

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

**DATED 26<sup>th</sup> MAY, 2011**

**Petition No. 347(C) of 2010**

Utsav Communication Pvt. Ltd. .... Petitioner

Vs.

MSM Discovery 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. Amitesh Chandra Mishra, Advocate

**ORDER**

**G.D. Gaiha**

The petitioner is aggrieved by the refusal of respondent to sign the subscription agreement with it for the supply of decoder boxes and consequent supply of signals by the respondent as per the provision in Clause 3.2 of the Telecommunications (Broadcasting and Cable Services) Interconnection Regulations, 2004, as amended from time to time.

2. The petitioner claims to be a Multi System Operator working in the area of Hoshangabad, having a subscriber base of 232 through its sub-operator, and at present only showing free to air channels. A copy of the list of subscribers has been annexed with the petition.

3. The initial request has been sent by the petitioner to the respondent vide its letter dated 11<sup>th</sup> September 2009 through a registered post letter of Indian Postal Department. With the said purported letter, the following documents were annexed.

- a. Certificate of incorporation.
- b. Board resolution of 11 September 2009.
- c. Address proof in the in the form of a phone bill.
- d. Identity proof as the PAN card number.
- e. Postal registration certificate which is sure to be valid from 6 September 2009 till 6 September 2012.
- f. Service tax registration certificate.
- g. The return of income taxes for the year 2006 2007 showing the PAN number of the petitioner company.
- h. Income tax return.
- i. Bank statement.
- j. Area has been shown as the entire municipal Corporation of Bhopal including railways, the BHEL and thereafter Chronicles of and other government colonies.

4. The petitioner claims that after making the initial request on 11<sup>th</sup> September 2009, as a follow-up measure several reminder letters dated 10<sup>th</sup> October 2009, 20<sup>th</sup> October 2009 & 28<sup>th</sup> of October 2009, along with all that relevant and requisite information and documents, approached the

respondent for signing of a fresh agreement for supply of signals to the cable TV network of the petitioner and requested the respondent to conduct a joint survey by letters dated 20<sup>th</sup> October 2009 and that of 28<sup>th</sup> October 2009 which are annexed along with the petition.

5. The petitioner claims to have received a letter from the respondent dated 10<sup>th</sup> December 2009 wherein the respondent asked the petitioner to send a duly filled up Affiliation Form along with the documents as mentioned in the above referred letters. The petitioner sent duly filled up Affiliation Form along with the desired information which included the list of its subscribers as asked for by the respondent.

6. The petitioner claims to have approached the respondent again on 5<sup>th</sup> July 2010 along with the required documents. The petitioner has not received any response from the respondent and therefore it again approached the respondent on 26<sup>th</sup> July 2010 and on 25<sup>th</sup> September 2010 .

7. The petitioner would further submit that in the year 2009 it had applied for the signals of NEO Sports. The petitioner has enclosed relevant communications between it and the NEO Sports.

8. The learned counsel for the petitioner would contend that now since more than a year has elapsed after making a request to the respondent to provide signals, and since it has also furnished all the requisite and necessary information in this regard, and in spite of it, there is no response from the respondent, which is against the spirit, scope and object of the Telecom Regulatory Authority of India rules and regulations and, therefore, no response

from the respondent may be treated as deemed denial/refusal of the request of the petitioner in view of the expiry of the statutory period of 60 days.

9. The learned counsel for the petitioner would further contend that on account of non-supply of the signals of the respondents, the petitioner has suffered huge losses. The petitioner has made the following prayers:-

- i) That the respondent be directed to enter into a subscription agreement with the petitioner and provide TV signals to petitioner's cable TV network on reasonable terms and conditions and issue decoder and commence the supply of signals to the network of the petitioner.
- ii) Grant the damages to the petitioner as against the respondent of Rs. 3 lakhs along with cost of litigation.

10. The learned counsel for the respondent on the other hand would contend:-

(i) The petitioner has not disclosed the relevant information and, therefore, the present petition is misconceived, unfounded and deserves no indulgence from this tribunal. The learned counsel for the petitioner would contend that response to the letter dated 10<sup>th</sup> December 2009, the petitioner has yet not furnished the requisite information so far. The learned counsel for the respondent would further submit that the letter dated 25<sup>th</sup> September 2010 sent by petitioner and placed along with the petition also shows the postal receipt fixed on the letter. As per the postal receipt the weight of the consignment allegedly containing about 30 pages, is only 20 gms which is

inconceivable. Further, the answering respondent has not received any letter dated 6<sup>th</sup> May 2010, 5<sup>th</sup> July 2010, and 26<sup>th</sup> August 2010 from the petitioner.

(ii) Though the petitioner has filed present petition only on 8<sup>th</sup> October 2010 and almost the entire correspondence between the parties, still the said letter dated 4<sup>th</sup> October 2010 along with proof of dispatch has been withheld for the reasons best known to it. The respondent has however annexed a copy of the letter dated 4<sup>th</sup> October 2010 along with proof of dispatch. In this letter the respondent has replied back well within 60 days and has mentioned various lacunae in the application requesting signals which have been mentioned by the respondent to the petitioner.

(iii) The following discrepancies have been observed in the informations furnished by the petitioner:-

(a) Though the Petitioner is a company incorporated under the Companies Act 1956 still the copy of the PAN card annexed with the petition at page 27 shows the name of 'Rashmi Parsoiya' and 'Rameshwar Prasad Jayaswal' and further the said PAN Card at page 27 of the Petition bears No. AOKPP8094D while the acknowledgment from Income Tax Department for the assessment year 2006-2007 at page 33 of the Petition shows Petitioner's PAN No. as AAACU7569D.

(b) The statement of bank account annexed at page 37 of the Petition shows the name of the account holder as Mrs. Rashmi Persaniya and not Utsav Communications, i.e., the Petitioner. It is respectfully submitted that petitioner is a duly incorporated Company and, therefore, an independent legal entity in the eyes of law.

(c) The petitioner has mentioned at page 48 of the petition that he has two LCO's while on page 49 of the petition, the column of franchisee list has been kept blank and the names of those LCOs which are mentioned herein are not been disclosed anywhere by the petitioner.

(d) The map provided with the petition is not legible and does not specify the exact area of operation of the petitioner. There is no document supporting his financial ability to sustain in the business, his mode of transmission of signal, permission from government authorities in respect of the same, SLR as per the requirement of Interconnect Regulation, map of his existing network, entertainment tax, service tax details, etc.

(iv) The petitioner has, therefore, concealed vital informations before approaching this Hon'ble Tribunal on 08.10.2010, seeking reliefs as mentioned in the petition.

(v) The learned counsel for the respondent has submitted that Apex Court while passing Interim Order dated 02.3.2006 in the case of Star India (Pvt.) Ltd. Vs. Sea TV Network Ltd., (2006) 4 SCC 130 (II) has recognized rampant and cognizable issue of under-declaration in the non addressable systems. The learned counsel would also further bring to our notice the case of Mona Cable Network, Saharanpur (U.P) Vs. ESPN Software India Pvt. Ltd bearing No. 145 (C) of 2009. It is brought to our notice that in this case, the Tribunal has categorically observed in its judgment dated 20.11.2009 in the Mona Cable Network case that though the petitioner was paying to the respondent only for 1082 subscribers however as per the entertainment tax details the petitioner was catering to about 13000 subscribers. This Tribunal has, therefore, held that as per Section 106 of the Indian Evidence Act, the petitioner should have,

in all fairness, produce all the records before the respondent so as to enable it to arrive at the correct number of subscribers.

(vi) The learned counsel for respondent would further very strongly contend that in the instant case the petitioner has proposed to supply signals in a very densely populated area and still he has chosen to declare only 232 subscribers which on the very face of it look to be fabricated and fictitious figure and, therefore, the petitioner should be directed to give all the information as desired by the respondent vide its letter dated 10.12.2009.

11. In the rejoinder the petitioner has not been able to specifically deny the various inconsistencies as mentioned in the reply by the respondent and has only done a lip service of denying the contents of the various paragraphs which is not convincing at all.

12. The petitioner's witness, Mr. Anand Parsaniya has been examined and during his cross examination, he admitted that the petitioner company was incorporated in the year 2004 and the first Directors of the company were Shri Rajender Kumar, Smt. Rashmi wife of Shri Anand Kumar Parsaniya. There was a third director whose name he cannot recollect at that time. The company has been carrying out the business of Cable TV Network in Hoshangabad after carrying out the same business in Bhopal and further intends to expand its business to Sagar and Lalitpur (U.P). The main areas of operation in Hoshangabad are mainly Hoshangabad Road, M.P. Nagar, New Market and Lalghati however he has a network in entire town of Hoshangabad. The witness has also further said that it has only two cable

operators for which he has filed the details. In regard to service tax, it is said that the annual return of the Income Tax is below Rs.10.00lakhs. and, therefore, no service tax is required to be paid by the petitioner. In regard to entertainment tax, he has given a very evasive answer.

From the above contents of the cross examination, we infer that the network of the petitioner is spread out in the entire town of Hoshangabad and it has also been working as a Cable TV Operator for a number of years. It is unbelievable that he is only having two cable operators after operating in several congested areas of the city as admitted during the cross examination.

13. Evidence by way of affidavit on behalf of the respondent has also been filed by one Mr. Asifur Rehman. The same inconsistencies which have been brought out in the reply by the respondent have been brought out in this affidavit by Mr. Asifur who is working as an authorized signatory of MSM Discovery Private Limited. The witness has also countered the allegations of the receipt of the letter dated 4.10.2010.

14. We, therefore, are of the opinion that there is a material concealment of facts in regard to the SLRs furnished by the petitioner. In case the petitioner is willing to get signals from the respondent, he must submit all the required informations.

15. Since the petitioner has given misleading information and has concealed material fact in regard to the SLRs furnished to the respondent, the petition is dismissed. We impose a cost of Rs.50,000/- to be paid to respondent.

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

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

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

HKC/