

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated : September 23, 2011

1. Petition No.364(C) of 2011

M/s Digi Konkan Network Private Limited ...Petitioner

Vs.

M/s Media Pro Enterprises India Private Limited ...Respondent

2. Petition No.365(C) of 2011

M/s Digicable Network (India) Pvt. Ltd., Mumbai ...Petitioner

Vs.

M/s Media Pro Enterprises India Private Limited ...Respondent

3. Petition No.366(C) of 2011

M/s Digicable Network (India) Pvt. Ltd., Dhule ...Petitioner

Vs.

M/s Media Pro Enterprises India Private Limited ...Respondent

4. Petition No.367(C) of 2011

M/s Digicable Network (India) Pvt. Ltd., Jalgaon ...Petitioner

Vs.

M/s Media Pro Enterprises India Private Limited ...Respondent

5. Petition No.368(C) of 2011

M/s Digicable Network (India) Pvt. Ltd., Alibaug ...Petitioner

Vs.

M/s Media Pro Enterprises India Private Limited ...Respondent

6. Petition No.369(C) of 2011

M/s Digicable Network (India) Pvt. Ltd., Badalpur ...Petitioner

Vs.

M/s Media Pro Enterprises India Private Limited ...Respondent

7. Petition No.370(C) of 2011

M/s Digicable Network (India) Pvt. Ltd., Pen ...Petitioner

Vs.

M/s Media Pro Enterprises India Private Limited ...Respondent

BEFORE:

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

For Petitioner : Mr.Arun Kathpalia, Mr. K. Datta, Mr.Anil
Fernades & Mr. Diggaj Pathak,
Advocates

For Respondent : Ms.Pratibha M. Singh & Mr. Vadivelu
Deenadayalan, Advocate

ORDER

These petitions by a Multi Service Operator having a Pan India presence against the respondent, a content aggregator and distributor of Star Group as also Zee Group of Channels, have been filed praying, inter alia, for the following reliefs:

a. Pass an order declaring the notice dated 3rd August, 2011 issued under regulation 4.1 and notice dated 6th August, 2011 issued under regulation 4.3 with regard to Star Movies, Star Plus, Star World, Star Gold, Star Ananda, Star Jalsa, National Geographic, Fox History & Entertainment, Star One, Star Vijay, Channel V, Nat Geo Wild, Nat Geo Adventure, Nat Geo Music, FX, Fox Crime, Baby TV, MGM NDTV 24x7, NDTV India, NDTV Good Times & NDTV Profit, to be illegal and void;

b. Pass an order of Permanent injunction restraining the respondent their servants and/or agents and/or assigns from in any manner deactivating or disturbing the supply of signals of the Respondent's Star bouquet of channels to the Petitioner;

c. Pass an order directing the respondent to enter into an agreement on reasonable terms with the petitioner for the Ratnagiri region with regard to Star Movies, Star Plus, Star World, Star Gold, Star Ananda, Star Jalsa, National Geographic, Fox History & Entertainment, Star one, Star Vijay, Channel V, Nat Geo Wild, Nat Geo Adventure, Nat Geo Music, FX Crime, Baby TV, MGM NDTV 24X7, NDTV India, NDTV Good Times & NDTV Profit."

The basic fact of the matter is not in dispute.

The petitioner and the predecessor in interest of the respondent Star Den Network Pvt. Ltd. have entered into

agreements for supply of signals of the Star Group of Channels. The agreement entered into by and between the petitioner and Star Den Media Services Private Limited being dated 14.1.2010 expired on 31.12.2010.

The parties were said to have been negotiating for renewal of the agreement but admittedly no agreement has yet been executed. In terms of the said agreement, the petitioner was to retransmit the signals of the Star Den Channels for the areas mentioned in Annexure-B thereto. The monthly subscription amount payable, it is stated at the Bar was about Rs.3-5 crores per month. Concedingly from January, 2011 no payment has been made.

With effect from 1.7.2011 a joint venture agreement was entered into by and between Star Den Ltd. and Zee Turner Ltd. as a result whereof the petitioner has become entitled to supply of signals of both the Zee Group of channels and Star Group of channels.

So far as Zee Group of channels is concerned the petitioner has filed a large number of petitions. Orders in the interim matters in the said petitions have been reserved.

These petitions involve the Star group of Channels.

By reason of a notice dated 3.8.2011 the respondent sought to terminate the agreement purported to be in terms of Clause 4.1 of the Telecommunication (Broadcasting & Cable Services) Interconnection Regulation, 2004 (13 of 2004) as amended from

time to time (The Regulations), inter alia, on the premise that a sum of Rs.16,18,16,020/- is owing and due to it.

A public notice under Clause 4.3 of the Regulations was also published on or about 6.8.2011.

The petitioner by reason of a letter dated 13.8.2011 stated:

"5. As you are aware, that the amounts that we are paying so far are far in excess of the declared connectivity, as is also evident from the SLR's with you. Being a new entrant in the cable transmission business, we had agreed to the subscription fees on the basis of certain growth estimates and roll out plans which, unfortunately, have not been met. Consequently, we are in the most peculiar situation where our declared connectivity is far below the subscription fee/numbers, while the normal position is quite the reverse. To add to our troubles, we are plagued with phenomena of dual feeds where several of our operators are receiving multiple feeds, further impacting revenue.

6. As mentioned in our earlier letters enclosing the SLR's there is a huge mismatch between our subscription revenue and broadcaster pay outs resulting in cash losses to us every month.

7. It is in this backdrop and keeping in view the reality of the ground position that we have been requesting for signals and renewal on reasonable terms. We once again renew that request for down gradation.

8. You have also in your aforesaid letter raised an issue concerning some alleged outstanding payable to Star Den. In the light of what has been set out above, we have been repeatedly requesting Star Den for a down gradation for several months as our pay out to Star Den under the old agreement was illusory, in view of the enormous mismatch mentioned by us above. Even though Star Den was fully aware of the ground position it formally failed to address the

issue though, in recognition of the reality, it had not raised invoices for several months awaiting the crystallisation of the extent of down gradation that we are entitled to. However, these are old issues that concern Star Den which they shall resolve with us, especially, since, as we understand, old fiscal issues concerning Star Den are not the problems of Media Pro.

10. Be that as it may, as we have clearly indicated that we were, are and continue to be desirous of renewing our agreement in respect of both the Zee and Star bouquet on reasonable terms for which purpose all information is available with you. If any further information or clarification is needed we would be very happy to provide that as well as and in this context we request you to indicate to us the date, time and place that our representative can visit you to negotiate, settle and renew the agreements on reasonable terms."

The petitioner contends that its income from the subscription fees realized from the cable operators being not commensurate with the amount of subscription fee required to be paid to the respondent for supply of signals of Star Group of Channels, it had all along been asking for down gradation to which it is otherwise entitled to.

Mr. Arun Kathhpalia, learned counsel appearing on behalf of the petitioner would contend :

- (1) The petitioner had all along been ready and willing to renew the subscription agreements with the respondent on reasonable terms.
- (2) For the purpose of taking the negotiations to their logical conclusion, the parties should be directed to meet within a period of two weeks.

- (3) The petitioner is ready and willing to pay a sum of Rs.6.00 crores towards arrears without prejudice to its rights and contentions that it was entitled to down gradation with effect from 1.1.2011.

Ms. Pratibha M. Singh, learned counsel appearing on behalf of the respondent, on the other hand, urged:

- (a) The petitioner being a defaulter to the extent of about Rs.20.00 crores cannot be permitted to continue to obtain supply of signals despite expiry of the agreement; and
- (b) The petitioner has no existing legal right to obtain an order of injunction, the agreement having expired on 31.12.2010

The fact that the petitioner is a defaulter is not in controversy. Whether in the facts and circumstances of the case the petitioner would be entitled to down gradation with effect from 1.1.2011 is the only issue between the parties.

The question is as to whether a new agreement would be directed to be entered into upon compliance of the statutory provisions. In view of the provisions contained in Clause 11.2 of the Regulations the matter of renewal of agreement is a matter between the broadcaster and the Multi Service Operator. If upon holding detailed negotiations for such a long period namely two months prior to the expiry of the agreement till this date, the parties have not been able to arrive at any agreement, we are of

the opinion that no legal right can be said to be existing in the petitioner for obtaining an order of injunction.

Commercial difficulties faced by a Multi Service Operator cannot be a ground for grant of an equitable relief by way of injunction, particularly, in a case of this nature, where the petitioner cannot be said to have acted bona fide having not paid the due amount of subscription fee for more than eight months. Even if it be assumed that the petitioner has made some payment, a huge amount must have become payable to the respondent.

Mr. Kathpalia would contend that the respondent has not paid carriage fee to the extent of about Rs.7.00 crores. The petitioner prima facie is not entitled to an order of set off. Even if the said contention is accepted, still the petitioner would be bound to pay a huge amount to the respondent. The petitioner in a situation of this nature was, thus, liable to clear off the dues payable to the petitioner.

Keeping in view the provisions contained in the Second Proviso appended to Clause 8.1 of the Regulations the commercial terms of the agreement continued to apply to the parties.

It is one thing to say that the parties would themselves agree to commercial terms with retrospective effect but it is another thing to say that having regard to the statutory provisions, this Tribunal would pass an interim order refusing to consider the existing

commercial terms between the parties despite the clear mandate contained in Clause 8.1 of the Regulations.

For the reasons aforementioned we are of the opinion that the petitioner is not entitled to any equitable relief. The prayer for interim relief is rejected.



(S.B. Sinha)
Chairperson

(P.K. Rastogi)
Member

September 23, 2011
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