

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**

**NEW DELHI**

**DATED 8<sup>th</sup> JUNE, 2011**

**Petition No.129(C) of 2010**

Jaipur Cable T.V. Network : Petitioner  
Vs.  
DEN Sky Media Networks Pvt. Ltd. : Respondent

**Petition No. 420(C) of 2010**

Jaipur Cable T.V. Network, Jaipur : Petitioner  
Vs.  
DEN Sky Media Networks 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. Vineet Bhagat, Advocate  
Ms. Neha Jain, Advocate

For Respondent : Mr. Vibhav Srivastava, Advocate

**JUDGEMENT**

**G.D. GAIHA**

These petitions by Jaipur Cable TV Network (Jaipur) are principally directed against Den Sky India Pvt. Ltd. (DEN), a Multi System Operator having a pan India presence.

In Petition No.129 (c) of 2010, the petitioner has inter-alia prayed for issuance of a directions upon Den Sky Pvt. Ltd. for restoration of supply of signals to its cable TV network and entering into a new subscription agreement for the year 2010-2011.

In the said petition, a Miscellaneous Application was filed marked as M.A. No. 330 of 2010 wherein a prayer was made for a direction upon respondent not to disconnect the supply of signals to its cable TV network. Indisputably, during pendency of the said petition, respondents had issued notices dated 10.11.2010 and 13.11.2010 being under Clauses 4.1. and 4.3 of the Regulations terminating the existing agreement inter-alia on the premise that the petitioner has not executed a fresh Interconnect Agreement as also on the ground of non-payment of the outstanding amounts.

2. The petitioner was asked by the said respondent to pay a sum of Rs.91,554/- towards subscription fees for the period May, 2010 and Nov, 2010.

The said Miscellaneous Application was directed to be converted into a fresh petition. No notice was issued in petition 420 (c) of 2010. As prayed for by learned counsel for the parties, it was taken up for hearing with Petition 129 (C) of 2010.

3. Indisputably, the controversy between the parties centers round the issue as to whether respondent has disconnected the supply of

signals to petitioner's network. The respondent contended that no such disconnection was caused.

Supply of signals to petitioner's network was said to be both on analog and digital mode for sums of Rs.100/- each per subscriber per month.

4. Hathway Bhaskar Multinet (P) Ltd. (Hathway) filed an application for intervention in the first petition which was marked as M.A. No. 156 of 2010 contending that it is a necessary party to the petition as petitioner had sought for a direction upon respondent to provide signals by concealing true and correct facts.

5. According to Hathway the petitioner owes to it a sum of Rs.17,90,918/- . It, however filed a fresh petition for recovery of the dues from petitioner, which has been marked as Petition No.270 (C) of 2010. We shall deal with the said petition separately.

6. According to the petitioner it had been supplying signals in Khatipura area. It had been paying a sum of Rs.13,000/- per month to DEN in support of which contention several receipts have been filed by petitioner from 30.11.2008 till 26.2.2010. The petitioner has also relied upon several Customer Activation Forms (CAFs) to show that a large number of customers were being supplied signals through digital mode.

7. The respondent inter-alia contends that earlier petitioner had been taking supply of signals from Hathway and now in stead of showing respondent's signal, it had been taking the signals from a competing MSO Digi Cable Network Private Ltd. (Digi) and, therefore, has disconnected the signals of the respondent without giving any mandatory notice.

8. According to it the control room of the petitioner was visited by the representative of the answering respondent as was directed by this Tribunal, whereupon it was found that petitioner has not inserted its feed in its network.

9. So far as the claim of Hathway is concerned, according to petitioner, there were internal disputes between three MSOs which was settled by Superintendent of Police, Jaipur dividing the areas which should be under the control of the respective MSOs. It was contended that Hathway has disconnected the network of petitioner. The area in question fell in the share of DEN. It has denied that DEN has been insisting for entering into a written agreement and has again started taking feed from Hathway.

10. During pendency of this petition various Orders were issued by us directing petitioner to make payments from time to time. An offer was also made by petitioner that three different drafts issued in the name of DEN Sky Media, Den Sky Network Private Ltd. and DEN sky

Media Network Pvt. Ltd., Jaipur may be encashed. A statement of accounts has been relied on by Hathway Bhaskar to show that a sum of Rs.19,55,616/- is due from petitioner. The said account stopped running from May, 2008.

11. The petitioner contends that it has settled accounts with Hathway by tendering cheques. Admittedly, however, some cheques bounced.

12. Although a large number of issues were framed, the questions which arise for consideration in these petitions inter alia are:-

*(i) Whether the petitioner is entitled to a direction from this Tribunal on respondent for entering into a new subscription agreement?*

*(ii) Whether the contention of respondent that as petitioner has moved to another MSO namely Digi Cable, it is entitled to recuse himself from supplying signals to the network of the petitioner?*

*(iii) What is the true and correct subscriber base for the petitioner?*

13. Submission of Mr. Bhagat, the learned counsel for petitioner, the respondents had taken different stands from time to time as Mr. Amrender Singh examined as a witness on behalf of respondent stated that admittedly DEN operates in Khatipura area, having joined its

network from 20<sup>th</sup> May, 2008 and the areas allotted to it would be around 20-22% of the total area of Jaipur. Having regard to the fact that Digi Cable and Hathway Bhaskar operate in the nearby areas, the witness must be held to have accepted that different MSOs operate in different areas.

14. The said witness, it was urged, has also accepted that petitioner has stopped making payments only from May, 2010 which would mean that he had been making payments till April, 2010 @ Rs.13,000/- per month and in that view of the matter, the question of petitioner's not re-transmitting the signals of the respondent does not arise.

Our attention has also been drawn to the statement of Shri Amrender Singh to contend that petitioner has not taken any line/signals from Hathway Bhaskar after its operation stopped in the area in question.

15. Mr. Srivastava, learned counsel, on the other hand, would contend:-

- (i) One agreement was entered into with petitioner in 2008.
- (ii) However from 9<sup>th</sup> March, 2009 another agreement has been entered into for the period 1.1.2009 to 31.12.2009 with Hathway Bhaskar.
- (iii) Admittedly from May, 2010 no payment has been made by petitioner to respondent.

- (iv) There is a clear indication that petitioner has migrated to another MSO without any prior notice.

Drawing our attention to the fact that Mr. Gopal Singh, the proprietor of petitioner in answer to a specific question stated that as far as his knowledge goes, the signals were disconnected only on 28.2.2010 although in the petition the date of disconnection was stated to be to 29.4.2010.

16. It being not in dispute that petitioner has not been taking supply of its signals from respondent, it would, in our opinion, be entitled to restoration of a supply of signal provided, it can establish that it was respondent who was responsible for disconnection thereof. Although a Compact Disc has been produced by respondent to show retransmission of signals by Digi Cable to the network of the petitioner, but it has not legally been proved; as the requirements of Section 65B of the Indian Evidence Act have not been complied with. We have no reason to disbelieve the statement of the respondent that petitioner in fact had started taking supply of signals of Digi Cable. If the contention of petitioner that respondent had stopped supply of signals from Feb, 2010 is correct, it defies any logic as to why it had made payments upto April, 2010 @ Rs.13,000/- per month.

17. What is the subscriber base of the petitioner vis-à-vis, respondent is yet to be determined. The petitioner has not produced

before this Tribunal the SLRs, although it was necessary to do so as according to petitioner itself, the supply of signals were affected both on analog as well as digital mode. The petitioner had also been taking supply of signals from Hathway. It had also been making ad-hoc payments.

In a situation of this nature, the petitioner should have taken only one stand, namely, that having regard to the division of areas amongst the three MSOs by the SP, Jaipur, the petitioner has been taking supply of signals from whom? It is idle to contend that a local cable operator would be entitled to take the benefit of the internal disputes of all the three MSOs and it would continue to avail signals from all three of them and/or two of them without making any payment/full payments.

18. The respondent does not say that it is not bound to supply signals to the petitioner's network. It merely states that as it has been obtaining signals from Digi Cable, it is not interested in doing so because of the conduct of the petitioner.

19. In law there is no bar in taking dual feed. In law, there is also no bar that in the same area for more than one MSO operate. If, however, a dual feed is taken, MSO/the local cable operator must discharge its contractual obligations in respect of both operators. It cannot refuse to pay the contractual subscription amount to one and pay and discharge its contractual obligations only to the other.

In view of the fact that petitioner has not been able to show that there had been any overt act on the part of respondent by disconnecting the supply without issuance of any notice, we are of the opinion that no direction as has been sought for can be issued.

The petitioner for the aforementioned purpose must comply with the statutory obligations for obtaining a fresh connection, namely, payment of all dues and furnishing a true subscriber base, when it approaches the respondent.

20. We have however, no doubt in our mind that the petitioner for reasons best known to it has migrated to the Digi Cable without giving any notice. These petitions are dismissed with costs. Advocate's fees assessed at Rs.25,000/-.

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

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

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

HKC/