

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

DATED 26th MAY, 2010

PETITION NO.268 (C) OF 2009

CCN Entertainment (India) Pvt. Ltd.

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.... Petitioner

Vs.

Star Den Media Services Pvt. Ltd.

.... Respondent

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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. Prateek Kumar, Advocate
Mr. Gaurav Juneja, Advocate

ORDER

P. K. Rastogi

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The Petitioner is a Multi System Operator (MSO) and the respondent is a Broadcaster. There was a subscription agreement between the petitioner and the respondent for the supply of signals for the year 2008. For the

year 2009, the agreement operative with effect from 1.1.2009, was entered into on 23.4.2009. On 03.11.2009, the respondent issued a letter to the petitioner for clearing the outstanding amount. It was also mentioned in the aforementioned letter that the respondent will be constrained to discontinue the services of their channels in case of failure of clearing the said outstanding amount. A public notice for discontinuation of signals to the petitioner in three weeks was also issued by respondent and the same was published in newspaper on 12.11.2009.

2. The petitioner approached this Tribunal on 03.12.2009 under Section 14 & 14-A of the TRAI Act, 1997 for directing the respondent to restrain from deactivating the supply of signals to the Cable TV network of the petitioner as threatened by the respondent. When the case was heard in the Tribunal on 04.12.2009, it was understood that disconnection has already taken place on 03.12.2009. Therefore, this Tribunal issued an interim order on 04.12.2009 which reads as under :-

“Having heard the learned counsel appearing for the parties and having perused the documents produced by the parties, we direct that the signals of the petitioner shall be restored by respondent on payment of a sum of Rs.18 lakhs by the petitioner. Deposit of the said amount as also the reconnection of the signals shall be without prejudice to the rights and contentions of the parties in the main matter. Reconnection be effected within 24 hours of the time of the deposit. The petitioner shall continue to pay the monthly subscription fee in terms of the agreement”.

3. According to the petitioner, he had a valid subscription agreement with the respondent for the year 2008 and was paying subscription of Rs.10,12,600/- per month to the respondent. However, as one more Network namely “Digi Cable”

got established in the same area, the petitioner lost the share of its more than 50% connectivity to the said "Digi Cable". He brought this fact to the knowledge of the respondent and the respondent reduced the subscription amount to Rs.6,07,571/- per month from the month of September, 2008 although the petitioner had requested to reduce the same from the month of May, 2008.

4. The petitioner entered into the Subscription Agreement for the year 2009 on 23.4.2009 for supply of signals to the Cable TV network of the petitioner. The petitioner further pleaded that he was forced to include the CNBC & IBN in the Subscription Agreement as the respondent had assured that the petitioner will not be charged any extra amount for these channels as the said amount would be adjusted against the carriage fees which the respondent is required to pay to the petitioner. However, the respondent did not adjust any carriage fees but continued to raise invoices as per the Subscription Agreement. Suddenly he has received a letter dated 03.11.2009 where an outstanding amount of Rs.10,90,438.82 as on 31.10.2009, has been demanded. According to him, he was paying his dues regularly and no amount was payable by him. The public notice issued on 12.11.2009 was also illegal. Therefore, he prayed for the following reliefs : -

- “(i) Direct the Respondent to withdraw its illegal Public Notice dated 12.11.2009;*
- (ii) Direct the Respondent to not disconnect the supply the signals to the Cable TV Network of the Petitioner;*
- (iii) Direct the Respondent to enter into a fresh Subscription Agreement for the year 2010 with the Petitioner on reasonable terms and conditions;*
- (iv) Direct the Respondent to adjust the Subscription Amount of (Bouquet-3) CNBC & IBN against carriage fees.”*

5. The respondent has submitted that he was constrained to issue disconnection notice for non-payment of dues under the provisions of Clause 4.1 of Telecom Regulatory Authority of India's Interconnect Regulations dated 10.12.2004 since the petitioner had failed to clear its dues despite repeated requests of the respondent. Further, in compliance with the provisions of Clause 4.3 of TRAI's Interconnect Regulations, notices in two newspapers were also issued by the respondent on 12.11.2009 in order to enable the consumers to safeguard their interests.

6. The main question in this petition are as under :-

“ (i) Whether the petitioner is a defaulter in terms of the subscription agreement dated 23.4.2009 as on date of issuance of notice dated 12.11.2009 as also the date of disconnection of signals on 03.12.2009?

(ii) Whether the petitioner was entitled to any carriage fees for carriage of CNBC channels?

(iii) Whether under the Subscription Agreement dated 23.4.2009, petitioner is entitled to claim set-off in subscription fees towards carriage fees for CNBC channels?”

7. The respondent has filed a copy of the Subscription Agreement entered into between the petitioner and the respondent, which has been signed by both the parties. This agreement for the year 2009 came into force from 01.01.2009. According to this agreement, the total monthly subscription fees was Rs.5,97,411/- and the same fee had to

be paid by 5th of the beginning of the every month. According to this, following Pay Channels were to be supplied to the petitioner :-

- “1. *STAR Movies*
2. *STAR WORLD*
3. *STAR Gold*
4. *Channel V*
5. *National Geographic Channel*
6. *FOX History and Entertainment*
7. *STAR One*
8. *Disney Channel*
9. *Toon Disney*
10. *Hungama*
11. *Times Now*
12. *Zoom*
13. *CNBC TV 18*
14. *CNN IBN*
15. *CNBC Awaaz”*

8. The perusal of the agreement would show that nowhere any mention has been made that the respondent was to pay any carriage fees to the petitioner for the CNBC Channels. The respondent filed a copy of the e.mail sent by him in reply to the e.mail of the representative of the petitioner wherein he requested for reduction of subscription fees to Rs.4.00 lakhs. The respondent’s e.mail dated 5.11.2009 reads as under :

“Dear Anirudha,

We write with reference to your email below. At the outset we completely deny the allegations made by you and state that you cannot unilaterally and whimsically wriggle out of your contractual obligations. As such, we request you to kindly clear your outstanding in order to avoid disconnection of signals.

We further state that you are well aware the STAR DEN does not handle the carriage of CNBC channels and that the same is handled by SETPRO. During our meeting we had only said that we would pitch-in for payment to your network. We state that you are merely misrepresenting the facts to somehow get a reduction in subscription fees from us. Interestingly, you have remained silent on carriage being paid to you for other STAR DEN channels. Furthermore, you have also remained silent on the 40% discount given across the board to all the networks of Mr. Ashok Agarwal (located at Manendragarh, Lormi, Mungeli, Darri and Korba) apart from Bhilai & Bilaspur. We state that we have always helped you year after year, which is quite evident from the below mentioned data.”

9. In the cross-examination, Mr. Rahul Sinha, Senior Regional Manager of the respondent has denied that there was any understanding to pay carriage fee for CNN channels. According to him, there is a separate company dealing with payment of carriage fee. He told that the respondent pays the carriage fee for Star channels only. He further stated as under :-

“It is wrong to suggest that respondent promised to pay carriage fee for CNBC channel to the petitioner and not to charge any subscription fees.

The petitioner used to pay full payments for some months and part payment some months. But we have not raised any dispute with regard to payment before November 2009.

The witness was shown page 107.

This email dated 9.11.2009 was sent to my email id but I have not received this email.

At the signing of the agreement Mr. Abhishek Aggarwal and Mr. Suresh Nihal, Distributor of the respondent was present.

Mr. Ashok Aggarwal left immediately after the negotiations were over.

It is incorrect to suggest that Mr. Ashok Agarwal had informed the respondent disinclination on retransmission of CNBC channels.

Do you have any policy for carriage fees. We pay only for our star channels.

CNBC being a separate company dealing with regard to payment of carriage fees is done by Setpro.

We have an eligibility criteria for grant of carriage fee for star channels but I do not know what are the eligibility criteria in respect thereof fixed by CNBC.

I cannot say whether the petitioner has satisfied the eligibility criteria fixed by our company.”

10. Mr. Ashok Aggarwal, the authorised representative of petitioner’s company in his cross examination stated that he has not written any letter to the respondent about carriage charges. He has been representing only and only with the representative of the respondent. He stated :-

“It is true that the petitioner has in respect of retransmission of CNBC channels entered into an agreement for the year 2008 but the same was done at the assurance of Mr. Sandeep Bhardwaj. VP Star Den and Mr. Rahul Sinha, Regional Manager (Sales) that the petitioner would not be burdened therefor as carriage charges would be paid to it. That is the reason why the agreement was also entered into April 2009.

Apart from the agreement entered into April 2009 no other agreement has been entered into for CNBC channel. It may include some part of the year 2008.

I was present when the agreement was given to me that carriage charges shall be paid.

I however not written any letter to pay carriage charges but I have been talking in regard with Mr. Rahul Sinha. I however sent an email on 9.11.2009.

It is wrong to suggest that I have no talks with Mr. Rahul Sinha for release of carriage charges.”

11. It is seen from the record that there is no document to show that carriage fees was to be paid to the petitioner by the respondent for the CNBC channels. Although the petitioner has mentioned that there were some discussions about this aspect but no proof has been produced before this Tribunal where it can be conclusively said that there was an agreement to that effect. Therefore, we have no other option but to hold that the respondent is not liable to pay carriage fees for the CNBC channels to the petitioner.

12. By reason of our interim order dated 04.12.2009, we directed, as noticed heretobefore, restoration of supply of signals on payment of a sum of Rs.18 lakhs by the petitioner. The petitioner was furthermore directed to continue to pay the monthly subscription fee in terms of the agreement. Subject to any payment which might have been made by the petitioner to the respondent herein in terms of the said order, we are of the opinion that the petitioner should be directed to pay the entire balance amount due and owing to the respondent herein to the respondent within a period of six weeks. This order we are passing in exercise of our inherent jurisdiction and by applying the principles of restitution in as much as no party should suffer, it is well known, owing to the acts of the court.

13. Regarding subscription agreement for the year 2010, it is for the petitioner and respondent to negotiate and enter into fresh agreement on the terms and conditions as mutually agreed upon and in accordance with the regulations.

14. The petition is dismissed with costs. Advocate's fee is assessed at Rs.50,000/-.

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(S.B. Sinha)
Chairperson

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(G.D. Gaiha)
Member

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(P.K. Rastogi)
Member