

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

13th December, 2011

Petition No. 208(C) of 2011

M/s Oscar Cable Network ... Petitioner
Versus
M/s Star Den Media Pvt. Ltd. ... Respondent

BEFORE:

**HON'BLE MR. JUSTICE S.B. SINHA, CHAIRPERSON
HON'BLE MR.P.K. RASTOGI, MEMBER**

For Petitioner : Mr.Sunder Khatri, Advocate

For Respondent : Mr.Saurabh Srivastva, Advocate

J U D G M E N T

The petitioner is a Multi Service Operator. Its area of operation is the town of Krishna Nagar, being the District Headquarter of Nadia in the State of West Bengal.

2. Being desirous of obtaining the signals of the channels of the Respondent herein, the Petitioner has filed this petition claiming inter alia the following reliefs :-

- a. *“Direct the respondent to provide uninterrupted good quality of signals of its channels (Package No.1) namely Star Plus, National Geographic, Star Movies and Star Gold to the petitioner’s network through decoders and SIM cards in the area namely Krishna Nagar, Nadia, W.B.; and*
- b. *Direct the respondent to execute the agreement for supply of signals namely (Package No.1) Star Plus, National Geographic, Star Movies and Star Gold on the basis of reasonable terms and conditions without any discriminating terms as per the present subsisting connectivity; and on the premise that its proprietor Shri Snehashish Ghosh had approached the respondent for supply of its signals on various occasions in respect of its bouquet No.1 namely Star Plus, National Geographic, Star Movies and Star Gold, but the said request having not been acceded to.”*

3. The petitioner, however, candidly accepts that it does not possess any proof of furnishing any document in that behalf to the Respondent.

Along with the petition, however, the petitioner has annexed a copy of the Registration Certificate issued by the Head Post Office Krishna

Nagar, the tax receipt granted by the Krishnan Nagar Municipality, receipt of payment of entertainment tax, identity card by Election Commission of India.

It also annexed a purported SLR of 150 customers, a copy whereof has been marked as Annexure P-6. It also enclosed an area map and the list of equipments for running the cable TV network.

4. The respondent herein in its reply denied and disputed receipt of any request for supply of signals from the Petitioner. It also alleged that the petitioner had illegally and unlawfully been transmitting signals of Star Jalsa, Star Anand, CNN IBN, Nat Geo channels to its subscribers wherefor a cease and desist notice was issued on 25.03.2010. A police complaint therefor was also lodged.

5. A complaint to the Superintendent of Police, Krishna Nagar had also been lodged.

It is, however, accepted that with a view to settle the disputes and differences between them, the parties met on 03.05.2011. In the said meeting the petitioner is said to have furnished a list of 9 link operators along with their connectivities amounting to 120 subscribers plus 13 direct connections.

6. It is contended that admittedly the Petitioner has 150 direct connections and thus the said representation on the part of the petitioner could not be accepted.

7. During the pendency of this petition also, the parties met on 02.06.2011. In the said meeting, allegedly the petitioner conveyed its willingness to execute a subscription agreement for three bouquets of the Respondent's channels being Bouquets 1, 2 and 3 on 2000, 325 and 1500 subscribers base respectively, i.e. on a total monthly subscription fee of Rs.1,54,057/-.

8. We may notice the minutes of the said meeting, which read as under:

“The following points were discussed and mutually agreed upon:

- 1. Parties recorded that Oscar Cable Network has filed Petition No. 208 © of 2011 before the Hon'ble Telecom Disputes Settlement & Appellate Tribunal, New Delhi ('Hon'ble TDSAT') inter-alia seeking signals of STAR DEN channels.*
- 2. Parties record that this meeting was called to explore the possibility of amicably resolving all issues/ disputes*

between the Parties. During the course of the meeting Oscar Cable Network conveyed its willingness to execute Subscription Agreement with STAR DEN for subscription of Bouquet 1,2 & 3 of STAR DEN channels for 2000, 325 and 1500 subscribers respectively [resulting in total monthly subscription fees of Rs. 1,54,057/-(excluding taxes). The said three Bouquets comprise of the following channels.

Bouquet1: *STAR Plus, STRA Gold, STAR Movies, STAR World, Vijay TV, NGC, Fox History & Traveler and Channel [V]. And also STAR News, which is an encrypted Fees-to-Air (FTA) channel and is part of Bouquet 1.*

Bouquet 2: *STAR One, MGM Nat Geo Wild, Nat Geo Adventure, Nat Geo Music, FX, Fox Crime, Baby TV, NDTV 24 x 7, NDTV Profit, NDTV Good Times and NDTV India. And also STAR Pravah, which is an encrypted FTA channel and is part of Bouquet 3.*

Bouquet 3: *STAR Ananda and STAR Jalsha*

- 3. During the course of the meeting Oscar Cable Network also conveyed to STAR DEN that under the proposed Subscription Agreement it's authorized Area of operation shall be restricted to Municipal limits of Krishnanagar town only.*
- 4. Further, Oscar Cable Network has offered and undertaken to – (a) subscribe the aforesaid Bouquets in*

their entirety and has offered that is shall not seek disconnection of any channel (s) / Bouquet(s) during the tenure of the Agreement; (b) Pay three months subscription fees (including taxes) in advance to STAR DEN; and (c) Pay applicable security deposit & processing fees for the Decoders.

5. *During the course of the meeting STAR DEN informed Oscar Cable Network that Decoders of FX, Fox Crime, Baby TV, Nat Geo Wild, Nat Geo Adventure and Nat Geo Music are in short supply and if the agreement was to be executed then, the same may not be readily available. To this Oscar Cable Network has informed STAR DEN that due to bandwidth constraints it will not be seeking these channels and will inform STAR DEN in writing as and when the channels are required by however, with an aim to avoid renegotiation for these channels it willing to subscribe and pay for then as of now.*

6. *Representatives of STAR DEN had informed Oscar Cable Network that they will speak with the concerned senior officials of the Company and revert to Oscar Cable Network on offer made by it at the earliest.*

The said minutes of meeting indisputably bears the signatures of the petitioner's proprietor.

9. Before this Tribunal, however, the petitioner gave out that it was not economically viable for it to abide by the contents of the said meeting and it intended to confine its claim in respect of Bouquet No.1 of the Respondent's channels on a subscriber base of 150 only.

The parties went to trial on that premise.

10. The petitioner in support of its case has examined its proprietor, Shri Snehashish Ghosh.

Paragraphs 7 and 11 of the affidavit affirmed by him read as under:-

*"7. I say that I am having the connectivity of 150 customers in the area Krishna Nagar, Nadia (W.B.). A copy of SLR List is exhibited as **Exhibit PW 1/7**.*

*11. I say that vide order dtd. 06.07.2011, the counsel for the petitioner has pointed out that his client is not in position to abide by the contents of minutes of the meeting because some facts were mis-presented by M/s. Star Den Media Pvt. Ltd., even in the petition, the petitioner has asked for supply of signals of bouquet No.1 but as per the minutes of the meeting, the respondent has forced the petitioner to sign for all bouquets. A copy of order dtd. 06.07.2011 passed by this Hon'ble Tribunal is exhibited as **Exhibit PW 1/13**."*

11. Curiously enough, the petitioner annexed a copy of the said MoU with the said affidavit. The said witness contended that it had only been retransmitting Free to Air channels.

12. The respondent, on the other hand, examined one Kunal Deshmukhaya. He supported the contentions raised in the Respondent's reply.

Nothing much, however, turns out of the oral evidence in this case keeping in view the factual aspects involved herein, as noticed heretobefore.

13. Mr. Sourabh Srivastva, learned counsel appearing on behalf of the Respondent, at the outset, very fairly stated that having regard to the provisions of the Telecommunication (Broadcasting & Cable Services) Interconnection Regulation, 2004 (13 of 2004), as amended from time to time (The Regulations), Respondent will have no objection if the petitioner subscribes the channels of Bouquet-1 only but the same should be on a subscriber base of 2000.

14. Mr. Sunder Khatri, learned counsel appearing on behalf of the petitioner, on the other hand, insisted that this Tribunal should direct the respondent to enter into an agreement on a subscriber base of 150.

15. Clause 3.2 of the Regulations postulates that a broadcaster is legally obligated to supply signals of its channels in the event a request is made by a Distributor of TV channel on reasonable terms and on a non-discriminatory basis.

The Regulations furthermore postulate that the request of the Distributor of the TV channel should be considered and an offer must be made by the Broadcaster within a period of sixty days.

In this case, however, admittedly the Petitioner does not contend that it had made any request in that behalf to the Respondent in support whereof it had produced before this Tribunal any document.

16. Indisputably, the Regulations lay down certain pre-conditions for providing signals of the channels by the broadcasters; one of them being that the requestee would not be a defaulter.

17. Clause 9.2 of the Regulations furthermore provides that the Distributor of the TV channel must supply the SLR. The underlying object of furnishing SLR along with the request appears to us to be giving of an opportunity to the Broadcaster and/or its Distributor through whom it intends to supply signals of its channel, to verify the same.

Negotiations are required to be made on the said basis.

Stricto sensu, the petitioner having failed to prove supply of any document to the respondent in order to enable it to supply its channels to the Petitioner's network, the petition should have been dismissed as being premature.

18. We have, however, gone into the merit of the matter keeping in view the fact that even during pendency of the proceedings, the parties had negotiated as a result whereof some broad agreement had been arrived at.

19. The petitioner does not contend that the minutes of meeting recorded on 02.06.2011 are incorrect. It does not say that the agreement arrived at by and between the parties, is any way vitiated in law as envisaged under Sections 16 to 20 of the Indian Contract Act. In the aforementioned situation, it is difficult for us to accept the contentions of

the Petitioner that it has made out a case for obtaining signals of the channels of the Respondent on a subscriber base of 150 only.

20. In view of the issues which arise for consideration in this petition, namely, as to what is the true and correct subscriber base of the petitioner, we are of the opinion that in the facts and circumstances of the case, the petitioner cannot be said to have proved the same, particularly having regard to the fact that even Paragraphs 7 and 11 of the affidavit affirmed by Shri Snehashish Ghosh have been verified as based on the records maintained in the usual course of business and true and correct to his personal knowledge, which does not serve the legal requirements.

Moreover, if there is nothing on record to show that the petitioner had not voluntarily accepted its subscriber base to be 2000 for the purpose of Bouquet 1 and 365 and 1500 for Bouquets 2 and 3 of the channels of the Respondent, it is difficult to accept that it agreed thereto despite the fact that its total universe was only 150.

21. For the reasons aforementioned, there is no merit in this petition, which is accordingly dismissed.

22. However, in the facts and circumstances of the case, there shall be no order as to costs.

(S.B. Sinha)
Chairperson

(P.K. Rastogi)
Member

December 13, 2011
`anu/rkc'