

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

DATED : 1ST DECEMBER, 2011

Petition No. 409 (C) of 2011

M/s. Ajaya Cable	Petitioner
Vs.		
M/s. Media Pro Enterprises India Pvt. Ltd.	Respondent

BEFORE :

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

For Petitioner	:	Mr. B. S. Sai, Advocate
For Respondent	:	Mr. Vadivelu Deenadayalan, Advocate for Mrs. Prathiba M. Singh, Advocate

JUDGEMENT

The petitioner is a multi service operator. The respondent herein is a content aggregator, inter-alia, of Zee Group of channels and Star Group of channels.

The petitioner on or about 07.07.2011 made a request for supply of signals of the Zee Group of channels, annexing therewith several documents.

It was stated :-

“We are doing activity for cable business Guntur Town, Urban and Rural Areas. We had 239 connections. So please provide your channels signals to our viewers.

We are submitting required documents to you for doing agreement. Documents attached herewith :

- 1. Postal Registration Certificate.*
- 2. Service Tax Registration Certificate.*
- 3. Entertainment Tax Registration Certificate.*
- 4. Pan card.*
- 5. No LCO's*
- 6. 50 channels List*
- 7. Guntur Urban & Rural areas by the Government norms.*
- 8. Ajaya Cable, #5-93-25, 1st Floor, 6/13, Brodipet, Guntur, A.P.*
- 9. Our company Newly started no Income Tax Returns.*
- 10. We had 239 subscribers.*
- 11. Firm Registration Certificate*

Please do the agreement and issue IRD Boxes and Viewing Cards immediately.”

2. It is not in dispute now that the respondent herein became the content aggregator in respect of both Zee Group of channels and Star Group of channels with effect from 01.7.2011.

3. A petition, which was marked as Petition No. 333 (C) of 2011, was filed by the petitioner before this Tribunal on or about 03.08.2010, praying for the following reliefs :-

- “(i) Direct the Respondents to provide uninterrupted signals of Respondent Zee Telugu, Zee TV bouquet channels and Star Channels Bouquets to the Petitioner Network;*
- (ii) Direct the Respondent to provide decoders, viewing cards of the Respondents Zee Telugu, Zee TV Bouquet and Star Channels Bouquet channels to the Petitioner Network.”*

4. One of the objections raised in the said proceeding was that no request having been made by the respondent herein, which was the content aggregator of both Zee Group of channels and Star Group of channels, the petition was not maintainable.

The petitioner was permitted to withdraw the petition with the following observations by an order dated 18.08.2011 :-

“Having heard the learned counsel for the parties, we are of the opinion that the petitioner having not made any request for supply of signals of the Star bouquet of the channels as well as that of Zee and the respondent herein having been appointed as a distributor of

both the Star and Zee bouquet of channels, the petitioner may make a fresh request to the respondent herein upon supplying requisite informations/documents as are necessary in terms of the provisions of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004.

We are sure as and when such a request is made by the petitioner the respondent shall consider the same as expeditiously as possible.”

5. The petitioner did not make any fresh request to the respondent. It, by a letter dated 04.9.2011, merely stated as under :-

“According Hon’ble TDSAT Petition No. 333 (C) of 2011 orders dated on 18.08.2011. As per TRAI Regulations including clause 9.2 of the regulations we supplied all required documents for doing agreement. The Petition with draw due to non complete of 2 months period of my request letter dated on 07.07.2011. So, please consider the Hon’ble TDSAT Orders do the agreement and give Channels Decoders and Viewing Cards within Seven days of this letter.”

6. The respondent by its letter dated 13.10.2011, while contending that no fresh request has been made in terms of this Tribunal’s order dated 18.8.2011, stated as under :-

- “1. That the above-referred letter is the only a formal communication that we received from your end carrying a substantial request for the supply of signals of our channels. However, you have not furnished any specific business details/information as contemplated in Clauses 3 and 9.2 of TRAI Regulations dated 4th September 2006 towards formalization of your request.

2. In this regard we wish to inform you that to commence meaningful negotiations you are required to furnish us the information/documents sought in our Application Form. We are enclosing herewith our Application Form and would request you to fill-up the same and return it to us together with documents sought therein at the earliest.

3. Additionally, we also request you to furnish the following information/documents in terms of Clause 9 of The Telecommunication (Broadcasting and Cable Services) Interconnection (Third Amendment) Regulation 2006 (10 of 2006) (“Regulations”) so as to establish whether or not you are a similarly based distributor of TV channels qua the current Multi System Operator (“MSO”).
 1. Valid and subsisting Postal Registration Certificate.
 2. Details of direct connections/details of subscribers. Subscriber Line Report (SLR) and in case there is no SLR then please provide evidence to corroborate your subscriber base (including local survey).

3. *List of cable operators who are/will be getting signals from your network along with their subscriber base.*
4. *Copy of the latest monthly invoice showing the dues, if any, from the presently affiliated MSO, or from any agent/any other intermediary to show that no payments are due.*
5. *Details of your exact area of operation.*
6. *Details of your exact area of operation clearly depicted on a printed map and countersigned by you.*
7. *Entertainment tax registration number and returns filed with entertainment tax authorities.*
8. *We request you to the furnish the aforesaid information and documents together with filled-up application form and documents sought in the Application Form so that Parties can have meaningful negotiations. You would appreciate that we cannot have meaningful negotiations unless we receive all relevant details from you.*
9. *Please note that neither this communication nor your submission of the Application or for that matter furnishing of information detailed above purports to admit your eligibility or entitlement to receive the Media Pro channels.”*

7. With the said letter dated 13.10.2011, a copy of the application form was also supplied to the petitioner. The petitioner by its letter dated 22.10.2011, which was received on 05.11.2011 by the respondent, stated as under :-

“On 13.04.2011 we wrote a letter to (M/s Zee Turner Ltd.) you. For which you replied on 21.04.2011. On 07.07.2011 we wrote another letter we sent all documents as per your letter dated 21.04.2011. From that date onwards as there is no response from you we approached Hon’ble TDSAT and filed Petition No. 333 (C) of 2011. On 18.08.2011 preliminary Hearing was conducted. On that date your Advocate also attended Hon’ble TDSAT. On 18.08.2011 as per TDSAT orders on 14.09.2011 we again approached you.

On 13.10.2011 you sent us a letter and Application. We are herewith submitting our application along with required documents with this letter. So, we request you to carry agreement with Media Pro Channels and provide us channels signals for which we will be very much thankful to you Sir.”

8. Even if it is assumed that the petitioner made a request to the respondent herein for supply of signals of its channels to its network, the same was done only on 22.10.2011. This petition has been filed on 11.11.2011 i.e. much prior to expiry of period of 60 days from the date of making of request. No opportunity, thus, has been given to the respondent to respond to the aforementioned request of the petitioner or verify the essential documents supplied by the petitioner.

This shows that the documents supplied earlier were not to be supplied again in order to avoid duplication. The documents sent earlier for supply of

signal were to be considered along with other documents which were to be supplied.

The petitioner itself having withdrawn the petition was bound by the directions issued therein and, thus, was obligated to supply such documents which were necessary for obtaining supply of signals on reasonable terms.

According to the petitioner, he has already annexed the documents as required under the Regulations to the respondent earlier itself, but having regard to this Tribunal's order dated 18.08.2011, such a contention cannot be accepted.

9. The petitioner has supplied most of the informations as were required under the Regulations. It may file other documents which are necessary according to it. If additional informations are required by the respondent it may also seek for the same from petitioner.

10. We have no doubt in our mind that the respondent shall consider the petitioner's application within a reasonable time and preferably within a period of four weeks from date. It may also meet the authorized representative of the petitioner.

11. This petition is disposed of with the aforementioned observations and directions without any order as to costs.

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(S.B. Sinha)
Chairperson

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(P.K. Rastogi)
Member

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