

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

DATED : 13TH DECEMBER, 2011

**Petition No. 382 (C) of 2011
(M.A. No. 293 of 2011)**

Dish TV India Pvt. Ltd.	Petitioner
Vs.		
ESPN Software India Pvt. Ltd.	Respondent
Media Pro Enterprise India Pvt. Ltd.	Applicant

BEFORE :

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

For Petitioner	:	Mr. Maninder Singh, Senior Advocate Mr. Tejveer Singh Bhatia, Advocate Mr. Vadivelu Deenadayalan, Advocate for Mrs. Prathiba M. Singh, Advocate
For Respondent	:	Mr. N. Ganpathy, Advocate
For Applicant	:	Mr. Sai Krishna Rajagopal, Advocate Mr. Sidharth Chopra, Advocate Mr. Saurabh Srivastava, Advocate

ORDER

The Applicant herein has filed this application for intervention in this Petition on the premise that it involves interesting questions of law as regards

interpretation/clarification of an order dated 18.04.2011 passed by the Supreme Court of India as also some clauses of the Telecommunication (Broadcasting & Cable Services) Interconnection Regulations, 2004, as amended from time to time (The Regulations).

2. The Petitioner herein is a DTH operator.

The Respondent as also the Applicant herein are 'Broadcasters' within the meaning of the provisions of the Regulations. In this petition, the Petitioner has inter-alia prayed for a direction upon the Respondent to make necessary changes/amendments in its Reference Interconnect Offer (RIO) so as to bring the same in compliance and in conformity with the applicable TRAI Regulations and the Tariff Orders as also a further direction to complete the process of execution of the agreement between the parties for supply of the signals of its three channels for the DTH service of the Petitioner on non-discriminatory basis and in terms of the Regulations prescribed by the TRAI for that purpose i.e. on R.I.O. basis with effect from 01.09.2011.

3. Mr. Sai Krishna, learned counsel appearing on behalf of the Applicant took us through the order of the Supreme Court of India to contend that the interim order dated 18.04.2011 passed by it having excluded from its purview, 'the existing contracts' in the event this Tribunal opines that the contention of

the Petitioner is accepted, the same would have an impact on the existing as also the future agreements to be entered into by it with the DTH operators.

4. Drawing our attention to the order dated 30.09.2011, it was pointed out that this Tribunal therein has clearly framed the following issues, which would require participation of the Applicant having regard to this ultimate impact, being:-

“(a) Whether the Supreme Court of India by passing its interim order dated 18.4.2011 excluded from its operation all types of contract?”

“(b) Whether the petitioner has a statutory right to compel the respondent herein to enter into a contract in terms of the RIO?”

5. Mr. Maninder Singh, learned senior counsel appearing on behalf of the Respondent, on the other hand, would contend that the Applicant is in no way concerned with the subject matter of dispute and in any event it is neither a necessary party nor a proper party within the meaning of the provisions of the Order I Rule 10 of the Code of Civil Procedure, 1908.

6. Mr. Sai Krishna in his rejoinder, however, would submit that in the facts and circumstances of the case, the provisions of Order I Rule 8-A of the Code of Civil Procedure may be held to be applicable.

7. At the outset, we may notice the interim order dated 18.04.2011 passed by the Supreme Court of India :-

“Heard learned counsel for TRAI, counsel appearing for the broadcasters and several counsel appearing for DTH operators and MSOs.

In brief, the DTH operators and MSOs support TRAI whereas the broadcasters support the order of TDSAT.

Interim stay of the impugned order of TDSAT subject to substitution of the figure 42% in place of 35% in the proviso to Clause 4(1) and in proviso (b) to Clause 4 (2) of the tariff order dated 21.7.2010. This interim order shall be prospective in operation and shall not affect contracts already entered.”

8. Before advertng to the contentions raised by the parties hereto, we may place on record that whereas the contention of the Petitioner in this petition is that the Respondent was statutorily obligated to make an offer to the DTH operators so as to enable it to elect continuance of old MoU or migrate to a RIO based contract; according to the Respondent, in the facts and circumstances of

this case, it is also entitled to a specific performance of contract wherefor a separate petition has been filed.

9. At the outset, we may also notice the relevant paragraphs of the Application, being paragraphs 7 & 8 thereof :-

“7. It is respectfully submitted that the present petition, though relates to a dispute, which may be specific to a DTH operator and a broadcaster, may affect the other broadcasters and DTH operators as well since the present petition involves interpretation/clarification of the aforesaid order of the Hon. Supreme Court and some clauses of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulations 2004 as amended to date.

8. It is respectfully submitted that the Applicant is a broadcaster (as per the definition of “broadcaster” in the Interconnection Regulation) and any order passed in the present petition involving interpretation/clarification to the aforesaid order of this Hon’ble Supreme Court and the Regulations/Tariff Orders of the TRAI would have ramifications affecting the Applicant’s existing and/or future agreements with DTH operators.”

(Underlining is ours for emphasis)

10. The Applicant, however, with its application has not annexed any existing contract to show as to how and in what manner it is interested in the

subject matter of the petition. So far as the future contracts are concerned, evidently the order which was passed by this Tribunal may not be held to be binding on the Applicant or any other broadcaster having regard to the fact that in the meanwhile the respective RIOs of the Broadcasters may be changed.

11. The short question is as to whether the principle of Order I Rule 8-A applies in the instant case.

It reads as under :-

“8-A. Power of Court to permit a person or body of persons to present opinion or to take part in the proceedings – While trying a suit, the Court may, if satisfied that a person or body of persons is interested in any question of law which is directly and substantially in issue in the suit and that it is necessary in the public interest to allow that person or body of persons to present his or its opinion on that question of law, permit that person or body of persons to present such opinion and to take such part in the proceedings of the suit as the Court may specify.”

(Emphasis supplied)

12. A bare perusal of the said provision would clearly go to show that the same would be attracted when public interest is involved.

We are not oblivious of the fact that the word “public interest’ is an uncertain term, which has to be given a due meaning depending on the facts and circumstances of each case.

As contended by Mr. Sai Krishna himself that Order I Rule 10 (2) of the Code of Civil Procedure stricto-sensu may not be applicable, it may not be necessary for us to consider the meaning of the terms “necessary party and proper party” in this case.

13. It may, however, be placed on record that the Supreme Court of India in *Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre and Hotels Pvt. Ltd. & Ors.* reported in (2010) 7 SCC 417 in a case where the Applicant had a future expectation based on ‘spes successionis’, rejected the Application for impleadment, stating the law thus :-

“A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. A “proper party” is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a

person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.”

Moreover, as indicated heretobefore, the Applicant itself acknowledges that the dispute is between a DTH operator and Broadcaster relating to applicability of its RIO.

14. In this case, indisputably, the questions formulated by this Tribunal in its order dated 30.09.2011 are questions of law. They may have some repercussion/impact on the industry, but the same would not mean that a question of law need be answered only upon hearing all those, who may be concerned therewith. If such a stand is taken, this Tribunal may have to implead all the broadcasters and all the DTH operators.

15. We may, however, hasten to add that keeping in view the nature of functions of this Tribunal and having regard to the fact that in terms of the

provisions of the Telecom Regulatory Authority of India Act, 1997, the provisions of the Code of Civil Procedure may not be inapplicable.

In a given case, this Tribunal not only may take the assistance of the Experts but also may hear the other parties concerned with the dispute in the event if it is found that its order would have wide ramification keeping in view the interest of the industry as a whole.

16. A question of Interpretation of a statute, however, by itself cannot be a ground for allowing an application for impleadment. Moreover, the RIOs of each broadcaster are different. In this case, we are more or less concerned with the individual disputes arising out of a Memorandum of Understanding executed between the parties on 12.03.2009 vis-à-vis the provisions of the Regulations, namely Clauses 13.2A.1 to 13.2A.6.

17. For the reasons aforementioned, this application is dismissed. There shall be no order as to costs.

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(S.B. Sinha)
Chairperson

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(P.K. Rastogi)
Member

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