

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

Dated 9th August, 2012

PETITION No. 335(c) of 2011

God Father Communications ...Petitioner
Vs
Sun 18 Media Services North (P) Ltd. ...Respondent

BEFORE:

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

For Petitioner : Mr Vineet Bhagat, Advocate
Ms. Neha Jain, Advocate

For Respondent : Mr. Kunal Tandon, Advocate

JUDGMENT

P.K.Rastogi, Member

This petition has been filed as the respondent has rejected the application of the petitioner for supply of signals to its network. The petitioner is a Multi System Operator in Amritsar and the respondent is a broadcaster as defined under the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004. The petitioner has prayed for following reliefs:

- (i) Declare the action of rejecting the application for affiliation/request for grant of signals as wrong and illegal;
- (ii) Direct the respondent to sign Subscription Agreement with the petitioner, provide TV Signals to petitioner's Cable TV Network and also direct the respondent to supply of decoders boxes of channels of Bouquet-IA comprising of Colors, IBN 7, CNBC Awaz, IBN Lokmat and Bouquet- 2 comprising of MTC, Nick, VHI, CNBC TV and CNN IBN to the petitioner on reasonable terms and conditions.

2. The petitioner has submitted that it had sent a letter to the respondent in the year 2010 and a reminder on 1.4.2011 requesting the respondent to enter into subscription agreement with the petitioner. However, as no response was received from the respondent, a legal notice dated 8.4.2011 was sent to the respondent along with all the relevant documents with a request to supply the signals to the Cable TV network of the petitioner. The respondent vide letter dated 25.4.2011 sent an application form and asked the petitioner to send the duly filled application form along with all the relevant/requisite documents. Vide the same letter; the respondent also alleged that the petitioner was indulging in piracy.

The petitioner wrote a letter to the respondent on 19.5.2011, whereby it denied the allegations of piracy. At the same time, the petitioner sent the duly filled up application form along with all the required documents. The petitioner requested for Bouquet-IA comprising of Colors, IBN 7, CNBC Awaz, IBN Lokmat and Bouquet- 2 comprising of MTC, Nick, VHI, CNBC TV and CNN IBN. The petitioner also told the respondent that in case the respondent requires the presence of the petitioner for negotiating the terms of the agreement the petitioner would be glad to meet the respondent at the time and venue convenient to the respondent. The respondent instead of executing the agreement with the petitioner, rejected the request of the petitioner by raising some false and frivolous objections and has rejected the request for grant of signals vide its letter dated 17.7.2011.

3. On the other hand, the respondent submitted that the petitioner was not entitled for any relief on the ground of

- (i) Illegal and unauthorized retransmission of signals of the respondent's channels;
- (ii) Under-declaration of its subscriber base;
- (iii) Not having a valid Postal Registration Certificate; and
- (iv) Has not made a valid request in terms of Clause 3 and 9 of the TRAI's Interconnect Regulations.

4. According to the respondent, the petitioner was admittedly re-transmitting signals of various broadcasters and FTA Channels since 2009 and it cannot be said that the petitioner had only 700 subscribers in the entire city of Amritsar when the cable and satellite connectivity in the city of Amritsar must be atleast 1,00,000.

The address mentioned in the Postal Registration was 40, Majitha Road, Opposite Tung Bala Amritsar, whereas the address mentioned in the Application Form is Building No. 331/32, Opposite Tung Bala Gate, Majitha Road, Amritsar. This shows that the head end has either been sifted or wrong address is being provided.

The petitioner has not only failed to make a valid request as contemplated under the Regulations, but also has not provided the respondent with relevant information and documents necessary to execute a fresh Subscription Agreement as mentioned in the Application Form. The respondent pointed out following discrepancies in the Application Form provided by the petitioner:

- (i) Application Form is unsigned/ no seal of the company;
- (ii) Incomplete documents have been provided;

- (iii) Map showing the area is not the true and correct map, neither does it provide the correct picture of the Amritsar City. Its area of operation is not even counter-signed and is in contradictory to the SLR provided;
- (v) The application form does not contain the area of operation of the local cable operators. Supporting documents showing the agreement entered into between the parties are also missing. The petitioner has genuinely entered into contract with these operators and that the agreement is still subsisting;
- (vi) In reference to Point No. 18 of the Application, neither any figure has been mentioned any evidence has been submitted;
- (vii) Address of the cable operators are wrong and / or incomplete;
- (viii) Subscription Agreement has not be provided;
- (ix) Details in Annexure E are incomplete;
- (x) Details of infrastructure available has not been submitted;
- (xi) Bank Statement for the preceding 3 years, showing business viability of the petitioner;
- (xii) Subscription Agreement executed between the petitioner and LCOs taking feed from its network; and
- (xiii) Lay out of cable network including transmission overhead and under-ground cables, including optical fiber cables, used by the petitioner in the Amritsar Distt. has not been submitted.

5. The respondent contended that the petitioner has been unauthorizedly transmitting signals of the respondent channel since 2008-2009. The petitioner had admitted that in so far as transmission of Channel IBN 7 is concerned, the petitioner had duly purchased the set top box from the respondent sometimes in the year 2008-2009. The Channel "IBN 7" was "FTA" Channel at that time and the set top box was distributed by the Network 18 in Punjab on promotional basis. The petitioner further admitted that the said channel was being distributed by STAR DEN till 14th August, 2010 and it was Free-to-Air channel till that time and got converted into a pay channel on its transfer to the present respondent and the Decoder Box of the said channel continued to receive signals and inadvertently, it continued without any intimation from the side of the respondent. In fact, the petitioner has shown willingness to pay the respondent for this channel during which it continued to run on the petitioner's Network at the negotiated subscriber base and the petitioner would further subscribe to the same from the respondent on reasonable terms and conditions.

6. The learned counsel for the petitioner contends that the petitioner has not indulged in any piracy on conversion of free to air channel to pay channel, no notice has been served anytime by the respondent informing it about the change of status of IBN 7 from FTA to pay channel.

We would like to point out that no records has been produced before us to say that the respondent has informed the petitioner any time that IBN 7 has been converted into pay channel. In fact, once the 'free to air channel' was converted into pay channel, the respondent should have informed the petitioner and demanded the subscription amount for the said channel. If the petitioner was not willing to pay the amount for the pay channel it could have withdrawn the signals. The continuation of IBN 7 channel inadvertently in absence of any letter from the respondent cannot be termed as piracy. In any case the petitioner has agreed to pay the amount due for the period for which IBN 7 has been continued and has been converted to pay channel.

7. Regarding FIR No. 31 dated 13.7.2011 registered against the petitioner for illegally transmitting the channels of the respondent; the petitioner has produced the latest order of the High Court of Punjab and Haryana in Criminal Miscellaneous Petition NO. M. 22770 of 2011, which reads as under:

"vide order dated 28.7.2011, notice of motion was issued. Mr. Majoj Bajaj, Addl. AG, Punjab accepted notice on behalf of respondent No. 1 to 3.

Reply has not been filed till date.

Adjourned to 18.11.2011, however, subject to Rs. 15,000 as costs.

In the meantime, respondents No. 1 to 3 are directed not to register any case against the petitioner”

In view of this aspect, we are of the view that the respondent has failed to make out any case of piracy.

8. The respondent has pointed out that there is a difference in address on the Postal Registration Certificate of the petitioner and the Application Form submitted by the petitioner. While the Postal Registration Certificate shows the address as 40, Majitha Road, Opposite Tung Bala Gate, Amritsar, the address mentioned in the Application Form is Building No. 331/32, Opposite Tung Bala Gate, Majitha Road, Amritsar. Both the addresses are at Majitha Road, Opposite Tung Bala Gate but the building number shown are different. The petitioner has submitted that the building number shown in Postal Registration Certificate has been shown wrongly. We are of the opinion that the petitioner should have got the address corrected at the Postal Registration Certificate.

9. The respondent has pointed out that the petitioner has declared subscription base of 700 only in the entire Amritsar city having a population of about 12.50 lacs and the T.V. household would be around 1.5 lacs as per

formula accepted in the cable industry. The respondent has further pointed out that in the Petition No. 405(C) of 2010 in case of God Father Communications Vs. Star Den Media Services Pvt. Ltd. this Tribunal's order dated 21.4.2011 had noticed that the subscriber base of 700 was on a very low side and it must be at least 1800-2000. Further, in the growing industry the subscriber base will go up and will not reduce. Therefore, such large scale under-declaration will not make the petitioner deserve for getting signals from the respondent. The petitioner submitted that it had filed petition No. 240(c) of 2009 against MSM Discovery in 2009. A joint survey was conducted during the pendency of the petition and this Tribunal directed MSM Discovery to enter into subscription agreement with the petitioner on the basis of 700 subscriptions.

We have passed our order dated 21.04.2011 in Petition No. 405(c) of 2010, where we have noted the contention of the respondents saying that subscriber base of the petitioner is about 1800 to 2000. It was not the finding of the Tribunal as contended above by the respondent.

10. Other objections raised by the petitioner for rejecting the supply of signal was on the consideration of incomplete information supplied to the respondent. These include Application Forms not containing the Registration

number and the area of operation of the local cable operator and no Supporting document showing the agreement entered into between the parties.

The perusal of SLR submitted by the petitioner to the respondent shows that the name, address and area of operation and connectivity were shown clearly. The only missing link is the Registration number of the cable operator.

11. The respondent has also pointed out that the petitioner has not shown the direct connectivity. The petitioner stand is that it does not have any direct connectivity and it does not supply signals to the customers directly.

The respondent has pointed out some more missing information as shown at para 4 above.

12. Every broadcaster is obliged to supply signals to the multi system operators whenever requested on non-discriminatory basis in terms of clause 3.2 of The Telecommunication (Broadcasting & Cable Services)

Interconnection Regulation 2004 as amended from time to time. However, the distributor seeking signals from the broadcaster has to provide information to the broadcaster as required under Clause 9.2 of the regulation. We may read the relevant portion of the Regulation as:

"9.2 First agreement between multi system operator and broadcaster

In non-addressable systems, while executing an interconnection agreement for the first time between a multi system operator and a broadcaster the multisystem operator shall furnish a list of the cable operators who will be getting signals from its network along with their subscriber base. The parties to the agreement shall take into account the subscriber base of cable operators connected to the multi system operator while negotiating the subscriber base of the multi system operator. For the consumers proposed to be directly served by the multi system operator, the procedure as laid down in sub-clause 9.1 of this regulation shall be followed. "

13. The broadcaster has to satisfy itself that the signal seeker is genuine cable operator having Postal Registration Certificate and financial means to run business and repay the subscription amount to the content provider. The broadcaster has also to be satisfied that the business of the cable operator is running in accordance with the law and regulation in force like permission from the concerned authorities for laying the cable underground or overground. The signal seeker is bound to provide the information in terms of the regulations and aforementioned requirement of different laws.

14. We find that as required under Regulation 9.2 of The Telecommunication (Broadcasting & Cable Services) Interconnection Regulation 2004, the petitioner has provided the entire information like the name of the LCO, their addresses and area of operation. The application form of the broadcaster seeks information about the postal registration number of the LCO also but the petitioner has not supplied that information.

The broadcaster has taken a plea that the petitioner is indulging in piracy. The allegation does not seem to be based on any material placed before us.

15. The respondent while rejecting the request of the petitioner has simply indicated that the petitioner has under declared the subscriber base as Amritsar Town is a big Town with population of more than 12 lacs. We are of the opinion that the population of a place is not the only criteria for determining the subscriber base of the signal seeker it depends upon its actual connectivity. The respondent has not taken any efforts to verify the subscriber list of the LCO's and their subscriber base.

16. It seems that the broadcaster has not made any effective steps to negotiate with the petitioner specifically when the petitioner itself wrote to the broadcaster that it was ready to meet the respondent at the time and venue convenient to the respondent. The finalization of subscriber base does not depend upon the SLR submitted by the petitioner alone. The same has to be negotiated.

However, the petitioner is bound to supply all the relevant information relating to his business as sought by the respondent.

17. The respondent has rejected the application of the petitioner for supply of signals based on conjectures and reasons like piracy without any supporting document and under declaration based on imaginary criteria of population of the Town without verification of the list of LCO supplied by the petitioner. Therefore, the letter of respondent for rejection of supply of signal to the petitioner cannot be sustained.

18. For the aforementioned reasons, we are of the opinion that ends of justice will be met, if the following directions are issued :

(a) The petitioner shall supply the requisite details of its LCOs alongwith their names, address, connectivities and area of operation

as well as contact numbers and subscriber base within a period of two weeks from date so as to enable the respondent to verify the same. Such verification by the respondent shall be made within three weeks from the date of receipt of the said informations / documents.

(b) The petitioner shall supply the correct and updated Postal Registration Certificate for itself as also its LCOs within the aforementioned period.

(c) It would also supply other relevant informations relating to the pole permission obtained by it.

(d) The respondent would be at liberty to seek for any additional information which may be necessary to arrive at the correct subscriber base of the petitioner and as is required in terms of the regulations.

(e) The respondent would hold negotiations with the petitioner for arriving at a subscriber base upon its furnishing the aforementioned details.

(f) For an initial period of 3 months, the parties may enter into an agreement on a subscriber base of 1400. But for the petitioner, it

must undertake to pay the requisite subscription fees on a subscriber base of 1400.

19. It is expected that the parties shall enter into an agreement on the basis of consensus which would be arrived at as regards the subscriber base of the petitioner within a period of 8 weeks from date.

20. This petition is disposed of on the aforementioned terms without any order as to costs.

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

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

K.D./NC