

petition that it has about 200 subscribers, respondent made an offer to it to enter into an agreement with it on the said basis.

The parties hereto entered into a Settlement Agreement on or about 25.4.2011.

The matter came up before this Tribunal on 06.5.2011 when 10 days' further time, as prayed for, was granted for signing the agreement.

3. However, when the matter came up before this Tribunal on 27.5.2011, learned counsel submitted that as some further issues remain, re-negotiation may be permitted to be held.

It had since been objected to by learned counsel for respondent.

4. Mr. Awanish Kumar, learned counsel appearing on behalf of the petitioner, urged that Clauses 6 and 7 of the Agreement being discriminatory in nature, the same should be directed to be modified suitably.

5. Mr. Gaurav Juneja, learned counsel appearing on behalf of respondent, on the other hand, urged that having regard to Clauses 8, 9 and 10 of the said agreement, petitioner cannot now be permitted to resile from the said settlement agreement.

6. The Settlement Agreement is valid upto 31.12.2011.

By reason of the said agreement, except 'Star Jalsa' and 'Star Anand', for which bouquet rate has been provided, all other channels are to be subscribed by petitioner on a-la-carte basis.

7. Grievance of Mr. Awanish Kumar is that petitioner cannot be prohibited from merging its network with another without prior written permission of Star Den, in view of the fact that the later has not provided for such a clause in any other agreement.

8. Mr. Juneja disputes the same. Petitioner is a Local Cable Operator. It has obtained Decoder Boxes of respondent. Respondent, in our opinion, cannot be prohibited from inserting such a clause so as to protect its own interest as regards 'default', 'areas' and 'handing over of decoders' in the hands of a wrong person by a local cable operator. In the event, however, the action on the part of the broadcaster is found to be unreasonable and/or contrary to the provisions of the Regulations framed by TRAI, petitioner would be entitled to approach this Tribunal.

9. So far as Clause 7 of the Settlement Agreement is concerned, grievance of petitioner is that it has been prohibited from discontinuing any channel and/or

bouquet.

10. It is now well settled that any agreement would be subject to the Regulations.

In the event of any conflict between an agreement and the settlement arises, the later shall prevail.

No party to an agreement can be deprived of a remedy/right provided for under the Regulations.

11. In that view of the matter, we are of the opinion that no case has been made out by petitioner for a direction upon respondent to re-negotiate on certain terms as we are informed at the Bar that petitioner pursuant to the said agreement has already received decoders.

12. Having acted on the said agreement, in our opinion, petitioner cannot be permitted to resile therefrom.

13. In Jeet Enterprises Vs. MSM Discovery Pvt. Ltd. (Petition No. 49 (C) of 2010), decided on 04.2.2011, this Tribunal has held as under :-

“Once the agreement has been acted upon, in the opinion of this

Tribunal, the MOU must be held to be binding on the petitioner. This Tribunal in ESPN Software India Pvt. Ltd., Gurgaon Vs. M/s. Sai Darshan Media Network Pvt. Ltd., Petition No. 134 (C)/2008 held as under :-

“24. Mr. Handoo’s contention that the statement of account filed by the petitioner, is not supported by any document, need not be determined in view of our findings aforementioned. In a situation of this nature, the principles of ‘estoppel by conduct’ can also be invoked. The petitioner, thus, having accepted the terms of settlement and having acted thereupon is estopped and precluded from contending that no settlement had been arrived at.

25. It, therefore, can safely be presumed that the reduction of subscriber base took place in terms of the said settlement and upon further negotiation after the said letter dated 30.6.2007 was received by the petitioner.”

In a case of this nature, we are not concerned with the onerous nature of the terms and conditions laid down in the MOU. The same might not have subsequently been found to be acceptable to the petitioner. However, if pursuant to the negotiations held by and between the parties, the petitioner had signed the MOU, it cannot complain of the burdensome nature of it at a later stage. If it entered into a compromise it did so with its eyes wide open. Nobody forced it to do so.”

14. This petition is disposed of in terms of the settlement arrived at by the parties with the aforementioned observations with no order as to costs.

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

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(G.D. Gaiha)
Member

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(P. K. Rastogi)
Member

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