

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

**Dated 9<sup>th</sup> May, 2011**

**Petition No. 33(C) of 2011  
(M.A.No.58 of 2011)**

Vigneswara Cable Network

....Petitioner

Vs.

Star Den Media Services Pvt.  
Ltd.

....Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE S.B. SINHA, CHAIPERSON**

**HON'BLE MR. G. D. GAIHA, MEMBER**

**HON'BLE MR. P.K.RASTOGI, MEMBER**

For Petitioner	:	Mr. G. Tushar Rao, Advocate Mr. Atanu Mukherjee, Advocate
For Respondent	:	Mr. Arjun Natarajan, Advocate
For Intervenor(M.A. No. 58/11) (M/s Venkat Sai Media Pvt. Ltd)	:	Mr.Navin Chawla,Advocate Mr.Sharath Sampath,Advocate

**ORDER**

**P.K.Rastogi, Member**

The petitioner, in this petition is a partnership firm carrying out the cable network business. This petition has been filed through Shri K. Kishore who is authorised representative of the partnership firm. The respondent is a broadcaster of Star Bouquet of channels.

2. The respondent issued a notice under Regulation 4.1 of the Interconnect Regulations on 24.02.2010 for disconnecting the supply of signals of the petitioner. This petition has been filed by the petitioner on 12.01.2011 against the issue of said notice by the respondent with a specific relief for restraining the respondent for disconnecting the supply of signals and maintaining the same till the disposal of the petition. The other reliefs included :

(a) pass an order directing the respondent to negotiate and enter into an agreement on just and reasonable terms and conditions upon verification of the subscriber base.

(b) pass an order directing the respondent to sign and execute the agreement on mutually agreed conditions and furnish and copy of the same to the petitioner.

3. During the pendency of this petition, M/s Venkat Sai Media Pvt. Ltd. has filed an application bearing number M.A. No. 58 of 2011 to grant permission to the applicant to implead itself as a party to the present petition.

4. The applicant is a private limited company incorporated in India, under the Indian Companies Act, 1956 and is a Multi System Operator engaged in the distribution of signals of various channels through cable TV network system in various cities/towns.

5. According to the applicant, there is no MSO in the name of the petitioner in the area of Chirala and the same has been created by Mr. Kolla

Kishore Kumar to create confusion in the minds of the Broadcasters as well this Tribunal. The malafide of Mr. Kolla Kishore Kumar is evident from the fact that he has represented himself as the proprietor of M/s Sri Venkateswara Cable TV Network to other broadcasters and filed cases against them which are pending adjudication before this Tribunal.

6. The applicant further submitted that Mr. Kolla Kishore Kumar has filed the present case as an authorised representative of the petitioner although the petitioner as on date does not even have a head end. The fact that Mr. Kumar and the petitioner herein are one and the same is evident from letter dated 09.12.2010 sent by Mr. Kumar to the broadcaster MAA TV Network Ltd. Signing as the proprietor of Sri Venkateswara Cable TV Network ; although the contents were printed on the purported letter head of Sri Vigneswara Cable TV Network. The address where the petitioner claims to have its head end is the same address as that of M/s Sri Venkateswara Cable TV Network which has been purchased by the applicant herein in the year 2009 itself. There cannot be two head end at the same address. It is apparent that Sri Venkateswara Cable TV Network existed only in name and not in fact.

7. The applicant submitted that Mr. Kolla Kumar the alleged authorised representative of the petitioner was unable to run his business effectively and was interested in selling the same to a more reputed MSO and with that intention he approached the applicant making various representations. Pursuant to negotiations held between the parties, the applicant agreed to take over the entire network/assets and business operation from Mr. Kolla Kumar at a total consideration of Rs. 28,05,000/- and for this purpose the parties executed a MOU dated 01.09.2009 and the

applicant made the payment of the agreed amount to the petitioner. The MOU recorded that while 51% of the business was absolutely transferred to applicant, for the remaining 49% it was supposed to manage the same for Mr. Kolla Kumar and pay any profit made thereon to him.

8. Pursuant to the takeover of Mr. Kolla Kumar's cable network business including the administrative office and the control room the applicant also entered into a rental agreement dated 10.09.2009 with the land lady of the premises where the administrative office was situated address being 1st Floor, Municipal complex, Opp. IOB, Chirala-523155, Prakasam District, Andhra Pradesh for the period of two years.

9. Mr. Kumar herein issued a letter dated 01.09.2009 to all the broadcasters including the respondent herein stating about the transfer of the network and requesting to transfer the agreement in favour of the applicant. The applicant after the takeover of Mr. Kolla Kishore Kumar's network in the month of September 2009 started paying the subscription charges to the respondent. It has paid Rs. 2,00,55,493/- from September 2009 to various pay channels and incurred Rs. 45,22,955/- towards administrative and material expenses. Further the applicant has entered into a regular subscription agreement with some broadcasters for retransmitting their respective TV channel signals to the cable operators affiliated to the applicant pursuant to the takeover.

10. The applicant further submitted that Mr. Kolla Kumar and his henchmen forcefully occupied the administrative office and the head end (control room) of the applicant and did not allow the applicant to enter into the

premises and thereby causing serious damages to the business of the applicant which was already incurring losses.

Further, Mr. Kolla Kishore Kumar filed a civil suit against the applicant in the Court of the Senior Civil Judge : Chirala, and by misrepresenting the fact got an interim injunction against the applicant from interfering with Mr. Kumar's firm which was earlier taken over by the applicant in September 2009. The applicant lodged a written complaint to the Inspector of Police, Chirala on 21.12.2010 for forceful occupation of the administrative office and the control room by Mr. Kishore Kumar.

11. According to the applicant Mr. Kolla Kumar has filed the above petition merely to create evidence that he, through the petitioner herein, is operating as an MSO in the town of Chirala. Mr. Kolla Kumar intends to use this present proceedings to somehow oust the applicant from the network they have acquired on payment of valuable considerations. In fact there is no network in the name of Vigneswara Cable Network operating in the Chirala town. There are no subscribers or LCOs affiliated to it or taking signals of TV channels from it. In view of the above, the applicant has prayed that:

“Allow the present applicant and grant permission to the applicant to implead as a party to the present petition and to make submission against the grant of the prayers made therein.”

12. The petitioner while opposing the application for impleadment of the applicant submitted that there never was nor is there any relation between the applicant and the non-applicant / petitioner at any time. The non applicant

petitioner is altogether a separate entity and the applicant is trying to mislead this Tribunal with an oblique motive and mal-intentions. On perusal of the pleadings contained in the application as well as the documents annexed thereto clearly shows that the same relate to another network with which the petitioner has no concern. The applicant cannot be permitted to use documents relating to some other network / entity to derail the petition filed by the petitioner.

13. The petitioner contended that it is a partnership firm consisting of five partners whose names and signatures are appended on the authorisation letter dated 10.01.2011 filed with this petition. The said partnership firm was formed and a partnership deed was duly executed between the partners as far back as on 23.07.2007 and was duly registered with the Registrar of Firms on 25.07.2007 at the address given in the petition. The petitioner is also registered with the Service Tax Department and has also been given a registration number for the purpose of payment of Entertainment Tax. The petitioner has been and is operating from the address mentioned in the petition and there is no relation nor any nexus with the applicant at all. The deed may show that the deponent is not one of the partners of the petitioner and therefore the claim of the applicant is without any basis and is patently false and malicious.

14. The petitioner further submitted that it has been operating at the same place from the past many years and entered into agreements with the respondent broadcaster without any break or interruption. The respondent broadcaster has been receiving regular payments for the supply of signals to the petitioner.

15. The main issue arising from this application is whether the applicant is a necessary party in the litigation between the petitioner and the respondent. This petition has been filed in the name of Vigneswara Cable Network and the respondent is Star Den Media Services Pvt. Ltd. The applicant has bought the cable TV network system by name M/s Sri Venkateswara Cable TV Network Ltd. After the signing of the MOU there has been some dispute between M/s Sri Venkateswara Cable TV Network and the applicant namely M/s Venkat Sai Media Pvt. Ltd. The civil dispute between M/s Sri Venkateswara Cable TV Network and the applicant has gone to District Court also.

16. This Tribunal has received other petitions bearing numbers Petition No. 408 (C) of 2010 (Sri Venkateswara Cable Network Vs. Ushodya Enterprises), Petition No.409 (C) of 2010 (Sri Venkateswara Cable Network Vs. MAA Television Network) and Petition No. 412(C) of 2010 (Sri Venkateswara Cable Network Vs. Sun 18 Media Services South Pvt. Ltd.) filed by Sri Venkateswara Cable Network against other respondents which are lying pending adjudication. According to the applicant, Vigneswara Cable Network is nothing but the same Sri Venkateswara Cable Network.

17. We have perused the copy of MOU executed between Sri Venkateswara Cable Network Ltd. and the applicant. We find that address mentioned is same as that of the petitioner herein. There is a lease agreement between the petitioner and the applicant to give the premises

where the petitioner's firm is situated on lease to the applicant. The applicant has entered into rental agreement on or about 10.09.2009.

18. The respondent in its reply to the petition submitted that the identity / composition of the petitioner is in serious doubt. While entering into the agreement in 2009, the petitioner represented itself to be a proprietorship concern with Mr. K. Kishore Kumar being its obvious proprietor. The said Mr. K. Kishore kumar now filed the present petition in his capacity as an authorized representative of the petitioner and the petitioner has now been represented as a partnership firm.

19. The respondent further submitted that Mr. K. Kishore Kumar sent a letter dated 01.09.2009 to the respondent in his capacity as the proprietor of one M/s Sri Venkateswara Cable Network. In the said letter Mr. K. Kishore talked about transferring its network, namely, M/s Sri Venkateswara Cable Network to one M/s Venkat Sai Cable Network Ltd. Interestingly, the said network's name was M/s Sri Venkateswara Cable Network and not M/s Vigneshwara Cable Network, regarding which the agreement was signed by the respondent.

20. The jurisdiction under Order I Rule 10(2) of the Code of Civil Procedure, 1908 can be invoked provided a person who has not been impleaded as a party is found to be a necessary or a proper party.

If on the own showing of the applicant, it has nothing to do with the business of the petitioner, there is no reason why it should be impleaded as a party herein.

The purpose for which the application has been filed, in our opinion, can be that if this petition is heard immediately after the other petitions as the Broadcaster has already entered into a specific defence.

21. However, it is clear that the applicant has no concern with the petitioner in this petition. The question as to whether the petitioner has no legal existence can be decided only while considering the main petition and not at the time of the consideration for impleadment of the applicant. We will have to examine the evidences about the status of Mr. Kolla Kishore Kumar during the course of hearing of the petition. We find that the applicant on its own showing has nothing to do with the petitioner which is a separate partnership firm. Therefore, the request of the applicant for impleading it in this petition is rejected.

22. Rejoinder to the reply filed by the respondent may be filed in the meantime.

23. It is further directed that this petition may be heard alongwith Petition No. 408 (C) of 2010, Petition No.409 (C) of 2010 and Petition No. 412(C) of 2010.

24. Put up the matter on 20.05.2011 for further directions.

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

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

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

/NC/