

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL  
New Delhi**

**Dated 28<sup>th</sup> July, 2011**

**Petition No.101(C) of 2011**

CCN Entertainment (India) Pvt. Ltd., Chhattisgarh .....Petitioner

Vs.

ESPN Software India Pvt. Ltd. ....Respondent

**Petition No.102(C) of 2011**

Hathway Bhaskar Pagariya Multinet Pvt. Ltd.,Raipur .....Petitioner

Vs.

ESPN Software India Pvt. Ltd.,Gurgaon ..... Respondent

**Petition No.103 (C) of 2011**

Hathway Bhaskar CBN Multinet Pvt. Ltd.,Chhatishgarh .....Petitioner

Vs.

ESPN Software India Pvt. Ltd. ....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.J.K.Mehta, Advocate  
Mr.Nasir Husain,Advocate

For Respondent : Mr. N.Ganpathy, Advocate  
Mr..Karthik Yadav,Advocate

**ORDER**

**P.K.Rastogi, Member for self and Mr. G. D. Gaiha, Member**

These petitions have been taken together as the facts and relief sought are similar in nature. We will take up the facts of Petition No. 101(c ) of 2011 to discuss the matter in detail.

2. This petition has been filed by the petitioner challenging the act of the Respondent in threatening to disconnect the supply of signals of ESPN Channels to the Petitioner's network in the territory of Billaspur, Chhattisgarh. The respondent has issued a public notice , which appeared in the newspaper Dainik Bhaskar, Raipur Edition and Hitavada, Raipur Edition on 5.2.2011 on the ground of 'Non-signing of Subscription Agreement' by the Petitioner.

3. The petitioner primarily acts as a Multi Systems Operator. The Respondent is the distributor of ESPN, Star Sports and Star Cricket Channels.

4. The petitioner submitted that it has been ever ready and willing to negotiate and execute a fresh subscription agreement with the Respondent on a fair and non-discriminatory basis. However, the Respondent has remained evasive and passive to all such bonafide efforts of the petitioner. Pertinently, the petitioner has been regularly making payment of the subscription charges to the respondent on receipt of invoices. The attempt of the respondent is to exploit the vulnerability of the petitioner in view of the ensuing ICC World Cup and under that pretext to extract illegal and unjust enrichment from the petitioner. The petitioner and the respondent had executed a service contract dated 7.6.2010 for the period of 12 months effective from 9.8.2009 to 8.8.2010. On the expiry of the service contract on 8.8.2010, the petitioner made bonafide and genuine efforts to negotiate with the respondent for renewal of their relationship and for executing a fresh agreement. The petitioner wrote to the respondent inter alia on 3.9.1010, 24.12.2010, 29.1.2011, 31.1.2011 and 5.2.2011. Suffice it to state that at every instance, the petitioner has clearly and unequivocally requested the respondent to conclude and execute an agreement with the petitioner. However, the respondent has remained and continues to be passive to all such efforts of the petitioner.

5. The petitioner submits that even after the expiry of the agreement dated 7.6.2010, the petitioner has been receiving the signals of ESPN channels from the respondent and is receiving the monthly invoices regularly. The petitioner has been duly, promptly and without any default, making payments to the respondent for the same.

6. The petitioner submits that in the year 2008 and thereabout the petitioner was the major MSO in Bilaspur region. Another competing MSO of the petitioner namely M/s. Bhatia Network had started its operation in the mid of 2010 and had entered into Agreements with major broadcasters including Starb, Zee Turner etc. and in February, 2011 the respondent gave decoder boxes to M/s. Bhatia Network/WWIL. Accordingly, in view of this development, the petitioner, on 5.2.2011, requested the respondent to downgrade its subscription amount due to obvious and foreseeable impact of a competing MSO being provided with a decoder box. The petitioner has not received any reply from the respondent to its mail.

7. Suddenly, on 5.2.2011, the petitioner was surprised to find that public notices were published in Dainik Bhaskar, Raipur Edition and Hitavada, Raipur Edition alleging that the signals of ESPN channels to

the petitioner's network would be disconnected on account of non-signing of the subscription agreement. In a very peculiar and surprising manner, the respondent also proceeded to mention in those notices that the signals of some very popular and awaited cricketing tournaments including the ICC World Cup, India's England tour, India's Australia tour etc. would not be available to the customers of the petitioner. Clearly the attempt of the respondent was not only to influence the customers of the petitioner but more importantly to exploit the importance of the upcoming sports tournaments and in the process makes unreasonable demands from the petitioner.

8. The petitioner further contended that the timing of public notices had been deliberately calibrated by the respondent to coincide with the ICC World CUP starting on 19.2.2011. It was a brazen attempt to exploit the vulnerability of the petitioner should the petitioner fail to carry the signals of the said tournament. The petitioner submitted that even in the past, the respondent had chosen sporting events to corner the petitioner in to submitting to its unreasonable demands. An instance of this was the agreement of 7.6.2010, which was signed on the eve of the Football World Cup. The petitioner questioned the public notice on the following grounds:

- (a) The public notices are void ab-initio in the absence of a notice under Regulation 4.1.
- (b) The public notices are ex facie motivated, which is apparent from their tenor and contents.
- (c) The petitioner's viewers would be denied their freedom to view the ESPN channels and the petitioner itself would be subjected to irreparable loss of business in that many LCOs would leave the petitioner's network and join competing MSOs.

9. The petitioner further submitted that the conduct of the respondent being manifestly illegal, if it was allowed to proceed with the disconnection of its signals, this would perpetuate illegality, an outcome which is impermissible and opposed to the rule of law. While the respondent can be compensated monetarily, the petitioner cannot be compensated and the injury that may be caused to it upon disconnection of signals by the respondent is not quantifiable in monetary terms.

10. In the circumstances, the petitioner prayed for an interim order restraining the respondent from switching off the signals of ESPN channels to the petitioner's network.

11. On the other hand, Mr. Ganpathy, the learned counsel appearing for the respondent submitted that the respondent did not submit the SLR in spite of repeated requests. The petitioner is requesting for reduction of subscription amount although there has been substantial growth in the subscriber base of the petitioner. Further, the agreement period is over and the same is not renewed although more than 3 months have passed from the date of expiry of the agreement.

12. The record show that the agreement between the petitioner and the respondent expired in July 2010. Before the expiry of agreement the parties started negotiations for the renewal of the agreement. The parties have not been able to come to any conclusion so far. During this period, the respondent continued to supply the signals and the petitioner continued to receive the signals from the broadcaster. The broadcaster has raised the invoice upto the month of March 2011 and the petitioner has paid the subscription amount in accordance with the invoice raised by the broadcaster.

13. We may read Regulation 8.1 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 (as amended from time to time):

"8. Time period for renewal of existing agreements

8.1 Parties to an interconnection agreement for supply of TV channel signals shall begin the process of negotiations for renewal of existing agreement at least two months before the due date of expiry of the existing agreement.

Provided that if the negotiations for renewal of the interconnection agreement continue beyond the due date of expiry of the existing agreement then the terms and conditions of the existing agreement shall continue to apply till a new agreement is reached or for the next three months from the date of expiry of the original agreement, whichever is earlier. However, once the parties reach an agreement, the new commercial terms shall become applicable from the date of expiry of the original agreement.

Provided further that if the parties are not able to arrive at a mutually acceptable new agreement, then any party may disconnect the retransmission of TV channel signals at any time after the expiry of the original agreement after giving a three weeks notice in the manner specified in clause 4.3. The commercial terms of the original agreement shall apply till the date of disconnection of signals."

The plain reading of the 1st provision shows that the negotiation beyond 3 months can continue. Nowhere it is mentioned that negotiation cannot continue beyond 3 months. The proviso only provide for the terms and conditions under which the relationship is to be continued beyond a period of 3 months.

We may also have a look at para 13 of the explanatory memorandum to the Telecommunication (Broadcasting and Cable

Services) Interconnection (Third Amendment) Regulation 2006. It reads as under :

**“Renewal of agreements**

13. Renewal of agreements is smooth in most of the cases, but the problems arise when the negotiations for renewal extend beyond the date of expiry of the original agreement. To govern the terms and conditions for continuation of signals beyond the expiry date of the original agreement, the original agreement can be extended till an agreement is reached regarding the terms and conditions for renewal. However, it must be recognized that the new commercial terms will apply retrospectively from the date of expiry of the original agreement. If however, no agreement is reached, then either party can disconnect the signals after giving the statutory notice as provided in Regulation 4 of these regulations. The terms and conditions of original agreement would govern the relationship between the two parties till the date of disconnection of signals. It is believed that the parties should be able to reach a new agreement within three months of expiry of the old agreement (after five months of negotiations). However, in case negotiations carry on beyond this period, then some new interim arrangement regarding terms and conditions should be worked out between the parties and terms and conditions of the old agreement would not get automatically extended beyond this period.”

In case negotiations carries on beyond this period (beyond 3 months of expiry of the agreement) new interim arrangement regarding terms and conditions should be worked out between the parties and terms and conditions of the old agreement would not get automatically extended beyond this period. The plain reading of the explanatory memorandum shows that neither the broadcaster nor the

MSO has the right to supply or receive the signals on the same terms and conditions as per the old agreement. However, they may have a separate arrangement, according to which signals may continue. It is true that no agreement in writing was entered into, but there is nothing on record to show that the parties altered their respective positions.

14. The arrangement in this particular case can be understood by the conduct of the parties. The invoices are being raised by the broadcaster respondent in accordance with the terms and conditions of old agreement and the petitioner was paying the same. By implication both the parties have been continuing their commercial relationship and the arrangement will continue till the parties decide that the negotiations between them have failed and they cannot continue with the arrangement.

15. The negotiations between the parties may fail if distributor or broadcaster does not agree with the terms and conditions of the other party. But parties should know the terms of other party clearly so that the opposite party can know and examine whether the terms and conditions put by one party are acceptable or otherwise by the other party. Further, it should be able to examine whether the terms put

up by the broadcasters are reasonable and non-discriminatory and in accordance with the various provisions of the regulations.

16. In the regulated industry, it is necessary that both the parties are governed by the provisions of the regulations. If one party does not follow the guidelines under regulation, the other party is free to approach the appropriate court for redressal of its grievances.

17. When affected party approach this Tribunal on notice of disconnection, we have duty to go into the merits of the case and to see whether the notice of disconnection is in accordance with the provisions of the regulations. If it is left open to the broadcaster to disconnect the signals without giving any opportunity to the distributor, broadcasters may put the distributor to unreasonable terms and conditions and allow 3 months to lapse and disconnect the signals after issuing the public notice without even informing the distributor.

18. In the present case it will not be out of place to mention that the Sports channels have specific demand at the time of special events like world Cup and other popular events of sports. It is peculiar to see that the respondent, a popular sports channel, was continuing with the

arrangement with the petitioner for a very long period of seven months after the expiry of agreement without any demur. Suddenly as the popular events like the World Cup and other events started, the respondent issued public notice for disconnection.

19. The broadcasters have obligation to provide the signals in non-discriminatory basis on a reasonable terms and conditions. The signal seeker has a right to seek the signals as long it fulfills the broadcaster's requirement as provided under the regulations. **The broadcasters cannot have unbridled freedom to deny the execution of agreement with malafide intention although the signal seeker keeps on trying to execute the interconnection agreement.** These aspects have to be examined carefully by the Tribunal in each case based on circumstances and conduct of the parties.

20. In this particular petition, no amount is outstanding against the petitioner. The only issue is non-execution of agreement. The records show that the petitioner is continuously trying and requesting the respondent to execute the agreement. However, the respondent has not come forward either to execute that agreement or saying that the agreement cannot be executed due to certain reasons. These

should be clearly mentioned and informed to the petitioner so that the petitioner either agrees to the terms of the respondent or approach the appropriate forum for determination of reasonable terms and conditions of the agreement. In fact, the respondent continued with the terms of the old agreement; raised invoices and received the payment; suddenly issued a notice for disconnection.

21. In the matter of this nature, where the Tribunal is called to decide on interim matter, we are of the opinion that we should use our discretion on the basis of balance of convenience and principle of irreparable injury. If disconnection of signals takes place, the petitioner will suffer irreparable damage in terms of many LCOs leaving its network. However, if the respondent succeeds, it can be compensated monetarily. The objective of the regulation is to achieve connectivity and disconnection should be an exception.

22. We are of the view that the balance of convenience is in favour of petitioners. Therefore, we feel that the end of justice will be subserved if the petitioners and respondent in all the petitions are directed to meet within a period of 10 days at a mutually convenient place and time to negotiate for the execution of new agreement. Meanwhile,

respondent is directed not to disconnect the signals of the petitioner pending finalisation of these petitions.

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**(G.D. Gaiha)**  
Member

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**(P.K. Rastogi)**  
Member

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