

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

**Dated 5<sup>th</sup> May, 2010**

**Petition No.260(C) of 2009**

Mahamaya Cable Network ... Petitioner

Versus

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

For Respondent : Mr. Kaushik Mishra, Advocate

**JUDGMENT**

**S.B. Sinha**

The petitioner is a multi system operator (MSO). The respondent herein is a broadcaster.

The petitioner is aggrieved by a public notice dated 5.11.09 issued by the respondent whereby and whereunder the supply of signals was sought to

be stopped, allegedly for non-payment of the dues towards subscription fees amounting to Rs.1,01,043.

The petitioner that the respondent should not have issued the said public notice in view of the fact that some other operators had been committing piracy in his area for which a complaint was made with the Superintendent of Police, Bilaspur in terms of letters dated 06.06.2008 and 04.10.2008 and the same was brought to its notice. The petitioner had also issued a letter to Shri Vivek Sharma of the respondent herein on or about 18.05.2009 pursuant whereto or in furtherance whereof, Krishna Corporation, Bilaspur who is admittedly the distributor of the respondent, had settled its dues by way of full and final payment for a sum of Rs. 60,000/-.

The respondent, on the other hand, would contend that the aforementioned Krishna Corporation was merely a collecting agent and not a distributor and thus had no authority to enter into any settlement on its behalf. According to the respondent, it had not even received the aforementioned sum of Rs.60,000 purported to have been paid by the petitioner to it. It is on the said premise the respondent sought to justify its action in issuing the aforementioned public notice.

The principal question, which, therefore, arises for consideration is as to whether the aforementioned Krishna Corporation had any authority to enter into the aforementioned settlement on behalf of the respondent.

Before, however, we advert to the rival contentions of the parties, we may notice the admitted fact of the matter.

In terms of a validation form effective from 15.1.09, which is Annexure P-1 to the petition, the petitioner had agreed to pay a sum of Rs.20,258/- for retransmission of the channels of the respondent @ Rs. 117.62 paise per subscriber declared. The supply of signals was to be made in Padar Para locality in the Tehsil of Mungeli in the district of Bilaspur. It appears that Krishna Corporation claimed itself as the distributor of the respondent. It thus had issued a notice to the Superintendent of Police on or about 6.6.2008 which reads as under:-

“This is to inform you that we are authorized distributor of MSM DISCOVERY PRIVATE LIMITED FOR Chhatishgarh and we provide signal for their Channels.

We have authorized to M/S MAHAMAYA CABLE NETWORK (MUNGELI) to show our Channel in this area, but

the other network is doing piracy of Sony Channels at MUNGELI, BILASPUR District which is ILLEGAL offence according to copy right Act, 1972.

You are requested to kindly look into the matter and stop this illegal Piracy going around in MUNGELI.”

To the same effect is the complaint made by the petitioner to the Officer-in-Charge of Mungelli Police Station on 04.10.2008 which reads as under:-

“Dear Sir,

That I am in the business of Cable Network in the name of MAHAMAYA CABLE NETWORK and I telecast MSM Dish Antena Chhatisgar. That I am authorized to telecast Zee TV, Sony TV and STAR PLUS Pay Channels by the Company.

In Mungeli through some others control room, pay channels of Zee TV and Star Plus is being telecasted, which is wrong and piracy. The abovementioned Channels are being telecasted by DTH or any other box.

It is hereby requested to you that the telecast of abovementioned Channels should be stopped at the earliest and some action must be taken against the telecast of Channels by the way of piracy.”

The petitioner has also issued a notice dated 18.05.2009 to Shri Vivek Sharma of the respondent with a copy to Krishna Corporation as also its regional office at Indore which is in the following terms :-

“Subject: For Piracy of SONY CHANNEL in Mungeli.

Dear Sir,

It is to inform you that I have authorized to telecast SONY CHANNEL in Mungeli. But for the last some months in Mungeli SONY CHANNEL is being telecasted by way of piracy through some other network called Nitin Dish Antena, which is already informed you many times earlier, but no action has been taken by you in this regard. Due to this Piracy we are facing many problems on the ground.

Hence it is requested to you that our monthly fee kindly be reduced.”

It is on the aforementioned premise, the action on the part of Krishna Corporation to reduce the monthly subscription fee to a sum of Rs.10,000/- per month and the settlement in respect of the arrears for the said sum of Rs.60,000/- must be viewed. The letter dated 31.08.2009 sent to the petitioner by M/s Krishna Corporation reads thus:-

“Dear Sir,

We have received your letter regarding downgradation, we come to know from your letter that you are not getting monthly collection from ground. We hereby downgrade your monthly fees to Rs.10,000/- (Ten Thousand only) + Tax, from 1<sup>st</sup> Sep.2009, onwards for one year.

We have received Rs.60,000/- (Sixty Thousand only) as final payment towards your outstanding in our Company.”

The respondent in its reply did not deny or dispute that Krishna Corporation was its distributor. It merely stated that no cheque has ever been sent to the respondent and that in terms of the invoices, all payments were to be made by way of a Demand Draft and in the name of the respondent company. If such a contention on the part of the respondent is to be accepted, it would be difficult to perceive as to why it was required to

appoint a distributor or even a collecting agent. A distributor and/or an intermediary is recognized in the Interconnect Regulations framed by TRAI, namely, Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 (The Regulations). It defines 'distributor' of TV Channels as under:-

**“Sec. 2(j).** Any person including an individual, group of persons, public or body corporate, firm or any organization or body re-transmitting TV channels through electromagnetic waves through cable or through space intended to be received by general public directly or indirectly. The person may include, but is not limited to a cable operator, direct to home operator, multi system operator, head ends in the sky operator.”

In terms of clause 3.2 read with clause 4.1 of the Regulation, a broadcaster is entitled not only to supply signals directly to an MSO itself but also through its distributor. A distributor ordinarily is an agent of the broadcaster.

An act of an 'Agent' would ordinarily bind the 'Principal'.

In the Indian Contract Act, 1872, in Chapter-X regarding AGENCY, Section 226 throws some light on this issue which reads as under:-

**“Enforcement and consequences of agent’s contracts** – Contracts entered into through an agent, and obligations arising from acts done by an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences as if the contracts had been entered into the acts done by the principal in person.”

The respondent did not say that Krishna Corporation was not its agent. It only referred to its invoices to contend that no such downgradation was given or any settlement has been arrived at.

The petitioner is a small-time operator. He had dealing with the aforementioned Krishna Corporation only. Not only the petitioner but also the Krishna Corporation had admittedly made complaints to the Superintendent of Policy in regard to piracy committed by another. That may or may not be correct but at least the respondent does not deny the same.

A letter was also addressed to Shri Vivek Sharma of respondent by the petitioner on or about 18.05.2009. He also did not respond thereto. The

averments made in the petition to that effect have been made in para 7, of the petition which is to the following effect:-

“7. That as no concrete action was taken by the police authorities and as the Petitioner continued to suffer from the alleged piracy, the Petitioner was left with no other option but to approach the Respondent vide its request letter dated 18.05.2009 for downgradation of the Subscription charges in view of the complex situation being faced by the Petitioner in the wake of piracy of its signals by the other cable TV network. A copy of letter dated 18.05.2009 along with its true typed English translated copy is annexed as ANNEXURE-P/4(COLLY) to this Petition.”

The respondent in para 7 of its reply merely stated as under:

“7. The answering respondent submits that averments made in para no.3 to 7 requires no reply.”

No specific denial to the averments made by the petitioner, thus, has been made in the reply by the respondent and, thus, would be deemed to

have been admitted in terms of the provisions contained in Order VIII Rule 5 of the Code of Civil Procedure or the principles analogous thereto.

It is contended by Mr.Kaushik Misra that the distributorship and/or appointment of M/s Krishna Corporation as a collecting agent was terminated soon after the acceptance of purported payment by it from the petitioner. No plea has been raised in that behalf, far less any proof. The respondent has also not brought on record its distributorship agreement to show that M/s Krishna Corporation was not authorized to enter into a settlement/agreement for downgradation. It being within its special knowledge should have disclosed the same before this Tribunal. In any event, it ought to have also proved its accounts to show that it had not received the sum of Rs.60,000/- from the said Krishna Corporation who admittedly was its collecting agent.

It was, on the aforementioned premise, also obligatory on the part of the respondent to bring some materials on record as to what steps it had taken against the said Krishna Corporation. It has also not been shown that despite M/s Krishna Corporation having been appointed as a distributor, the petitioner had all along been making direct payments through Cheques/Demand Draft to the respondent only.

The respondent having accepted the relationship by and between itself and M/s Krishna Corporation, the extent of the authority granted to it by the respondent being within its special knowledge should have been pleaded and proved. We may notice that even other statements made in the petition had not been specifically adverted to in its reply by the respondent. Apart from raising the aforementioned contention and/or subsistence of an agreement, the other allegations made in the petition have not been traversed.

We, therefore, are of the opinion that the impugned public notice cannot be sustained. It is set aside accordingly. The respondent is directed to restore the signals.

The petitioner is entitled to costs from the respondent. Counsel's fee assessed at Rs.50,000/-.

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

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

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**(P.K. Rastogi)**  
**Member**