitting its signals outside the authorized area, stating :

“We would like to bring your attention to the discussion that we have had on this subject matter. As informed we state that the Subscription Agreement with M/s Star Vision Cable Network (“SVCN”) cannot be assigned without express authorization from us. Further, you or for that matter SVCN can also not change the location/ installation address the IRDs without our specific approval. Therefore, we immediately call upon you to relocate the IRDs to the installation address as per Subscription Agreement under confirmation to us.

Without prejudice to the foregoing we state that we had verbally agreed that Hathway Cable & Datacom Pvt. Ltd. (HCDPL) may take over SVCN provided all formalities (i.e. execution of subscription agreement in the name of HCDPC for the same Area as declared in the earlier Agreement signed with SVCN, etc.) are completed in respect of all the STAR DEN channels. As you are aware, in terms of the Agreement signed with SVCN, the authorized area of operation/territory is Viram Khand, Gomti Nagar only in Lucknow city.

It has now come to our knowledge that SVCN/you are illegally retransmitting signals of our Channels to sub-operators/consumers in Unauthorized Areas. As per our market information, you have illegally extended the retransmission of our channels to the following operators in the below mentioned Unauthorized Areas.

1. M/s Sansar Video Vision Wariz Ganj and Gola Gunj
 Mr.Kamil Muztba
2. M/s T.N. Cable Adarsh Nagar, Alamabagh

Mr.Toney/Sardar Sarab Jeet Singh

3. M/s Gupta Cable N/w Subhash Nagar, Alambagh
Mr.Sunil Gupta
4. M/s Abhishek Cable N/w Indra Lok, Krishna Nagar
Mr.Harish Negi
5. M/s Talwar Cable Dish N/w Indra Lok, Vinay Nagar, Krishna Nagar
Mr.Vikky/Ajay Talwar
6. M/s J Sons Cable Chitragupt Nagar, Alambagh
Ms Preeti Srivastava

We state that your action of providing the signals of our Channels in above stated Unauthorized Areas is adversely affecting our commercial interests.

We, therefore, call upon you to refrain from providing signals of our channels to Unauthorized Areas immediately failing which we shall be constrained to initiate appropriate action (including but not limited to disconnection of signals to your network).”

13. It is not in dispute that the petitioner did not respond thereto.

14. A notice under clause 4.1 of the Interconnect Regulation was issued by the respondent addressed to the petitioner No. 2, stating as under:

“It has come to our knowledge that you are, unauthorisedly and without entering into any agreement with us, re-transmitting the signals or our channels to the subscribers and sub-operators in the territory of Wazirganj, Gola Ganj, Adarsh Nagar, Alambagh, Subhash Nagar, Indra Lok, Krishna Nagar, Vinay Nagar, Chitragupt Nagar

(“unauthorized territory”) also. We state that you cannot unilaterally and without prior written permission of STAR DEN Media Services Private Limited extend your area of operation.

We note that despite our various requests to you to abstain from the unauthorized cable casting, you have continued the same which besides in violation of the said Agreement also amounts to violation of the provisions of the Cable Television Networks (Regulation) Act, 1995 (as amended), and the Copyright Act, 1957, against which we are entitled to initiate appropriate legal (civil/criminal) action. Furthermore, your action of providing the signals of our Channels in unauthorized territory without any agreement is also adversely affecting our commercial interests since we have existing commercial agreements with other operators/affiliates for these areas.

We further state that your action of encroaching upon Unauthorised Territory without any prior agreement with us is also affecting our commercial interests as it has a direct bearing on our negotiations basis on which your subscriber base and fees were fixed.”

15. A public notice was also issued by the respondent on or about 20.08.2008. It reads as under:

“This is to inform consumers that signals of some of the Channels (comprising of STAR Movies, STAR Plus, STAR World, STAR Gold, National Geographic Channel, The History Channel, STAR One, STAR Vijay, Hungama, The Disney Channel, Toon Disney Channels, Times Now, Zoom, Channel [V], CNBC, TV18, CNN-IBN and CNBC Awaaz) are likely to be disconnected three weeks’ from today to the following cable operator(s). The reason for deactivation is unauthorized retransmission of signals by the following cable operator(s).

M/s Star Vision Cable Network, 1/70, Viram Khand,
Gomti Nagar, Patrakar Chauraha, Lucknow, Uttar Pradesh.

All the areas serviced by the Operator(s) and its franchisees will be affected.”

16. This petition has been filed by the petitioners on 05.09.2008 claiming inter alia the following reliefs:

“A. Declare the said Public Notice dated 20.8.2008 appearing in ‘Dainik Jagran’ at Lucknow to be illegal, null and void and/or

B. Restrain the Respondent from switching off/disconnecting the signals for Star movie, Star Plus, Star world, National Geographical channel, History channel, Star One, Star Vijay Hangama, Disney channel, Toon Disney channels, Times Now, Zoom, Channel V CNBC-TB 80, CNN-IBN and CNBC Awaz for the area of Lucknow on the cable television network of the Petitioner No.1.”

17. This Tribunal passed an interim order on 08.09.2008 restraining the respondent from acting pursuant to or in furtherance of the said public notice subject to the petitioner’s restricting its area of operation to Viram Khand, Gomti Nagar, Lucknow.

18. The petitioner filed a Writ Petition before the Delhi High Court questioning the legality of the said order. It was marked as W.P.(C) No.6643 of 2008.

19. A learned judge of the said Court passed the following order on 10.09.2008:

“Issue notice to the respondent to show cause why the petition be not admitted.

Aggrieved by the public notice, which appeared in the Dainik Jagran on 20th August, 2008, the petitioners had approached the TDSAT. On 8th September, 2008, the following order was passed by the TDSAT:-

ORDER

Notice. Ms. Mamta Tiwari accepts notice on behalf of the respondents and requests for a short adjournment to file reply. Let the reply along with supporting documents be filed within a week. Rejoinder, if any, be filed within a week thereafter. List on 26th November, 2008.”

In the meanwhile, the respondent will not act in pursuance of the public notice dated 20.8.2008 subject to petitioner restricting its area of operation to Viram Khand, Gomti Nagar, Lucknow.

The present petition is directed against the order dated 8th September, 2008 by virtue of which the area of operation of the petitioners has been restricted to Viram Khand, Gomti Nagar, Lucknow. It is contended by the learned Senior Counsel appearing for the petitioners that initially the respondent had entered into an agreement with petitioner no.2 for the said two areas. Subsequently, the petitioners entered into a fresh agreement dated 28th June, 2008 with the respondents, a copy of which has been filed on page 29 of the paper book and as per Annexure-B, the area as shown is entire Lucknow City.

Learned Senior Counsel for the petitioners further submits that a copy of the agreement was handed over by the respondents to the petitioners and the petitioners have signed this agreement and returned the original to the respondents. In support of her submissions learned Senior Counsel relies upon a communication, which has been filed along with the writ petition, to show that the respondent was dealing

directly with the petitioners based on the agreement dated 28.6.2008.

Counsel further submits that in pursuance of the agreement, the subscription is being received by the respondent from the petitioner No.1 herein in the sum of Rs.71,546/- per month while the subscription fee being paid by the petitioner No.2 was approximately Rs.50,000/- per month only.

Taking into consideration the averments made by the learned Senior Counsel for the petitioners, till the next date of hearing, the operation of the public notice dated 20th August, 2008 and the part of the order dated 8th September, 2008 restricting the rights of the petitioners to the areas of Gomti Nagar and Viram Khand, Lucknow, shall remain stayed.

The petitioners will take steps to serve the respondents. List on 20th October, 2008. Copy of this order be given DASTI under the signatures of Court Master.”

20. Pursuant to or in furtherance of the said order, the first petitioner has still been retransmitting the signals for the channel of the respondent in the entire town of Lucknow.

21. However, by an order dated 09.02.2010, another learned judge of the said court disposed of the said petition noticing:

“1. Learned counsel for the respondent states that the main matter is listed for hearing before the Telecom Disputes Settlement & Appellate Tribunal (TDSAT) on 23rd February 2010. He states that till the disposal of the matter by TDSAT there will be no disconnection carried out by the Respondent and that all points urged in the present petition can be urged before the TDSAT.

2. In that view of the matter, no further directions are required. The petitioner is permitted to urge before the TDSAT all the points raised in this Petition.

3. The petition stands disposed of.”

22. In its reply, the Star Den not only denied and disputed the execution of the purported agreement dated 28.6.08 by and between it and the petitioner No. 1, it contended that the name of the petitioner no. 1 was not changed on its records, nor decoders were recorded in its name. It was furthermore contended that the petitioner No. 2 although, in terms of original agreement dated 27.12.06, were to carry out its operations only within the areas of Viram Khand, Gomti Nagar, it, in violation thereof, had been supplying signals to its customers throughout the town of Lucknow.

23. The parties have, besides, documentary evidence, have also adduced oral evidence.

24. One Mr. Piyush Mahajan, General Manager (Operations) for North India, has affirmed an affidavit on behalf of the petitioner no. 1. No witness has been examined on behalf of the petitioner no. 2. We may place on record that the said Piyush Mahajan inter alia alleged that one Mr. Amit Misra, who was the authorized representative of the respondent, was the signatory to the aforementioned agreement dated 28.6.08. As execution of the said agreement was denied and disputed by the respondent, the petitioners expressed its intention to examine the said Amit Misra also. He, pursuant to an application filed by the petitioner, was asked to appear before this Tribunal on 27.11.09. On receipt of the said summons, Shri Amit Misra appeared before us. We were informed that he would not be examined. However, the expenses incurred by the said witness were reimbursed. In that view of the matter, Mr. Amit Misra was discharged. No reason whatsoever for the said stand was assigned. After the

examination of Shri Piyush Mahajan, the respondents herein filed a sur-rejoinder, whereupon, the petitioners sought to recall Mr. Piyush Mahajan and also summoned Mr. I.K. Kapur. The said witnesses were examined by this Tribunal. We may notice that Shri Kapur was merely summoned to produce some documents but he even made attempts to prove the contents thereof, although he had no personal knowledge thereabout.

25. The respondent, in support of its case, examined one Mr. Manoj Kumar Singh. In the aforementioned factual backdrop of events, we may notice that this Tribunal by an order dated 24.11.09 framed a large number of issues. They are as under:

- “1. Whether the agreement dated 20.6.2008 is genuine and has been executed by both the parties?
2. If the answer to the issue No.1 is in affirmative, whether the agreement dated 20.6.2008 is legal, valid and operative between the parties?
3. Whether the Star Den can appoint a sole distributor who is also a stake holder in the largest MSO in Lucknow?
4. Whether the petitioner is entitled to signals on reasonable terms of parity?
5. Whether the sole distribution agreement would be entered into by the distributor of the Respondent on its behalf?
6. Whether the petition is otherwise maintainable as interalia no affidavit has been affirmed on behalf of the petitioner No.2?
7. Whether the notice issued to the petitioner under clause 4.1 and 4.3 of the Interconnect Regulation having been addressed to the Petitioner No.1 are valid?

8. Whether the petitioner had been operating beyond Viramkhand in Gomti Nagar, Lucknow, (the agreed area)?
9. Whether the petitioner in any event has violated the terms of the agreement by relocating decoders from one place to another?
10. Whether the petitioners are entitled to any relief?"

26. Mr. S. Ganesh appearing for the petitioners contended:-

- (i) The public notice issued by the respondent suffers from a factual error as therein the name of the petitioner No. 1 has not been mentioned.
- (ii) In terms of Regulation 4.1 of the Interconnect Regulations, a broadcaster is required to assign reasons and as the only reason assigned therein was unauthorized transmission, the same being not pertaining to any act on the part of the petitioner no. 1, who had taken over the network of the petitioner no. 2 on or about 26.2.08, the said notice must be held to be bad in law.
- (iii) The respondent is guilty of appointing the Den Network as its distributor who in turn has appointed one Mr. Omeshwar Singh as its Multi System Operator (MSO), and the latter being the Director of the Den Network, the same must be held to be illegal in view of the decision of the Supreme Court of India in Star India Pvt. Ltd. v. Sea T.V. Network Ltd. [2007(4) SCC 656].

- (iv) During the pendency of this petition, the petitioner having served a notice on the respondent to renew its agreement dated 28.6.08 and in the alternative having asked it to supply its signals in terms of clause 3.2 of the Interconnect Regulations and such signals having not been supplied within a period of 60 days from the date of the making of the request, as is mandatorily required, the impugned actions on the part of the respondent must be held to be invalid in law.
- (v) The agreement entered into by and between the petitioner no. 1 and the respondent is genuine, which would appear from the following circumstances:-
- (a) The stamp paper was purchased in the name of the respondent.
 - (b) On comparison of the said agreement dated 28.6.08 with that of 27.12.08 it would appear that the blanks contained therein have been filled up by the same person, namely Shri Amit Misra.
 - (c) PW-1, Mr. Piyush Mahajan, in his deposition having categorically stated that Mr. Amit Misra was sent to Lucknow by Mr. Arora of Biswas Enterprises, with whom he had discussions on telephone, the respondent ought to have examined Shri Arora, if it intended to deny or dispute the said statements made by the petitioner.
 - (d) Although the agreement in question had not been signed by the respondent, in this case also, the usual practice of the agreement being filled up and signed by the MSO at the first instance, which are sent to the broadcaster for their signatures was followed but the same, having not been returned after their signatures, by itself cannot lead to the conclusion that the agreement was a forged and fabricated one.

- (e) The details of the particulars contained in the said agreement were known only to the respondent and in that view of the matter, the petitioner must be held to have brought on record enough evidence to establish the genuineness of the said agreement.
- (f) From the chronology of events it would appear that the dispute between the parties started only after Mr. Omeshwar Singh was appointed which would clearly show the malafide on the part of the respondent.
- (g) Payments having been made even on 30.8.08 which having been accepted by the respondent, the impugned public notice is wholly unsustainable and the respondent should be directed to renew the agreement.
- (h) The very fact that the respondent had entered into an agreement of pay channel with the petitioner no. 1 is also a pointer to show that it had all along the requisite knowledge of the Assets Transfer Agreement dated 26.02.08 by and between the petitioners herein.
- (i) Yet again, the respondent having offered bouquet-II in favour of the petitioner no. 1 which would also show that it had taken over the network of the petitioner no. 2.
- (j) This Tribunal may direct the respondent to conduct a joint survey with the petitioner for the entire town of Lucknow and on the basis thereof, the subscription fee may be directed to be paid by the petitioner

to the respondent with retrospective effect from August, 2008 which will be about 3 to 4 times of the current subscription fee but the same shall be carried out in a graded manner.

27. Mr. Ramji Srinivasan, appearing on behalf of the respondent, on the other hand, urged:-

- (a) The original prayers made in the petition cannot be granted to the petitioner at this stage.
- (b) Although both the petitioners have joined together in this petition, no affidavit having been affirmed by or on behalf of S.V. Cable Network, the petition is not maintainable.
- (c) The petitioner having propounded the agreement purported to be dated 28.6.08 before this Tribunal, the onus of proof was on it not only to prove the genuineness but also the validity thereof.
- (d) The witness examined on behalf of the petitioner, Mr. Piyush Mahajan, being not aware of the area as also other vital aspects of the matter, and having accepted that despite taking over of the network of the petitioner No. 2, the petitioner No. 1 had not personally been operating the same but only a consultant had been doing so, no credence can be given to his evidence.
- (e) Having regard to the provisions contained in the agreement, neither the petitioner No. 2 could transfer its undertaking in favour of the petitioner No. 1 without obtaining the permission of the respondent, nor the decoders could have been removed from the premises in which the headend was located.

- (f) As the system recognized only the name of the person with whom the formal agreement had been entered into, bills, invoices and notices had rightly been raised in the name of the petitioner No. 2 and sent to the address recorded in its records which must be within the knowledge of the petitioner No. 1, as the same admittedly pertained to the concerned network and in view of the fact that the invoices were being received at the said address and payments were being made on the basis thereof.
- (g) In any view of the matter, service of notice in terms of clause 4.1 and the publication of notice in terms of 4.3 of the Regulations, cannot be held to be bad in law as the same could not be issued/published in the name of the petitioner No. 1, it being not on the records of the respondent and in that view of the matter, the petitioner no. 1 cannot be said to have been prejudiced thereby.
- (h) Non-examination of Mr. Amit Misra by the petitioner, although summoned, and, who, at the material point of time, having been working with M/s Digi Cable and not the respondent, must be held to be a conscious act on the part of the petitioner for which an adverse inference should be drawn.
- (i) Bouquet-II channel of the respondent having been offered to the petitioner No.1 at Rs. 25001.61 paise calculated for 601 subscribers at the rate of Rs. 18.2 paise, the amount of Rs.71,000/- shown to be payable in the purported agreement dated 28.6.2008, would show the manner in which the document has been fabricated.

29. Although a large number of issues have been framed by this Tribunal, in our opinion, the following principal questions arise for our consideration in this petition :-

- (1) Whether the agreement dated 28.6.08 is genuine and valid; and

- (2) Whether the respondent was bound to give effect to the Assets Transfer Agreement entered into by and between the petitioners inter se.
- (3) Whether the public notice dated 20.8.2008 is valid.

30. Before, however, advertng to the rival contentions of the parties, as noticed heretobefore, we may notice some of the provisions of the agreement entered into by and between the parties hereto. The first agreement was entered into on or about 27.12.2006 by and between the petitioner no. 2 and the respondent. The area of operation stipulated therefor was Viram Khand, Gomti Nagar. Clause 6 of the said agreement reads as under:-

- “(a) Affiliate shall, at its own cost and expense, cause the Subscribed Channels to be received only from the designated satellite(s) as notified by STAR from time to time, and shall ensure distribution throughout the Area through its Distribution System on a separate dedicated channel(s) for reception by all Subscribers. The Affiliate shall be reasonable, at its sole cost and expense, for obtaining all Licenses and permits necessary for the foregoing.
- (b) The Affiliate shall take all necessary action to prevent any unauthorized access to the Subscribed Channels in the Area and shall regularly obtain and provide to STAR updated piracy reports. The Affiliate, after taking written approval from STAR, will, at its own cost, take appropriate remedial actions to curb piracy in the Area. In the event the Affiliate fails to curb piracy, then STAR shall be entitled to terminate the Agreement

and disconnect/deactivate the Scheduled Channels in addition to any other legal or equitable remedies available to it.”

31. The said agreement was valid for the period 1.1.07 and 31.12.07. The number of subscribers mentioned therein was 1495 and the rate per subscriber per month was fixed at Rs.32.10 paise. Indisputably, the said rate had been fixed by the respondent herein on an all India basis. We may, however, place on record that the Telecom Regulatory Authority of India Limited (TRAI) in the year 2007 had allowed enhancement of the subscription fee to the extent of 4%.

32. As the genuineness of the agreement dated 28.6.08 purported to have been entered into by and between the petitioner no. 1 and the respondent herein is in question, we may notice the broad features thereof:-

- (1) The agreement in question is almost in identical terms and appears to be in the handwriting of the same person. Admittedly Shri Amit Misra represented the MSO and not the Respondent.
- (2) The customer reference is also the same, namely, the petitioner No. 2. The negotiated number of subscribers has been raised only to 1660 for Bouquet-I and is fixed at 830 for Bouquet-II, whereas the rate for Bouquet-I was shown again at Rs.32.10 paise but the 4% increase allowed by TRAI has not been taken into consideration. In relation to Bouquet-II, the rate had been shown as Rs. 22 per subscriber per month for which the monthly subscription fee payable was Rs.18260/- as compared to Rs.25001.62 paise, which had been offered to the

petitioner no.1 by the respondent in its e-mail dated 2.6.08 and accepted by the petitioner no. 1 on the same date, to which reference has been made by us heretobefore.

- (3) It is beyond any doubt or dispute that the prohibitions contained in the agreement were known to the petitioners, namely, the network could not have been transferred by the party to the agreement without the formal consent of the broadcaster and the headend also could not have been shifted from the place noted in the agreement to another place without the prior consent. We may also place on record one of the pleas raised by the petitioner, namely, that the trouble started only after Universal Cable was appointed as its distributor by the respondent on 25.7.08. No such plea was originally raised in the petition. Only in its rejoinder, the petitioner raised the said plea. It could not have been done. Keeping in view the fact that ordinarily, the parties should be asked to go on trial either on the basis of their original pleadings and such a new plea, which would have a very vital bearing on the ultimate result of the petition, should not be allowed to be raised in the rejoinder. We may, however, notice that according to the petitioner, Universal Cable is a sole proprietorship concern of Mr. Omeshwar Singh who is said to be the Managing Director of Enjoy Cable Networks Pvt. Ltd. It is further stated that the Den Enjoy is a joint venture and 'Den' and 'Enjoy' which is the largest operating MSO in the territory of Lucknow. We would consider the effect of the said statement, if any occasion arises therefor.

33. Although we may consider the merit of the matter at some details, at a later stage of this judgment, we may at this stage, notice that the agreement dated 28.6.08 has come to an end. It, as noticed heretobefore, was valid only up to

31.12.08. There is nothing on record to show that the petitioners have been on negotiating terms. Had the parties been on negotiating terms, the Interconnect Regulations provide that the agreement shall remain valid for a further period of 90 days on same terms and conditions in term of clause 8.2 of the Regulation. Immediately after the said purported agreement was executed, the respondent had issued a notice dated 27.4.08 contending that the petitioner no. 2 had unauthorisedly been transmitting the signals outside the authorized area. It furthermore issued a termination notice to its distributor, namely, Vishwas Enterprises, stating that its distributor agreement has expired on 30.6.08. Both the notices under Regulation 4.1 and the notice under Regulation 4.3 were issued on 20.8.08. We have noticed the said fact at the outset only for the reason that the chronology of events would go to show that there was no scope for any negotiation, after expiry of the tenure of the said purported agreement dated 28.6.08. Even if the said agreement is held to be legal and valid, no relief on the basis thereof, in our opinion, can be granted to the petitioner no. 1 in this petition.

34. Similarly, the petitioners do not deny or dispute that it had been retransmitting signals throughout the town of Lucknow although its original area of operation was only Viram Khand, a part of Gomti Nagar, which is one of the wards of the Lucknow Municipal Corporation. If the termination notice is otherwise valid, the same brought about an end to the relationship between the parties hereto. Even if the said notice was issued under Regulation 4.1 and the public notice issued under Regulation 4.3 are held to be invalid, it is not possible for us to grant any relief in favour of the petitioners herein, as admittedly, the agreement, by and between the parties, has come to an end. There does not exist any contractual relationship between the parties. In absence of such a contractual relationship, the question of directing the respondent to renew the agreement would not arise. We may, however, for the sake of completion of record, notice that during the

pendency of this petition, the petitioner had served notice upon the respondent asking it to renew the agreement and/or treat the same to be a request within the meaning of the provisions of clause 3.2 of the Regulations of 19.3.09. As the said request has not been acceded to by the respondent, the petitioner no. 1 has filed another petition before this Tribunal which has been marked as Petition No.26 (C) of 2010. We would deal with the said alternative plea of the petitioner while considering that petition independently.

35. The next question, which arises for consideration, is as to whether the notice issued under Regulation 4.1 of the Regulation and the public notice under Regulation 4.3 thereof are valid.

36. It is not denied or disputed that despite intimation by the petitioners herein in regard to Assets Transfer Agreement dated 26.2.2008 in terms whereof request has been made to the respondent herein for transfer the IRDS in the name of the petitioner no.1 w.e.f. 1.3.2008, the same was not done at the level of the respondent. We may proceed on the assumption that the respondent by reason of the said correspondences and/or otherwise, became aware thereof. But the fact remains that neither the IRDS allotted to the Petitioner No.2 were transferred nor any invoice was raised and issued in the name of the petitioner no. 1. It is also neither in doubt nor in dispute that the petitioner no. 2 before entering into the aforementioned agreement dated 26.2.2008 did not obtain any written permission of the respondent.

37. The petitioner No. 1 furthermore could have been granted some relief, but to its conduct and provided it kept its operations within the stipulated area.

38. What would be the effect thereof is the question?

39. The stipulations contained in the agreement between the parties are contractual in nature. The parties to the contract were bound to comply therewith save and except in some extraordinary situation. No such case has been made out. Furthermore, it was obligatory, in our opinion, on the part of the petitioners herein to insist on the respondent to transfer the IRDS in favour of the Petitioner No.1 as also to see that invoices are raised in its name. We, however, are not oblivious of the fact that while the same was pending with the respondent, its General Manager offered Bouquet-II to the petitioner no. 1 on or about 2.6.2008 which was accepted.

40. But the same by itself, in absence of any other material having been brought on record, cannot be a ground to arrive at a decision that the respondent had waived its right in relation thereto. We may, however, notice that even according to the petitioners immediately thereafter namely in the month of July, 2008 an allegation was made that the petitioner No. 2 had unauthorisedly been retransmitting signals outside the allotted area. A termination notice was also issued by the respondent to its authorized distributor that its distributorship agreement had expired due to efflux of time on 30.6.2008. It is furthermore accepted that M/s. Universal Cable was appointed as a distributor. The notices under Regulations 4.1 of the Regulation and the public notice soon followed. It is, therefore, difficult for us to accept the submission made by Mr. Ganesh that although in the records of the respondent the name of the petitioner no. 2 appeared and invoices and other notices were issued to it, the notice issued under Regulation 4.1 and the public notice issued under Regulation 4.3 would be illegal.

41. The privity of contract was by and between the petitioner no. 2 and the respondent herein. It never came to an end. The programme which was available in the system of the respondent was to generate invoices, notices etc. contained only in the name of the petitioner No. 2. So far as the petitioner no. 1 is concerned, it for bouquet-1 which referred to the subscription agreement dated 27.12.2006 was a non-existent entity. It is, therefore, difficult for us to accept that in absence of the name having been mutated in the records of the respondent, the notice having not been addressed to the petitioner No. 1 or its name having not been referred to in the public notice, they became vitiated in law.

42. Neither Regulation 4.1 nor Regulation 4.3 provides that the notice as also the public notice must be issued in the name of the entity which had de facto been operating the network whether legally or otherwise. The same would have been necessary provided there existed a privity of contract. It is presumed in law that the parties would be acting in terms of the agreement. It is presumed that the things which have started in terms of an agreement would continue unless altered.

43. In any view of the matter the petitioner no. 1 cannot be said to have been prejudiced thereby. It was entitled to a notice. Its subscribers and/or viewers were also entitled to come to know of the said fact that the retransmission of the signal would be disrupted on the expiry of 21 days from the date of issuance of the notice under Regulation 4.1 and/or public notice under Regulation 4.3, whichever is later.

44. A provision made by way of a subordinate legislation only with a view to let third parties know about certain things happening or would happen in future, in our opinion, do not become nullities in the eyes of law automatically. The purpose and object of issuance of such notice must be fulfilled but that would not mean that the law would presume that the same would be to the benefit of one party and not the other. In a case of this nature, the petitioners should have shown that they are prejudiced in any manner.

45. So far as the question of genuineness of the purported subscription agreement dated 28.6.2008 is concerned, we have noticed heretofore the submissions made by M. Ganesh in this behalf. We may, however, refer thereto. We have noticed the statements of Mr. Piyush Mahajan on which alone the petitioner No. 1 relies upon. Admittedly at that point of time the petitioner No. 2 was not in picture. From the pleadings of the parties furthermore it does not appear that any case has been made out that the petitioner no. 1 had approached the respondent for the purpose of execution of the agreement. What has been pleaded in the petition reads as under:

“That thereafter, the Petitioner and the Respondent entered into a Subscription Agreement dated 28.6.2008 for the period from 1.03.08 for the Star Bouquets 1 and 2 at the negotiated subscriber base of 2490 subscribers with subscription fees of Rs.71,546/- payable monthly. The said Subscription Agreement contained an “Annexure B” specifically mentioning the area served as the entire Lucknow City.”

46. The respondent in its reply, on the other hand, averred:

“That the reliance placed by Petitioner No.1 on a single payment of Rs.71,546/- to demonstrate that the alleged Subscription Agreement had in fact been executed is false and baseless. It is submitted that from the Agreement placed on record by the Petitioners, it can be seen that monthly subscription fees has been shown as Rs.71,546/- and that Sales Tax and Education Cess are to be calculated (@ 12.36%) over and above the subscription fees thus totaling to Rs.80,389.08. This shows that the monthly subscription fees payable by Petitioner No.1 will be Rs.80,389.08 and not Rs.71,546/- as falsely suggested. It is further submitted that no payment was made in July 2008 by the Petitioner No.1 and it is for this reason that two payments were made in August 2008, one of Rs.60,925/- (on 18.08.2008) and the second of Rs.71,546/- (on 31.08.08). Statement of Account of Petitioner for the period 01.01.2008 till September 2008 is annexed hereto and marked as Annexure-R/4.”

47. We find substance in the said contention. We may furthermore notice that various contentions have been raised in the said reply as to why the said subscription agreement dated 22.6.2008 should not be relied upon. Having regard to those averments in mind, Mr. Piyush Mahajan must be held to have made certain statements which completely make himself unreliable.

48. We may notice the relevant portion of his deposition which are as under:

“That I had negotiations in respect of the said Agreement with Mr. Vivek Arora who represented the Respondent. I personally met Mr. Vivek Arora who more than once in Delhi as a part of the negotiation process and also spoke to him several times in this regard telephonically. The negotiations in this regard were concluded by the

third week of June, 2008. On 28.6.2008, I was in Lucknow, when I telephonically requested Mr. Vivek Arora, if the Subscription Agreement could be signed as the accounts department of the Petitioner Company required an Agreement to start making payment directly to the Respondent. Mr. Vivek Arora agreed to the same and he instructed his distributor to complete the formalities in respect of the said Agreement. On 28.6.2008, Mr. Amit Mishra from M/s. Vishwas Enterprises, who was the distributor of the Respondent Company came to my hotel in Lucknow i.e. Gemini International Hotel. He filled up the Agreement Form in my presence and asked me to sign the same and attach a photograph of mine to the same. I checked the details regarding the area and the subscription amount filled up by Mr. Amit Mishra, which were as per the final negotiations held between me and Mr. Vivek Arora on which there was agreement between us. After checking the same I signed the said Agreement and affixed my photograph to the said Agreement. Mr. Amit Mishra got a photocopy made of the said Agreement and gave it to me and kept the original with himself. The Agreement was signed for the city of Lucknow for a monthly subscription fees of Rs.71,546/- plus service tax for bouquets 1 and 2 of the Respondent. That the subscriber base for the bouquet 1 was negotiated at 1660 subscribers and for bouquet 2 was negotiated at 830 subscribers. That it was agreed between me and Vivek Arora that the Petitioner No.1 Company would give growth to the Respondent as it expanded its operations in the city of Lucknow.”

49. It is difficult to accept the evidence of the said witness. According to him a due diligence had been carried out. The matter, however, was being looked after, according to the same witness by Mr. Rajesh Bansal the Consultant of the petitioner no. 1. No report was submitted to the said witness by him. It was merely a verbal order on telephone. The witness also did not ask the Consultant to verify as to whether the petitioner no. 2 had any agreement with the four LCOs who were operating under it.

50. Although the area, even according to Mr. Mahajan, is very relevant for the purpose of the agreement, he did not either know the area covered by the agreement nor did he remember the number of subscribers. There was no decision, as it appears from his evidence, taken by the Board of Directors to takeover 'Star Vision'. He being merely an employee of the company, it is difficult to believe that the network could be taken over at its instance without any resolution having been passed by the Board of Directors or at least without the concurrence of one of its Directors. He in his evidence furthermore accepted that it was necessary for the first petitioner to have an agreement in his favour from the respondent to enable it to transmit signal in an authorised manner. If the parties had met in a hotel, in view of the points raised by the respondent, further corroborative evidence should have been brought on record. He on 22.6.2008 even did not have any authority to sign the agreement. He even could not say that Mr. Alok Govil, who had gone abroad, was visiting which country at the relevant time. Shri Alok Govil did not examine himself. He even did not recollect whether the requirements of clause c of Section 21 of exhibit PW1/6 were fulfilled. He produced the said document, according to him, only because they were asked for from him. He did not say who had asked him thereabout. He, for the purpose of execution of the agreement, on his own admission merely supplied one photograph, which he had not been keeping. Mr. Govil is said to have informed him about the development although entering into an agreement with the respondent was crucial in nature.

51. If he was having any personal knowledge with regard to the operation of the network, he would have known as to which areas the petitioner no. 2 had been operating. He would not have left everything to his alleged Consultant. Even no such case

has been made out in the petition. It is also difficult to believe that despite the fact that Shri Amit Mishra from M/s. Vishwas Enterprises had been summoned by this Tribunal for examining him, he would not be examined. We have noticed heretofore that on the relevant date no explanation was offered as to why he would not be examined. Furthermore Mr. Amit Mishra alone could have proved his handwriting in the draft proforma. His handwriting although was questioned by the respondent in the cross-examination, the same has not been sent for verification to a Handwriting Expert. It is also difficult to accept that although in respect of a part of the Gomti Nagar, namely Viram Khand the petitioner no. 2 had 1495 subscribers, for the whole of the town of Lucknow, the respondent would agree for a negotiated base of subscribers of 1660 for Bouquet-1 and only 830 subscribers for Bouquet-II.

52. His statement that it had been agreed between him and Mr. Vivek Arora that the petitioner No. 1 would give growth to the respondent as it expanded its operation in the city of Lucknow does not find support from the pleadings of the petitioner. It is, in our opinion, apart from various grounds stated by the respondent herein, difficult for us to arrive at a conclusion that the agreement in question is a genuine one. Even assuming that the said agreement was a genuine one, it has expired. A notice under 4.3 had been issued. The said notice, we have held heretofore is valid in law. If that be so, the said agreement does not exist and thus the question of its being renewed would also not arise.

53. We would also assume for the aforementioned purpose that the public notice is bad in law but even then no relief can be granted to the petitioner as it does not have any existing legal right to continue to operate in the town of Lucknow.

54. In any view of the matter, the respondent having not signed the purported agreement, no contract came into being and on that ground too, the question of renewal thereof would not arise.

Furthermore, the Petitioner No.1 is guilty of unauthorized transmission of signals.

55. One of the questions which has been argued for our consideration is as to whether the petitioner no. 1 should be put to terms for carrying on its operation in terms of the interim order passed by this Tribunal as also the Delhi High Court. In terms of the order passed by this Tribunal, the petitioner no.1 was to make payments. From the month of September, 2008 admittedly no payment has been made to the respondent. When questioned, Mr. Ganesh submitted that the amount though tendered to the respondent had not been accepted by it. It is difficult to believe the said statement. Thus, even the admitted amount has not been paid.

56. We have noticed heretofore that Mr. Ganesh himself had made an offer before us that the petitioner would be increasing the subscription fee on a progressive basis and is ready and willing to pay the same with retrospective effect on the subscriber base which may be found out on a joint survey. We are informed at the bar that the amount towards the subscription fee from Sept, 2008 had been tendered.

57. The first petitioner could not have expanded its area of operation without a valid agreement. It obtained an order from Delhi High Court on certain premise, the correctness whereof is open to question. It is now a well settled principle of law, that a Court of law and/or a judicial tribunal has an inherent power to put the parties to the same position as if the order of injunction granted in favour of one party and against the other had been complied with. If such an assumption is to be made, the petitioner no. 1 must reconstitute the amount it has earned during pendency of this proceeding. Such an order can be passed by this Tribunal in exercise of its inherent power. (2008 (4) SCC 791 at 796).

58. The first petitioner is said to be a reputed company and has a network throughout India. If that be so, there cannot be any doubt whatsoever, that it would be maintaining its books of account. There cannot furthermore be any further doubt or dispute that even under the Companies Act, 1956 that the petitioner is statutorily required to maintain the books of account and get the same audited by the Statutory Auditors. It is expected that the petitioner No.1 shall pay to the respondent the requisite payment at its earliest.

59. We dismiss the petition with liberty granted to the respondent to file an appropriate petition for recovery of the amount it is entitled to recover.

60. The petition is dismissed with cost. Counsel's fee assessed at Rs.2,00,000/-.

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

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