

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**

**NEW DELHI**

**DATED 14<sup>th</sup> AUGUST 2012**

**Petition No.52 (C) of 2012**

Sree Konark Digital Systems Pvt. Ltd. ...Petitioner

Vs.

Sun 18 Media Services South Pvt. Ltd. ...Respondent

**Petition No.58 (C) of 2012**

Eswara Communications ...Petitioner

Vs.

Sun 18 Media Services South Pvt. Ltd. ...Respondent

**BEFORE:**

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

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

For Petitioners : Mr. Sharath Sampath, Advocate  
Mr. Manikya Khanna, Advocate

For Respondent : Mr. Nittin Bhatia, Advocate

**ORDER**

The Petitioners, Sree Konark Digital Systems Pvt. Ltd. and Eswara Communications herein are Multi System Operators, having

their respective areas of operation in the towns of Srikakulam and Vijayawada & Mangalagiri respectively.

2. At the outset we may notice that the Petitioner, Sree Konark Digital System Pvt. Ltd. as also one Sree Devi Communications Pvt. Ltd. filed petitions before this Tribunal on almost identical grounds against MAA Televisions Network Ltd.

Even the dates of request and other details necessary for disposal of these petitions are also identical.

We have dealt with the contentions raised by the parties therein by a judgment and orders delivered this date.

The findings of ours in the said decision shall *mutatis mutandis* apply in these cases also.

3. We may, therefore, notice only certain additional grounds raised in these petitions.

4. It is not in dispute that one I. R. K Raju, who also either in his individual capacity or a Managing partner of firm or a Director of companies registered and incorporated under the Indian Companies Act, 1956 commonly known as Sree Devi Enterprises, Vishakhapatnam; Sree Devi Master Media System, Vishakhapatnam; Sree Devi Enterprises, Kakinada and Sree Devi Digital Systems,

Rajahmundry has been running a business of cable operation apart from the Petitioners herein, namely, Sree Konark Digital Systems and Eswara Communications.

The said I. R. K Raju is the Managing partner of the Petitioner Company. The said concerns owe a huge sum to the Respondent herein by way of non-payment of subscription fees. According to the Respondent, whereas in the case of Sree Konark Digital System, it has now an outstanding of Rs.45,60,536/-; in the case of Eswara Communications, the outstanding is said to be Rs.6,61,324/-.

5. The relevant statements of accounts furnished by the Respondent in this connection are as under:-

<b>Network</b>	<b>Place</b>	<b>Outstanding dues</b>
<i>Sree Devi Enterprises</i>	<i>Vishakhapatnam</i>	<i>Rs.3,46,101.66/-</i>
<i>Sree Devi Master Media Systems</i>	<i>Vishakhapatnam</i>	<i>Rs.1,383,782.82/-</i>
<i>Sree Devi Enterprises</i>	<i>Kakinada</i>	<i>Rs.1,069,663.10/-</i>
<i>Sree Devi Digital Systems</i>	<i>Rajahmundry</i>	<i>Rs.1,760,988.52/-</i>
<b>Total Dues</b>		<b>Rs.4,560,536.10/-</b>

6. The Petitioners herein do not deny or dispute that the concerns named heretobefore defaulted in payment of subscription fees to the

Respondent herein. However, according to it the amount said to be due would be much less. It contends that the amount due to the Respondent, as would appear from various statements made by it varied, as would appear that in stead and in place of Rs.45,60,536.10p the Respondent in its reply claimed a sum of only Rs.27.00 lakhs which, again rose to a sum of Rs.36,61,103.75p. The Petitioners, however, do not deny or dispute their liabilities; only the quantum thereof is in issue.

7. It is also not denied and disputed that Shri I.R.K Raju is the Managing Partner of the Petitioner firm.

8. The Petitioners in support of its case have examined Shri Appana Srinivas, its Area Sales Manager, who in his cross examination admitted that a sum of Rs.6.00 to 7.00 lakhs is due to the Respondents from it. He furthermore stated that a sum of Rs.6.00 to 7.00 lakh is in dispute.

9. The question which arises for consideration is as to whether the same would come within the purview of the Proviso appended to Clause 3.2 of the Telecommunication (Broadcasting & Cable Services) Interconnections Regulations 2004 as amended from time to time.

We may notice the said provisions.

*“3.2 Every broadcaster shall provide on request signals of its TV channels on non-discriminatory terms to all distributors of TV channels, which may include, but be not limited to a cable operator, direct to home operator, multi system operator, head ends in the sky operator; [HITS operators and multi system operators shall also, on request, re-transmit signals received from a broadcaster, on a non-discriminatory basis to cable operators.]*

*Provided that this provision shall not apply in the case of a distributor of TV channels having defaulted in payment.*

*Provided further that any imposition of terms which are unreasonable shall be deemed to constitute a denial of request*

*Provided also that the provisions of this sub-regulation shall not apply in the case of a distributor of TV channels, who seeks signals of a particular TV channel from a broadcaster, while at the same time demanding carriage fee for carrying that channel on its distribution platform.”*

10. It is neither in doubt nor in dispute that Clause 3.2 of the Regulations having been made by way of restriction to freedom of contract between the parties, the same must receive a strict construction.

11. If the Proviso appended to clause 3.2 of the Regulations on its plain reading entitles the broadcasters not to supply any signals, once it is established that the signal seeker is a defaulter, clause 3.2 of the Regulations will have no application.

12. Mr. Sharath Sampath would contend that the Petitioner is ready and willing to pay the amount payable by it to the Respondents on reconciliation of the accounts.

13. We are, however, of the opinion that the said submissions of Mr. Sampath cannot be accepted for more than one reason. Firstly because in a case of this nature, it is not necessary for the broadcaster to plead and prove the exact amount due from the distributor of a TV channel and secondly because it is to merely to show that the signal seeker being a defaulter, it has no statutory obligation to supply signals to its network.

Once the broadcaster is relieved of its statutory obligations, the petition to enforce a right under clause 3.2 of the Regulations must fail as by reason of the 'Proviso' appended thereto, the Regulations itself shall not apply in regard to a defaulter.

14. If clause 3.2 of the Regulations has no application, the Petitioner must resort to the process of entering into a contract upon negotiation of the commercial terms.

In that view of the matter, the other subsidiary provisions of the Regulations as for example Clause 3.5 of the Regulations shall also not apply.

15. A signal seeker must be able to show that he is not a defaulter. In a given case, however, the signal seeker would be entitled to relief in the event it is shown that the defence raised by the Respondent broadcaster is sham or otherwise *mala-fide*.

16. We may notice that this Tribunal in Digicable Network India Pvt. Ltd. Vs. Star Den Media Services Ltd. disposed upon 2.2.2012, opined that the Clause 3.2 providing for a 'must provide' clause would not be applicable in the case of a defaulter.

17. The said provision had also been construed by this Tribunal in various decisions. We may take notice of some of them.

In Jak Communication Pvt. Ltd. Vs. Sun Distribution Services Pvt. Ltd. being Petition No. 151 (C) of 2010 disposed on 4.2.2011, it has been held as under:-

*“30. There cannot, therefore, be any doubt or dispute that this Tribunal, in exercise of its jurisdiction under Section 14 and 14A of the Telecom Regulatory Authority of India Act, 1997 (The Act) can issue any direction on such request made by the ‘Distributor of the*

*Telecommunication Services' only when it fulfils the statutory obligations in relation thereto. In terms of the provisions of the said Regulations, a 'Distributor of the Telecommunication Services' may ordinarily be held to have disentitled itself from obtaining supply of signals if the proviso appended to clause 3.2 of the regulations and/or clause 9.2 thereof are attracted.*

*31. It has, however, been held in a number of decisions that a 'Broadcaster' would be well within its rights to refuse to grant signal in the event a 'Distributor of the Telecommunication Services' has not fulfilled the obligations in terms whereof it would not be able to provide the supply of the signal of its channels on reasonable terms and on non-discriminatory basis.*

*See Shreedevi Enterprises Vs. Channel Plus, Petition No. 156 (C) of 2010.*

*32. It is, moreover, a trite law that the respondent cannot having regard to the statutory mandate, refuse and/or delay grant of supply of signals unreasonably. It cannot do so for an unauthorised purpose which would amount to acts of malice of fact. See W.B.S.E.B v. Dilip Kumar Ray reported in (2007) 14 SCC 568, Kalabharati Advertising v. Hemant Vimalnath Narichania (2010) 9 SCC 437."*

Yet again in Intermedia Cable Communication Pvt. Ltd. Vs. Taj Television Pvt. Ltd. being Petition No. 244 (C) of 2010, disposed on 15.4.2011, it has been held:-

*“47. It for reasons best known to it failed and/or neglected to do so. It is not a case where the petitioner did not have any SLR having regard to the fact that it had entered into contracts with various broadcasters. In terms of Regulations 9.2 of the Regulations even for the first connection, the names of link operators to whom the MSO intends to retransmit signals is required to be disclosed. Only in a case where no SLR exists, the MSO can adduce evidence including undertaking of a survey for the said purpose. This Tribunal has, in a number of decisions, held that for the purpose of obtaining signals from a broadcaster directly, the MSOs/LCOs must show that it is not a defaulter within the meaning of the provisions of the proviso appended to Clause 3.2. of the Regulations as also must comply with the statutory requirements contained in Regulation 9 thereof.”*

Similar is the ratio laid down in Harika Cable Vision Vs. ATP Network (Petition No. 400 (C) of 2010) and another being Petition No. 227 (C) of 2008 decided on 5<sup>th</sup> November, 2009.

18. Another question which has been raised by Mr. Sampath is that application for grant of pole permission before the concerned officer of the State Electricity Board would also amount to grant of permission.

In support of the said plea, reliance has been placed on a certificate issued by the Commissioner of the Municipality.

It reads as under:-

*“Dated: 29.2.2012*

*True Translation from Telugu to English*  
*Endowment*

*Sub:- Information about d.No. 11-31-1 is not in the limits of Madhurnagar colony of Srikakulam Municipal Corporation. Request Regarding.*

*Ref: - 1) Application of Sri Jallepalli Sridhar Rao*

*2) Remarks of Revenue Inspector.*

*Above Reference No.1 seeking the information regarding the existing of Door No.11-31-1 is in the limits of Madhura nagar colony or not of Srikakulam Municipal Corporation in the way of application.*

*As per Ref.(2) Revenue Inspector has confirmed in written that D.No. 11-31-1 is not in the Madhura nagar colony.*

*Hence informed that D.No. 11-31-1 is not in Madhuranagar colony.*

*SD/-*  
*Commissioner*  
*Srikakulam Municipal Corporation*

*To :- Sri Jallepalli Sridhar Rao*  
*Srikakulam”*

19. We do not see any force in the said contention.

20. We have noticed heretofore, a decision of this Tribunal in Sree Devi Enterprises Vs. Channel Plus being Petition No. 156 (C) of 2010, which runs counter thereto.

21. In that case as also in several others, directions were issued to the broadcasters to supply signals to the network of the signal seeker subject to production of the permission granted by the concerned statutory authority or the electricity undertaking, as the case may be.

22. For the reasons aforementioned these petitions are dismissed. The Petitioners upon clearing off their dues, however, may approach the Respondent again for supply of signals of its channels.

23. In the facts and circumstances of the case, there shall be no order as to cost.

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

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

*HKC/*