

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

**DATED 13<sup>th</sup> MAY, 2010**

**M.A. No. 59 of 2010**  
**In**  
**Petition No. 255(C) OF 2009**  
(M.A. Nos. 166 & 170 of 2009)

City Channel Network ...Petitioner

Vs.

Zee Turner Ltd. ...Respondent

**M.A. No. 60 of 2010**  
**In**  
**Petition No. 258(C) OF 2009**  
(M.A. No. 167 of 2009)

City Channel Network ...Petitioner

Vs.

M/s MSM Discovery Pvt. Ltd. ...Respondent

**M.A. No. 61 of 2010**  
**In**  
**Petition No. 259(C) OF 2009**  
(M.A. No. 165 of 2009)

City Channel Network ...Petitioner

Vs.

M/s Star Den Media Services (P) 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 (Zee) : Mr. Maninder Singh, Senior Advocate  
Mr. Arjun Natrajan,  
Ms. Nitya Thakur, Advocates for  
Mrs Prathiba M. Singh, Advocate
- For Respondent (MSM) : Mr. Kaushik Mishra, Advocate
- For Respondent (Star Den) : Mr. Gaurav Juneja, Advocate  
Ms. Garima Sharma, Advocate
- For Intervenor (M.A. No. 59, 60, 61 of 2010) : Mr. Navin Chawla, Advocate  
Mr. Sharath Sampath, Advocate

**ORDER**

1. The petitioner herein is a Multi Service Operator. It has filed these three petitions against the respective broadcasters inter-alia praying for:

- “(i) Direct the respondent to issue the Duplicate Decoders to the petitioner;*
- (ii) Direct the respondent to pay the placement fee of Rs. 4,00,000/- except running year as per the Agreement;*
- (iii) Direct the respondent to give adjustment in the subscription amount for the period for which the Petitioner has been requesting for the duplicate Decoders from Respondent;*
- (iv) Direct the respondent to restrain from illegally harassing the petitioner for ulterior purposes;*

2. The respondents have filed their respective replies. They have also filed evidence of their respective witnesses by way of affidavits. The petitioner did not do so. At this stage the petitioner has filed an application for withdrawal of the main petition.
3. The learned counsel for the respondents, have raised an objection thereto. We, therefore, heard the learned counsel for the parties on the maintainability of the said application.
4. The petition filed before this Tribunal can be withdrawn in terms of the provision in terms of or analogous to Order XXIII Rule1 of the Code of Civil Procedure, which reads as under :

**“ORDER XXIII**

**WITHDRAWAL AND ADJUSTMENT OF SUITS**

***[R. 1. Withdrawal of suit or abandonment of part of claim.-(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:***

*Provided that where the plaintiff is a minor or other person to whom the provisions obtained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.*

*(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.*

*(3) Where the Court is satisfied-*

*(a) that a suit must fail by reason of some formal defect, or*

*(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the*

*(4) Where the plaintiff-*

*(a) abandons any suit or part of a claim under sub-rule (1), or*

*(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.*

*(5) Nothing in this rule shall be deemed to authorize the Court to permit one of several plaintiffs to abandon a suit or part of a claim. Without the consent of the other plaintiffs.]”*

Sub-rule 4 of Rule 1 of Order 23 states that for withdrawal of the suit or abandoning a part of the claim, the Court may impose such costs as it may deem fit.

5. Mr. Maninder Singh, appearing on behalf of the Zee Turner, Mr. Gaurav Juneja for Star Den Media Services Pvt. Ltd. and Mr. Kaushik Mishra for MSM Discovery would contend that the amount for awarding costs be determined having regard to the relevant factors namely the conduct of the petitioner, malafide intention on its part in filing this petition, the harassment, the parties had undergone, the expenses they have to bear etc.
6. Mr. Vineet Bhagat, learned counsel appearing on behalf of the petitioner, on the other hand, would contend that the petitioner, who was an MSO is now forced to sell its network to Digi Cable and act under it as a Local Cable Operator and, thus in facts and circumstances of the case, the prayer for withdrawal of this petition has been made.
7. The learned counsel would contend that recourse thereto had to be taken by the petitioner having regard to the fact that it would otherwise have been totally out of business. The learned counsel urged that no opinion on fact has yet been arrived at with regard to its alleged bad conduct on its part and/or its acting malafide.

8. This petition has a chequered history. Inter-alia on the premise that its decoders had been stolen, a petition was filed against Zee Turner Ltd. On the very first date of hearing a concession was made by the learned counsel appearing on behalf of the respondent that the same shall be supplied to the petitioner on payment of costs thereof whereupon an order to that effect was passed by this Tribunal on 24.11.2009.

It is stated by Mr. Maninder Singh that on that date the said concession was made as the respondent was not in possession of a copy of the petition. However, the matters, so far as Star Den and MSM Discovery are concerned, were placed on 26.11.09 but no interim order was passed. We may, however, notice that this Tribunal in its order dated 11.12.2009 noticed that one Mr. Anand Persaniya said to be the consultant of Mr. Devbrat Singh Bais, the proprietor of the petitioner concern, has been instructing the counsel for the petitioner. A statement of Mr. Devbrat Singh was taken on 4<sup>th</sup> Jan, 2010.

9. In the meanwhile the respondent returned the amount paid towards the price of the decoder boxes.

10. Issues were framed on 4<sup>th</sup> March, 2010.

11. We may notice that Digi Cable Network got itself impleaded in the meantime. It also opposed the petition .

12. Paragraph 11 of the original petition reads as under:

*“11. That in view of the above facts and circumstances, the respondent in order to harass, humiliate and victimize the petitioner on one pretext or the other to drag it out of the Cable TV business has not issued the Decoder Boxes to stonewall the efforts of the petitioner to run its business peacefully.”*

It was on the aforementioned premise the respondent had also undergone the process of investigation in the criminal cases initiated by the petitioner. However, a closure report was filed by the Investigating Officer on 10.2.2010 stating that the First Information Report was falsely lodged. In the mean time, the petitioner filed a contempt petition under Sec. 20 of the Act for alleged violation of the interim order passed by this Court against Zee Turner.

- 13.** There is no dispute that a FIR had been lodged. The respondents had to participate in the investigation. Mr. Devbrat Singh had lodged a FIR on the ground that the decoders had been stolen, the police has found the said FIR to be false. Various inconsistent statements have been made before us. The petitioner has prefabricated its stand from stage to stage of this proceeding. We have also noticed in various orders that on the one hand the petitioner had denied a memorandum of understanding by and between itself and the respondent but itself filed the same alongwith the purported medical papers of his mother in the process of explaining as to how the decoders were stolen. We need not go into the details thereof being matters of record. Under what circumstances the petitioner had to take different stands and ultimately entered into a compromise with the rival MSO is a matter by and between the parties thereto. But whatever be the circumstances, a party to a litigation cannot be permitted to file a petition on a false premise. This Tribunal, as a Court of Law would not encourage the same. We are satisfied that this petition was not bonafide.

In *Shree Rama Multi-Tech Ltd. and Anr. Vs. Asset Reconstruction Company (India) Ltd.*, (2007) 2GLR 1230 a learned single Judge of Gujrat High Court upon referring to several decisions of the Supreme Court of India held as under :

*“As noted earlier to withdraw any proceeding once having initiated in the Court of law is not a matter of unlimited right of the litigant. Such an application has to be examined by the Court and in a given situation, it may be open for the Court either to permit withdrawal upon costs or even to refuse withdrawal. One such situation would be when as per the provisions contained in Law, set –off is claimed or counter –claim made. Second situation would be where the party*

*concerned wishes to institute fresh proceedings after withdrawal of the existing proceedings. It may be that in a given case the Bank or financial institution does not wish to invite an order from the Debts Recovery Tribunal and would wish to pursue its remedies under the Act of 2002 without the aid of any machinery of the Court. If the application of the Bank or financial institution in such a case to withdraw the proceedings is not decided expeditiously or is rejected without assigning any reasons, Bank or financial institution would be left with no further possibility of pursuing the remedy under the Act of 2002. This could be one of the situations in the mind of the legislature while amending the provisions of Sub-section (1) of Section 19 of the Act of 1993. This provisions primarily provides for an application to be filed by the Bank or financial institution for withdrawal of the proceedings from Debts Recovery Tribunal, expeditious consideration of such an application and for recording of reasons if the application is being rejected by the Tribunal. Nothing contained therein would suggest that the purpose of enactment of the said provision was to enforce the choice of the remedy on the bank or financial institution.”*

In Rasiklal Rathor Vs. Smt. Maitroi Sukhla, AIR 1974 Ori 158, 39(1973)CLT1341, G.K. Misra CJ stated the law, thus,

“3. *The learned Subordinate Judge should not have been oblivious of the fact that the arbitration had almost come to a close and he had powers to grant cost under Order 23, Rule 1(3). Senior Advocates had been engaged as arbitrators and lawyers also appeared before them. Mr. Patnaik says that a minimum cost of Rs. 250.00 should have been allowed by the learned Subordinate Judge while granting the withdrawal. The claim appears to be quite reasonable.*

4. *The withdrawal of the suit is accordingly allowed subject to payment of Rs. 250.00 as costs by the plaintiff to the defendant within two months from today, failing which the application for withdrawal must be rejected.*

*Subject to the aforesaid order regarding costs, the civil revision is dismissed.”*

14. We, therefore, are of the opinion that costs should be imposed while granting an opportunity to the petitioner to withdraw the petition. Costs are quantified at Rs. 1,00,000/- in each of the cases payable to the broadcasters.

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

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

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