

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

Dated 6th October, 2010

Petition No.6 (C) of 2010

M/s Indian Cable Net Company Limited ...Petitioner

Vs.

M/s Sudarshan Infocomm Welfare Society ...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.Maninder Singh, Sr.Advocate
Mrs. Prathiba M. Singh, Advocate
Mr.Arjun Natarajan, Advocate
Ms. Nitya Thakur, Advocate
Mr. Sudeep Bhandari, Advocate

For Respondent

: Mr.Navin Chawla, Advocate
Mr.Sharath Sampath, Advocate

JUDGEMENT

P.K. Rastogi, Member

The petitioner is a Multi-System Operator(MSO). The respondent is a society of Cable operators.

2. The petitioner executed a subscription agreement on or about 01.08.2008 with the respondent for a period of three years. Under the said agreement, the

respondent was to pay a sum of Rs. 8 lakhs per month including taxes. At the time of execution of the agreement, the petitioner paid an advance sum of Rs. 28.70 lakhs to the respondent for upgrading its cable network.

3. The petitioner has approached this Tribunal with regard to the letter of respondent issued to the petitioner on 10.12.2009 stating that it would stop taking signals w.e.f. 01.01.2010. The said letter was received by the petitioner on 22.12.2009. Further a public notice was also issued by the respondent on 22.12.2009 in English newspaper in the Kolkata edition of 'Aajkal'.

4. The petitioner has further stated that an outstanding subscription amount of Rs. 14,13,390/- as well as a sum of Rs. 11.70 lakhs towards an advance amount given by the petitioner to the respondent is payable by respondent to it.

The petitioner, in the aforementioned backdrop of events has prayed for the following reliefs:-

- (a) "Quash the Public Notice dated 22.12.2009 and the notice of disconnection dated 10.12.2009 issued by the respondent received by the petitioner on 22.12.2009.
- (b) Direct the respondent to not migrate to the rival MSO without clearing the outstanding subscription dues to the tune of Rs. 14,13,390/- as well a sum of Rs. 11,70,000/- towards the advance

amount furnished by the petitioner to the respondent to upgrade the head-end and network operations.

- (c) Direct the respondent to return all assets (analog and digital) installed by the petitioner in the headend and network operations including the STBs and viewing cards installed in the households/subscribers.
 - (d) Direct the respondent to not transfer, sell, alienate or create any third party interest in the active decoders and viewing cards installed by the petitioner in the head-end operations.
 - (e) Pass any such other and further order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case."
5. This Tribunal after hearing the learned counsel for the parties passed the following order on 11.01.2010:

"Having heard the learned counsel for the parties, we direct as under:-

- (i) The respondent may, in terms of its letter dated 10.12.2009, supply the decoders and other assets of the petitioner lying in their premises by preparing an inventory for the said purpose.
- (ii) The respondent furthermore shall, without prejudice to the rights

and contentions of the parties, pay a sum of Rs. 8.00 lakhs to the petitioner within three days.”

6. In spite of the aforementioned order of this Tribunal, the respondent did not return all the IRD boxes and viewing cards except few decoders and viewing cards and few pieces of assets in response to the MA No.41 of 2010. This Tribunal again issued directions to the respondent on 18.02.2010 for returning the entire equipment by 19.02.2010 and STBs by 20.02.2010. Respondent returned 492 STBs out of 535 STBs and furnished sum of Rs.2,45,635/- to the petitioner as per market price for the equipments which were damaged.

7. According to the petitioner, it had executed a subscription agreement dated 01.08.2008 with the Respondent for a period of three years. The said agreement was for the supply of signals of various broadcasters. It is pertinent to mention that in view of order dated 24.11.2008 passed by this Tribunal the said agreement took effect only from 01.12.2008. In terms of the said agreement, the respondent was under obligation to pay a sum of Rs.8,00,000/- per month (inclusive of taxes) for availing signals from the petitioner.

8. After signing of the said agreement, the petitioner had extended immense support to the respondent by providing it several equipments, infrastructural and technical support as well as manpower assistance. The support and assistance

extended by the petitioner from time to time enabled the respondent to upgrade its control room and network operations. Since August 2008, the petitioner was assisting the respondent by providing various assets enabling it to upgrade its analogue operations for its use. The analogue assets provided by the petitioner were inclusive of amplifiers, modulators and 6 fibre cables. The said assets were provided by the petitioner to the respondent for use but they remained the property of the petitioner.

9. The petitioner further submitted that vide order dated 24.11.2008 passed by this Tribunal in Petition No.170(C) of 2008 the respondent herein was relieved of its obligation to take signals from Cablecomm Services Pvt. Ltd. Susequent thereto, the petitioner further assisted the respondent by installing activated IRDs and Viewing Cards. Pursuant to various rounds of discussions and meetings held between the parties, the respondent requested the petitioner to install HITS RU Units for supply of digital signals through Set Top Boxes (STBs) to its customers. Thereupon, the petitioner installed several digital equipments for the respondent's control room as well as provided STBs and Viewing Cards for the customers' premises. These assets are the sole property of the petitioner and have been only given for use to the respondent, which is duly acknowledged by the respondent.

It has further been contended that since December 2008 the petitioner had been regularly and consistently raising monthly invoices on the respondent to secure payment of subscription amount as per agreement dated 01.08.2008. Despite continuously availing good quality signals, the respondent defaulted in making regular payments for the services availed by it. As per the books of account of the petitioner, the respondent was liable to pay a sum of Rs.14,13,390/- towards outstanding subscription charges.

10. Subsequent to the signing of the agreement the petitioner had furnished an advance amount to the tune of Rs.28,70,000/- with the respondent to enable the respondent to upgrade its cable network. The respondent vide its letter dated 10.12.2009 intimated the petitioner, that it would stop taking the petitioner's signal feed from 01.01.2010. The said letter was received by the petitioner only on 22.12.2009. Simultaneously, the respondent issued a Public Notice dated 22.12.2009 in English newspaper published in the Kolkata Edition of "Aajkal" on ground of poor quality and bad services but it has not been able to locate any other public notice of the said date in a second newspaper. Respondent pleaded that non-publication of the said Public Notice in the regional language i.e., Bengali is a clear non-compliance of the mandatory provisions of Regulation 4.3 of the Regulations. Furthermore, the impugned Public Notice was liable to be quashed on this ground alone being contrary and non-compliant with Regulation 4.3.

11. The petitioner submitted that the respondent vide its Email dated 23.12.2009 informed the petitioner that the notice published by it on 22.12.2009 in the newspapers 'Aajkal' and 'Protidin' had been falsely issued. Furthermore, the petitioner was assured that the respondent shall be withdrawing the said public notice. Susequent to giving an assurance as to withdrawal of the said Public Notice the respondent vide its Email dated 24.12.2009, to the utter shock and surprise of the petitioner, informed that it would not be withdrawing the Public Notice dated 22.12.2009.

The petitioner vide its letter dated 04.01.2010 intimated the respondent that its outstanding as on 31.01.2010 was to the tune of Rs.14,13,390/-. Vide the said letter the petitioner also informed the respondent that it was liable to pay an amount of Rs.11,70,000/- towards the outstanding advance furnished by the petitioner.

12. The respondent, on the other hand, has contended that the petitioner has tried to create an impression before this Tribunal that the Set Top Boxes supplied to the respondent were supplied by the petitioner herein and that too free of cost. The respondent had duly paid an amount of approximately Rs.450/- per set top box as the refundable security deposit to Wire and Wireless India Ltd. who then issued the said boxes to it. The respondent has as on date made a

payment of Rs.2,40,000/- vide cheque Nos.282871 and 282886 for approximately 535 set top boxes. The respondent, however, was ready and willing to return the said boxes to Wire and Wirelss India Ltd. on the refund of the above mentioned amount. It was pertinent to mention here that the Subscriber Application Forms supplied to the customers before installing the Set Top Boxes was also issued by Wire and Wirelss India Ltd. and hence the petitioner in the present petition does not have any locus standi to claim return of the said boxes.

13. The respondent further submitted that the petitioner withheld the fact that there were two credit notes issued to the respondent for December 2008 and February 2009. However, in the petition the same have not been reflected. The petitioner further withheld the fact that as per the understanding between the parties, the petitioner was to pay to the respondent the electricity charges, reimburse diesel charges and the salaries of the employees which the respondent had fully paid on behalf of the petitioner which used to be paid earlier by the petitioner to the respondent through cheques, however, were not paid for the month of December, 2009.

Therefore, taking the credit notes issued by the petitioner to the respondent read with the invoice for the month of December, 2009, it would be clear that the amount of Rs.1,58,524/- shown as outstanding is the exact

amount, the benefit of which was to be given to the respondent. Hence, the respondent was liable to pay only the subscription fee for the month of December, 2009 and proportionate subscription fee till 11.01.2010 which was the day when the signals of the petitioner were disconnected by the respondent. Therefore, considering the payment of Rs.8,00,000/- made by the respondent vide order dated 11.01.2010 passed by this Tribunal, it is in fact the petitioner who has to refund an amount of Rs.1036/- to the respondent.

14. The respondent further contended that the petitioner has made a false and frivolous claim of Rs.11,70,000/- as balance of the advance taken by the respondent only for the purpose of the present petition. Any question relating to loans or advances, even though between two service providers, cannot form part of proceedings before this Tribunal as the same has nothing to do with providing signals to customers and hence this Tribunal does not have jurisdiction to entertain the said claim. The respondent had taken an advance of Rs.28,70,000/- from the petitioner with an understanding that only an amount of Rs.17,00,000/- would be returned to the petitioner as there was an understanding between the parties for sharing of placement charges against which the balance of Rs.11,70,000/- was to be adjusted. The petitioner has now taken up this issue only for the purpose of this present petition to create prejudice to the respondent even though the same was not payable at all and in any case had nothing to do with supply of signals to the customers and was

purely contractual in nature to be adjudicated in civil proceedings before the proper forum.

15. The respondent further submitted that when the officers of the petitioner came to the office of the respondent on 15.01.2010, the respondent handed over all the equipment that it could immediately and made a request to the officers of the petitioners to grant some more time to verify the claim towards the balance and as the said equipment had to be carefully removed from various places and would take time. The officer of the petitioner agreed to the same, however, instead of returning later, the petitioner sent the letter dated 03.02.2010, which was received by the respondent on 05.02.2010. That on receiving the letter dated 03.02.2010 sent by the petitioner, the respondent again made an oral request to the petitioner to come and collect all the equipment, minus the set top boxes. However, the petitioner instead of collecting the equipment, had filed a false and frivolous application before this Tribunal. The respondent had become aware of the malafide attitude of the petitioner and was ready and willing to return all the equipment to the petitioner as and when they want to collect the same.

16. The respondent in his submissions contended that no amount is to be paid to the petitioner as subscription amount after payment of Rs.8.00 lakhs to the petitioner pursuance to the orders of this Tribunal.

17. After hearing both the parties, following issues were framed for adjudication:

1. Whether the discontinuation of signals of the petitioner by the respondent upon publication of a public notice dated 22.12.2009 without clearing the subscription is valid?
2. Whether the petitioner is entitled to the costs in regard to the pay channels for the months of January and February 2010 as the decoder boxes were not returned by the respondent till 20th February, 2010?
3. Whether the Tribunal has jurisdiction to entertain the claim of the petitioner so far as the same relates to payment of Rs.11,70,000/- purported to be by way of advance paid to the respondent?
4. Whether any amount is due from the respondent to the petitioner towards subscription charges?
5. If the aforementioned prayer is answered in the affirmative, what could be the actual amount due to the petitioner towards payment of advance?
6. Whether the proposal made for giving credit notes for December 2008 and February 2009 have been given effect to?
7. Whether the respondent is entitled to refund for a sum of Rs.2,40,000/- paid to WWIL towards set top boxes or the same was a refundable security?

8. Adjustment of electricity charges and salary of employee paid by the respondent?

18. We would like to analyse the issues based on the contention of the parties and facts on record.

Legality of disconnection of signals by resopndent

Clauses 4.2 and 4.3 of Interconnection Regulation, 2004 as amended from time to time read as under:

"4.2. No distributor of TV channels shall disconnect the re-transmission of any TV channel without giving three weeks notice to the broadcaster or multi system operator clearly giving the reasons for the proposed action.

4.3. A broadcaster/ multi system operator/ distributor of TV channels shall inform the consumers about such dispute to enable them to protect their interests. Accordingly, the notice to disconnect signals shall also be given in two local newspapers out of which at least one notice shall be given in local language in a newspaper which is published in the local language, in case the distributor of TV channels is operating in one district and in two national newspapers in case the distributor of TV channels is providing services in more than one district. The period of three weeks mentioned in sub-clauses 4.1 and 4.2 of this regulation shall start from the date of publication of the notice in the newspapers or the date of service of the notice on the service provider, whichever is later.

Explanation

1. In case the notice is published in two newspapers on different dates then the period of three weeks shall start from the latter of the two dates.

2. Broadcaster/multi system operator/ distributor of TV channels may also inform the consumers through scrolls on the concerned channel(s).

However, issue of notice in newspapers shall be compulsory”.

19. The counsel for petitioner has argued that the notices under clauses 4.2 and 4.3 are not in compliance with the regulations. The Regulations clearly provide that while giving a notice under clause 4.2, the reasons for the proposed action “shall be specifically stated”. In the present case, a perusal of the present notice under clause 4.2 clearly reveals that there are no reasons whatsoever specified in the same. Insofar as compliance with clause 4.3 is concerned, the same has to be compulsorily published in 2 local newspapers out of which at least one should be in local language. In the present case, despite the entire evidence in the case having been concluded, the respondent has not been able to show on record the compliance with this clause. Further, clause 4.3 specifically provides “the notice in the newspapers must give the reasons in brief for the disconnection”. Notice under clause 4.3 states the reasons as “The notice is hereby given to the consumers that we are likely to withdraw from taking Cable

TV Signal from M/s Indian Cable Net Company Limited after 21 days as per the provisions of clauses 4.2 & 4.3 of Interconnect Regulation of September 2006 for poor quality of Signal and bad services.

20. The entire purpose behind the regulations stipulating the reasons for the clause 4.2 notice and the reasons for the clause 4.3 notice is that there should not be any disconnection without a valid reason. The person against whom such notices are given should have an opportunity to establish that the reasons are invalid and unsubstantiated and / or to meet the deficiencies pointed out.

The respondent has merely made bald pleadings qua poor quality of signals and bad services. No document has been placed on record. Even the witness had no knowledge with respect to the publication of the public notice and hence far from proving and establishing the legality and validity of the public notice, the witness simply disassociated himself from the same and merely stated that the same is a decision of the Secretary of the Society.

21. The learned counsel further contended that under such circumstances when, clause 4.2 notice does not contain any reasons, the compulsory precondition of publication in a local newspaper in local language having not been complied with and thirdly the reasons for such disconnection having not been proved by way of written or oral evidence, the public notice cannot stand the test of scrutiny, the same are liable to be, therefore, quashed.

22. Mr. Navin Chawla, the learned counsel for the respondent, on the other hand, submitted that the respondent in his letter dated 10.12.2009 had written to the petitioner stating -

“This is to inform you that we would not like to continue to your signal. Please treat this letter as a 21 days notice as per TRAI Regulations. We would like to disconnect your signals with effect from 1st January 2010 for which you are requested to take back the decoders and other assets lying in our premises. We would also like to request you stop our monthly subscription payment with effect from 1st January 2010.”

23. The counsel further contended that the petitioner was providing poor quality signals and bad services and hence the Respondent had no choice but issue a notice of disconnection as per the Interconnection Regulations. Due to poor quality of signals he had lost most of its subscribers to the competing MSOs and DTH operators. The learned counsel contended that public notice was issued in two newspapers in AAJKAL and PRATIDIN.

The President of the Respondent Society in his cross-examination stated that the publication was made in two newspapers although only copy of one Public Notice in AAJKAL could be filed on record. When his attention was drawn to the e-mail where he had mentioned that :

"This is to inform you that the notice published in the daily newspaper Aajkal and Protidin, on 22nd Dec 09, claiming to be in our name is purely false & without our concern. We are also going to publish a notice disclaiming the previous notice in the same newspapers within one or two days", he informed that "At the time when public notice was published, I was out of station and my consent was not taken for the publication as the decision had been taken by other Members".

Regarding default in payment of subscription amount, the Respondent had only one month dues and in fact some credit was to be given for reduction of subscriber base. On the direction of Tribunal, the respondent paid Rs.8.00 lakhs towards dues of subscription amount and the signals of the petitioner were discontinued on 11.01.2010.

24. As stated earlier, it is clear that the Multi System Operator has to give 3 weeks notice to the Broadcaster clearly giving reasons for disconnection. The respondent has not given any reason in the notice to the petitioner on 10.12.2009. The reasons of bad quality are mentioned only in public notice dated 22.12.2009 published in 'Aajkal'. No record is produced before us for publication of public notice in second newspaper. We are, thus, of the opinion that the respondent has failed to comply with the provisions of clause 4.2 as well

as clause 4.3 of the Interconnection Regulations.

Dues in respect of subscription amount

25. Mrs. Prathiba M. Singh, the learned counsel for petitioner has argued that insofar as the subscription amounts are concerned, the respondent admits on record that a sum of Rs.10.08 lakhs is the amount due as of 11th January which is the date of disconnection. The only grounds on which the respondent denies any liability to make the said payment are: (a) Issuance of 2 credit notes; (b) Reimbursement of electricity expense and diesel staff salary etc. No amount was liable to be reduced as per the said credit notes. In fact, the credit notes itself have not been proved by the respondent. The same are not even approved by the WWIL Head Office. In any event, even if the credit notes are taken on their face value, the purpose of issuance of credit notes would only in order to compensate for reduction in subscriber base, as per the respondent. The witness of the petitioner has already stated in the cross-examination that the subscription amount for the months of January and February 2009 were reduced on the basis of negotiations and, therefore, the subscription amount itself having been reduced, no additional benefit by way of reduction from the invoices raised in view of credit notes can be given to the respondent. The respondent cannot claim benefit twice over on the ground of reduction of subscriber base.

26. The learned advocate has argued that the signals of the petitioner were discontinued by the respondent on 11.01.2010. Both the parties agreed that a sum of Rs. 10.08 lakhs as subscription amount was payable to the petitioner as on this date. However, the respondent has requested for adjustment of 2 credit notes, one related to the month of December 2009 and other for February, 2010.

The credit notes are reproduced below :

Indian Cable Net
 36 MM Lane
 Raniganj – 713347
 Credit Note proposal

Sales Segment Subscription Revenue

Sl.	Name of operator	Period	Inv Ref	Dated	Bill value	Serv Tax	Cess	Ent Tax	Total	Bills for last six months	Collection recvd fro last six months	o/s	Amt provided in doubtful debts in the A/Cs against o/s	Amt of cr. Note proposed adjustable against provision made	Collection plan	P& L effect
1	Sudershan infocom Welfare Society	Dec '08	WB006/000507/2008/SB	1.12.08	63024	7563	227	3151	73965	-	-		NIL	NIL		Subscription will reduce by Rs. 63024/-
					63024	7563	227	3151	73965							

Reason for credit note proposed :

Few operators have migrated to Darshan Infocomm Pvt. Ltd.

Proposed by SD/- CEO ICNCL	Verified By SD/- Sr. Manager – F & A ICNCL
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Approved by			
National business Head WWIL	Accounts receivable Head WWIL	CFO WWIL	CEO WWIL

Indian Cable Net
 36 MM Lane
 Raniganj – 713347
 Credit Note proposal

Sales Segment Subscription Revenue

Sl.	Name of operator	Period	Inv Ref	Dated	Bill value	Serv Tax	Cess	Ent Tax	Total	Bills for last six months	Collection recvd fro last six months	o/s	Amt provided in doubtful debts in the A/Cs against o/s	Amt of cr. Note proposed adjustable against provision made	Collection plan	P& L effect
1	Sudershan infocom Welfare Society	Feb '09	WB006/000637/2008/SB	1.2.09	72051	8646	259	3603	84559	-	-		NIL	NIL		Subscription will reduce by Rs. 72051/-
					72051	8646	259	3603	84559							

Reason for credit note proposed :

Few operators have migrated to Darshan Infocomm Pvt. Ltd.

Proposed by SD/- CEO ICNCL	Verified By SD/- Sr. Manager – F & A ICNCL
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Approved by			
National business Head WWIL	Accounts receivable Head WWIL	CFO WWIL	CEO WWIL

The perusal of these credit notes show that a credit was to be given for the month of December, 2009 for an amount of Rs.73,900/- and Rs.84,559/- for the month of February, 2009. The credit note was proposed due to the reason that few operators had migrated to other MSO.

Invoices of January 2009 and subsequent months show that this amount of Rs. 73,900/- has been reduced from January onwards but no credit was given for December 2008 although proposal was made applicable with effect from 01.12.2008 itself. Similarly, Rs. 84,559/- was to be given credit from the subscription amount of February 2008. Again the credit has not been given for the month of February although the amount has been reduced from the future invoices.

27. Therefore, the amount of Rs. 1,58,524/- should be reduced from the total outstanding of the subscription amount payable by the respondent.

28. The respondent has filed vouchers of electricity, fuel and salary charges. The petitioner agree that electricity charges and salary is reimbursable but as the respondent has illegally migrated, should not claim the same. We do not agree with the plea of the petitioner. The electricity charges for the month of December, 2009 and upto 11th January, 2010 is reimbursable . Similarly, salary amount of Rs.3548/- as claimed by the respondent is also reimbursable.

Loan amount advanced by the petitioner

29. Mrs.Pratibha M.Singh, the learned counsel for the petitioner, has argued that it is the admitted position on record that an amount of Rs.28.70 lakhs was given to the respondent by the petitioner for upgradation of the networks etc. The 3 objections raised by the respondent to deny this legitimate claim of the petitioner are: -

- (a) That as per the minutes of meeting dated 02.12.2008 no amount is payable;
- (b) That as per the MOU dt. 19.8.09 carriage fees is still to be paid by the petitioner to the respondent.
- (c) The dispute with respect to the loan is not a dispute which can be decided by this Tribunal.

30. She argued that the respondent in its reply never relied upon the minutes of meeting dated 02.12.2008. In fact, the respondent merely relied upon an oral understanding that only Rs.17 lakhs would be returned. In order to contradict this position and in order to strengthen its case, the petitioner filed the minutes of meeting dated 02.12.08. This document proves irrefutably that a loan of Rs.28.70 lakhs has been given to the respondent. These minutes of meeting were entered into on 2.12.08 while the order of this Tribunal for payment of Rs.54 lakhs had already been made on 24.11.08. Subsequently, vide order dt.

26.11.2009, the petitioner in the said case withdrew the petition on the ground that the matter has been amicably settled. This means that Sudarshan had resolved the matter with Cablecomm and, therefore, Cablecomm withdrew the petition. The petitioner has no role to play in such amicable resolution of dispute and these minutes cannot be relied upon as there was no adverse order against the respondent by this Tribunal.

31. Regarding carriage fee, the learned counsel contended that the document with respect to carriage fee was entered into on 19.8.09. The respondent took a completely false plea in its reply that the loan amounts are liable to be adjusted towards carriage fees. In order to establish the falsity of the respondent's case, the MOU relating to the carriage fees was placed on record by the petitioner. When the respondent realized that the MOU was, in fact, establishing the case of the petitioner, in the evidence by way of affidavit, the respondent's witness Mr. Sarkar tried to interpret the document as though the MOU was in operation from 1.1.09 to 31.12.09. A bare reading of the MOU reveals that the MOU was entered into on 19.8.09. The respondent's own witness in cross-examination had admitted the following facts: -

- The 1st installment of Rs.12.5 lakhs was received in August 2009;
- MOU was signed in Kolkata in August 2009

- No amount is received prior to August 2009
- No document has been filed to show shifting of E-3 and S-1 channel placements in March-April 2009

All this goes to prove that the MOU was from August 2009 to August 2010. In fact, the MOU refers to the decisions to be taken in the 1st quarter of 2010. If the MOU was to expire in 2009, such a sentence would not have been there in the said document.

32. Regarding jurisdiction of this Tribunal, she argued that both the petitioner and the respondent are service providers. The dispute in the present petition relates to telecommunication services, the broadcasting services, being a part of it. The transaction with respect to the loan is inextricably linked with the installation of the respondent's control room, purchase of equipment and migration of the respondent to the petitioner etc. Also, the respondent itself sought to adjust the loan amount towards carriage fee which squarely brings the dispute within the regulations. If the respondent's plea is accepted then it would lead to a multiplicity of proceedings inasmuch as, the advancement of loan being inseparable and part of a composite scheme and transaction, part of the dispute would be adjudicated in this Tribunal and part of the dispute in a civil court which would defeat the entire purpose of constituting a specialized tribunal. The respondent itself had admitted that he used the loan amount to migrate to the

petitioner and under such circumstances the entire dispute being one with respect to the provision of telecommunication services and the advancement of the loan being one part of the entire transaction, the same cannot be taken out of the purview of the regulations.

33. We fully agree with the contentions of the petitioner. It is clear from the pleadings of the petitioner and respondent at various places that this amount has been taken for running of the business of respondent for supply of signals to the subscribers. Apart from this, the respondent himself has taken a plea that the balance amount of Rs. 17 lakhs was not payable and it was to be adjusted towards carriage fees. Thus we see that it was a composite deal and one part of the transaction cannot be separated from the other. We hold that this Tribunal has full jurisdiction to adjudicate on this issue.

34. It is seen from the records that out of amount of Rs. 28.70 lakhs, Rs. 17 lakhs has been returned till 11.05.2009 and balance of Rs. 11.70 lakhs was still payable. Regarding the carriage fee, the MOU between Sudershan and ICNCL drawn on 19.08.2009 show that:

“ICNCL will do the carriage deal and will collect the carriage fee directly. ICNCL will pay to Sudershan Rs. 30.00 lacs as an adhoc share of carriage fee. This will be a fixed sum and will not have any bearing with

actual collection of carriage fee. Payment of this Adhoc amount will be made in four quarterly installments, of which 1st installment, will be Rs. 12.50 lacs and balance will be three equal installments.”

35. Thus, we see that the amount payable for the period 19.08.2009 to 18.08.10 for the carriage fees was Rs. 30 lakhs. However, as the disconnection of the signals of the petitioner took place on 11.01.2010, signals were used for only 145 days. Therefore, the proportionate amount payable was Rs. 11,91,781/- lakhs only. An amount of Rs. 12.50 lakhs was already paid. Thus, the respondent has received the excess amount of Rs. 58,219/- which is to be adjusted from the total amount to be paid by the respondent.

Return of decoder boxes and other asset by the respondent

36. The counsel for the petitioner contended that it was the admitted position that a large amount of equipment was supplied by the petitioner to the respondent such as, STBs, Viewing Cards, IRD Boxes etc. all of which had to be returned by the respondent to the petitioner. This Hon'ble Tribunal had directed vide order dt. 11.1.10 that all equipment has to be returned by 15.1.10. It is the admitted position on record by the respondent's witness that all payments to broadcasters had been made by the petitioner. The respondent has not made any payment either to the broadcaster or petitioner directly.

The witness had also given a statement that only some decoders were remaining to be retuned of free-to-air channels but in the cross-examination Mr. Sarkar admitted that several of the channels appearing, decoders of which were only returned on 22.02.10, were of pay channels and encrypted channels. Thus, the respondent has been taking false pleas and has deliberately delayed the return of equipment.

37. The counsel further contended that respondent was in complete contempt while not returning the entire equipment. This Tribunal vide its order dt. 18.2.2010 has given a prima facie finding that despite sufficient opportunity having been given the respondent has not returned the entire equipment. The respondent being in complete contempt the petitioner is entitled to the amount of loss it has suffered due to payment to the broadcasters.

38. This Tribunal had issued orders on 11.01.2010 that the respondent should return all the decoders and other assets of the petitioner lying in their premises by preparing inventories for the said purpose. The petitioner visited the premises of the respondent on 15.01.2010 to seek compliance of the Tribunal's order but only small part of the available assets were returned. It was only after this Tribunal's order on 18.02.2010, the decoders and equipment were returned on 22.02.2010.

39. The learned counsel of respondent stated that set-top boxes were to be returned only after return of security deposits of Rs.2,40,000/. We do not appreciate the action of the respondent in not returning the STBs to the petitioner although the signals were discontinued on 11.01.2010 itself. The action of respondent in withholding the STBs which is the property of the petitioner/broadcaster was definitely unauthorised and illegal.

40. The petitioner has claimed damages of Rs.20,84,725/- for incurring a liability towards pay channel cost for 40 days i.e. from 11th January, 2010 to 20th February, 2010. On the other hand, the respondent had claimed the refund of security deposit of Rs.2,40,000/-. The petitioner has argued that the security deposit was non-refundable but no document has been filed to this effect. All the security deposits are primarily refundable deposits unless it is qualified otherwise. We are of the opinion that security deposit amount is refundable to the respondent by petitioner in absence of any proof to the contrary.

41. We do not agree with the claim of damages of Rs. 20 lakhs, the amount paid by the petitioner to the broadcaster for 40 days. In fact, had the signals been continued for these 40 days, the respondent was to pay an amount @ 8 lakhs per month only. In that case, the amount would have been around Rs. 10 lakhs or so. However, respondent discontinued the signals and returned some

of the equipments. Around 535 STBs were not returned in time inspite of this Tribunal's order. The petitioner is definitely eligible for the reasonable damages from the respondent. We are of the opinion that end of the justice will be subserved if the security deposit of Rs. 2.40 lakhs which was to refunded by the petitioner to the respondent is forfeited by the petitioner and an equal amount of Rs. 2.40 lakhs is also granted as damage to the petitioner due to delayed return of the balance equipments by the respondent. We have passed this order bringing the parties to the same position if the order of this Tribunal is not violated. Therefore, we hold that an amount of Rs. 2.40 lakhs will be paid by the respondent to the petitioner.

Conclusion

42. After considering all the aspects, we are of the view that the respondents is liable to pay the amount in accordance with statement given below along with interest to the petitioner.

S.No	Description	Amount (in Rs.)
1.	Subscription amount to be paid by the respondent to the petitioner till 11.01.2010	10,08,595/-
	Less credit notes	1,58,524/-

Less reimbursement of electricity expenses	44,758/-
Less Reimbursement of staff salary	3,548/-
Less amount already paid through cheque no. 183261 dated 11.01.2010	8,00,000/-
Sub Total	10,06,830/-
(A) Balance to be paid by Respondent	1,765/-
2. Loan amount to be paid by Respondent	11,70,000/-
Excess carriage amount paid by the petitioner	58,219/-
(B) Sub Total	12,28,219/-
3. Damage amount for delayed payment (C)	2,40,000/-
4. Net amount to be paid by Respondent to Petitioner (A)+(B) +(C)	14,69,984/-

43. In view of the reasons mentioned above, we direct the respondent to pay Rs.14,69,984/- alongwith interest @ 18% p.a. pendente lite and future to the petitioner.

44. In view of the observations made herein, this petition is allowed in part. In the facts and circumstances of the case, the respondent will pay the cost to the petitioner. The counsel's fee is assessed as Rs. 50,000/-.

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

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(G. D. Gaiha)
Member

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(P.K. Rastogi)
Member

/NC/