

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated : November 15, 2011

Petition No.405(C) of 2011

M/s R.K. Cable ... Petitioner

Vs.

M/s Sun-18 Media Services North Pvt. Ltd. ... Respondent

BEFORE:

**HON'BLE MR. JUSTICE S.B. SINHA, CHAIRPERSON
HON'BLE MR.P.K. RASTOGI, MEMBER**

For Petitioner : Mr. Navin Chawla, Advocate
Mr. Tejveer Singh Bhatia, Advocate

For Respondent : Mr. Kunal Tandon, Advocate

J U D G E M E N T

S.B. Sinha

The petitioner is a Multi Service Operator having its headend in the town of Yamuna Nagar.

The parties hereto entered into an agreement for supply of signals of the respondent's channel on or about 21.05.2011.

2. According to the petitioner although initially it had a Subscriber Line Report of 800 subscribers, operating in some pockets of the said town of Yamuna Nagar, the agreement was entered into in respect of 3000 subscribers.

According to the petitioner, it understood that it would have a right to operate in entire Yamuna Nagar. The petitioner, it now stands admitted at least from August, 2011 started supplying signals to 12 more LCOs.

According to the petitioner, the respondent sent its representative Mr. Gagan and it was agreed that the enhanced subscription fee would be about Rs.2.75 lakhs.

3. There exists a dispute as to whether for the aforementioned purpose the agreement was signed by the petitioner or not.

Whereas in its e-mail dated 08.10.2011 the petitioner while requesting the respondent to withdraw its notice under Clause 4.1 asked it to intimate to it the date and time for entering into the subscription agreement on a subscription fee of Rs.2.75 lakhs, in paragraph 8 of the petition it is stated that Mr. Gagan got an agreement signed by the petitioner, a copy whereof, however, was not available with it.

4. Indisputably, the respondent having come to learn that the petitioner had started supplying signals to other cable operators issued a

letter dated 21.7.2011 contending that they were being served by M/s DEN Saya Channel Network Pvt. Ltd. Yamuna Nagar. The respondent called upon the petitioner to submit unto it the details of the increased subscriber base within ten days; in response where to the petitioner by a letter dated 08.08.2011 asked the respondent to let it know as to how much amount M/s DEN Saya Network had been paying to it in respect of the said LCOs for the purpose of further negotiation for the purpose of increasing the subscription payout.

5. The respondent asked the petitioner to stop giving feed to new LCOs but it did not comply with the same.

By a letter dated 19.9.2011 the respondent, inter alia, stated :-

“Be that as it may, we cannot accede to your request since (a) you have connected various operators who have left huge outstanding payable to the MSO they were earlier affiliated to (and have been taking feed from your network in complete violation of Explanation 1 to Clause 3.2 of the Regulations), (b) all the said 12 LCOs are operating in areas outside your authorized area of operation as per the Subscription Agreement; and (c) you have failed to comply with Clause 12 of the Regulations.”

It called upon the respondent to :

“(a) Stop illegal and unauthorized retransmission of signals of our channels in unauthorized area of operation as per the Subscription Agreement dated

21.05.2011, (b) clear the abovementioned outstanding, and (c) provide monthly SLR as contemplated in Clause 12 of the Regulations, and (d) pay for having illegally and in unauthorized manner retransmitting signals of our channels to the LCOs mentioned in Enclosure – B, failing which, we shall be constrained to take appropriate remedies available under the Law.”

The said communication was to be treated as a notice under Clause 4.1 of the Telecommunication (Broadcasting & Cable Services) Interconnection Regulation, 2004 (13 of 2004) as amended from time to time (The Regulations).

6. Along with the said letter, the names of 12 cable operators to whom it had been supplying out feed were mentioned as detailed in Enclosure –B appended thereto. A statement showing loss to the extent of Rs.30,94,001 said to be caused to the respondent was also annexed.

The petitioner, however, contended that from a perusal of the billings of the respondent to the said cable operators, it would appear that it had been receiving from them a sum of Rs.8,51,561/- per month; whereas in fact M/s DEN Saya had merely been receiving a sum of Rs.72,176.14 from the said Cable Operators.

7. By a detailed letter dated 08.10.2011, the petitioner contended that the eleven cable operators had been paying to M/s DEN Saya only a

sum of Rs.50,076/- and if the total amount paid to the respondent for those cable operators as demanded by it is given effect to, the payout would come to Rs.749.45 being the rates of Sony+ Star+Zee+Sun+ ESPN+Ten Sports.

In the aforementioned context it was stated :-

“We are ready and willing to pay the said amount towards your bouquet of channels. We also deny that there is any outstanding of Rs.29,442/- due and payable by us as on date. We would further like to submit that your calculations of the alleged subscription fee payable by us for the alleged unauthorized transmission of channels is totally false to your own knowledge. As per your own calculation the total billing for a month for these channels comes to Rs.8,51,561/- per month which is totally imaginative figure for which I am sure even DEN Saya would not be making payments to you. We also request you to kindly supply us the last 6 months invoice raised upon M/s DEN Saya by you and the payments made by DEN Saya to you. We are sure that the entire monthly subscription fee of M/s DEN Saya would also not be Rs.8,51,561/- we understand your difficulty as M/s DEN Saya might have stopped your payment not only for Yamuna Nagar but also for its others areas. We kindly request you not to indulge any such arbitrary and illegal actions and we request you to kindly withdraw your public notice which is entirely misconceived and incorrect. With respect to the SLR sought by you the same was not required to be given by us since our agreement was on lumpsum

basis. Therefore, we request you to kindly refrain from making such false allegations such as piracy against us especially when we had acted with your approval for supplying the signals on our network to the said LCOs. It is in fact you who is now trying to run away from its commitments. We once again request you to withdraw the false notice and tell us the date and time for entering into the subscription agreement as we had already agreed on the amount of Rs.2.75 lakhs a month for us to operate in entire Yamuna Nagar District.”

The respondent, however, did not withdraw its notice under Clause 4.1 of the Regulations. It furthermore published a public notice on or about 22.9.2011 in terms of Clause 4.3 thereof.

Questioning the validity of the said notices, the petitioner has approached this Tribunal for passing an appropriate order quashing the same as also for a direction upon the respondent to enter into a subscription agreement for the new cable operators at the rate of Rs.2.75 lakhs per month for the entire Yamuna Nagar District.

8. It may be placed on record that on almost similar lines and in respect of the aforementioned 12 local cable operators, notices under Clauses 4.1 and 4.3 were issued by Mediapro Enterprises India Ltd. and MSM Discovery Pvt. Ltd.

9. Two petitions were filed by the petitioner questioning the said notices, which were marked as Petition No.380(C) of 2011 and 324(C) of 2011 respectively.

Whereas in the case of Mediapro the offer of the petitioner to pay a sum of Rs.16 lakhs per month from July, 2011 besides service tax payable thereon was accepted, a restraint order was passed directing the said respondent that the public notice should not be given effect to; in the case of MSM Discovery by an order dated 30.8.2011, the petitioner was directed to confine its area of operation as mentioned in the agreement dated 09.02.2011. The interim order to the said effect was made absolute as it was prima facie found that some of the alleged unauthorized areas in which the petitioner was retransmitting the signals of MSM Discovery were in fact not unauthorized areas.

10. The primary contention of the petitioner is that it had not received a copy of the agreement dated 21.5.2011 nor did it receive a copy of the agreement in respect of the entire town of Yamuna Nagar.

11. Mr. Tandon learned counsel appearing on behalf of the respondent, however, has produced before us a copy of the agreement, from a perusal

whereof it appears that a copy has been supplied to Mr. Rakesh Kumar on the day the same had been executed.

The area of operation mentioned in annexure B thereto is stated "as per Annexure A attached". Annexure 1 to the agreement which has been handed over to the respondent by the Petitioner is said to be containing the following details :-

| <i>AREA OF OPERATION</i> | | | |
|--------------------------|---------------------------------|--|--------------------|
| <i>S. No.</i> | <i>Area</i> | <i>Locality</i> | <i>Connections</i> |
| 1. | <i>SEC 18 & SEC 18 HUDA</i> | | 225 |
| 2. | <i>Model Town</i> | <i>(i) Sarni Chowk</i> | 75 |
| | | <i>(ii) Parasram Chowk</i> | 15 |
| | | <i>(iii) Prem Nagar</i> | 40 |
| | | <i>(iv) Shakti Nagar</i> | 10 |
| | | <i>(v) PWD Colony</i> | 20 |
| 3. | <i>Model Colony</i> | <i>(i) Shastri Colony</i> | 45 |
| | | <i>(ii) Azad Nagar</i> | 30 |
| | | <i>(iii) Mahavir Colony</i> | 10 |
| | | <i>(iv) Sharma Garden & Madhu Colony</i> | 25 |
| 4. | <i>Paper Colony</i> | <i>(i) 200 Quarters</i> | 25 |
| | | <i>(ii) Thapar Colony</i> | 20 |
| 5. | <i>Professor Colony</i> | <i>(i) Yogesh Nagar</i> | 10 |
| | | <i>(ii) Lal Dwara</i> | 90 |
| | | <i>(iii) Kalindi Colony</i> | 15 |
| 6. | <i>Chopra Garden</i> | <i>(i) Sarojini Colony</i> | 15 |
| | | <i>(ii) Vishal Nagar</i> | 20 |
| | | <i>(iii) Vikas Nagar</i> | 20 |

| | | | |
|----|--|--|-----|
| | | | |
| 7. | <i>Sawanpura & Gurunanakpura</i> | | 90 |
| | <i>Total Connections</i> | | 800 |

12. The agreement copy submitted by the respondent shows that the area of operation is 7 colonies of Yamuna Nagar town but not entire Yamuna Nagar town. The connectivity in these colonies is only 800. There is some force in the agreement of Shri Navin Chawla that although the connectivity mentioned in the area of operation is 800 but payment is being made for 3000. The agreement shows that the payment is to be made for 2800 subscribers for bouquet 1 channels alone.

However, the petitioner is not able to show any record where the respondent has agreed to increase the area of operation.

13. We have noticed heretofore that the petitioner in its letter dated 8.8.2011 and subsequent correspondences categorically stated that it was interested in an increased subscriber base for the entire town of Yamuna Nagar. This itself prima facie shows that the petitioner accepted that in terms of the agreement it's area of operation was not the entire town of Yamuna Nagar.

14. In its e-mail dated 08.10.2011, the petitioner raised a contention that the allegations made against it by the respondent as regards

commission of acts of piracy were false especially when they had been acting with the approval of respondent for supplying signals on their network to the said LCOs.

15. On a query made by us, Mr. Chawla submits that by approval of the respondent, the petitioner meant the agreement for enhanced subscription fee at Rs.2.75 lakhs per month.

From the tenor of the notice under Clause 4.1 of the Regulations, it does not appear that the respondent accepted the same.

16. In fact Mr. Tandon submitted and in our opinion not without justification that the petitioner has made contradictory and inconsistent claims with regard to the purported agreement entered into by and between the parties.

17. Statements made in paragraph 8 of the petition have not been verified by the deponent, Shri Rakesh Kumar being the proprietor of the petitioner as true to his knowledge. In verification portion it is stated that the contents of the petition are true to the knowledge of the deponent as derived from the official records maintained by the petitioner in its ordinary course of business.

But in the affidavit the deponent states that the contents of the petition were true and correct to his knowledge.

18. The petitioner, therefore, prima facie is guilty of supplying signals to the areas beyond the area of operation under the agreement. In this case, the respondent unlike Mediapro Enterprises Ltd., does not agree to continue to supply signals of its channels to the 12 LCOs.

19. The public notice, therefore, must be held to have been issued on a factual foundation. We, however, keeping in view the fact that in Petition No.324(C) of 2011 ^{had} allowed the petitioner to supply signals of the channels of the respondent within the stipulated area of operation issue a similar direction. The petitioner shall also affirm an affidavit within two days giving an undertaking that it would not in future carry out any operation beyond the agreed area as noticed to hereinbefore.

20. This ^{in line with} petition is disposed of on the above terms without any order as to costs.

(S.B. Sinha)
Chairperson

(P.K. Rastogi)
Member

'anu/rkc'