

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**

**NEW DELHI**

**Dated 3<sup>rd</sup> December, 2012**

**Petition No. 827 (C) of 2012**

Sree Devi Digital Systems (Anakapalle) ...Petitioner

Vs.

MSM Discovery Pvt. Ltd. ...Respondent

**Petition No. 828 (C) of 2012**

Sree Konark Digital Systems (Srikakulam) ...Petitioner

Vs.

MSM Discovery Pvt. Ltd. ...Respondent

**Petition No. 829 (C) of 2012**

Sree Devi Digital Systems (Tuni) ...Petitioner

Vs.

MSM Discovery Pvt. Ltd. ...Respondent

**Petition No. 830 (C) of 2012**

Sree Devi Digital Systems (Vizianagaram) ...Petitioner

Vs.

MSM Discovery Pvt. Ltd.

...Respondent

**Petition No. 831 (C) of 2012**

Sree Devi Digital Systems (Rajahmundry)

...Petitioner

Vs.

MSM Discovery Pvt. Ltd.

...Respondent

**Petition No. 832 (C) of 2012**

Eswara Communications (Vijaywada)

...Petitioner

Vs.

MSM Discovery Pvt. Ltd.

...Respondent

**Petition No. 833 (C) of 2012**

Vijay Communications (Krishna)

...Petitioner

Vs.

MSM Discovery Pvt. Ltd.

...Respondent

**Petition No. 834 (C) of 2012**

Sree Devi Enterprises (Kakinada)

...Petitioner

Vs.

MSM Discovery Pvt. Ltd.

...Respondent

**BEFORE:**

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

For Petitioner : Mr. Jayant K. Mehta, Advocate  
Mr. Sharath Sampath, Advocate

For Respondent : Mr. A.C. Mishra, Advocate  
Ms. Vidya Prabhakaran, Advocate

**ORDER**

Petitioners in these petitions are a Multi Service Operators and the Respondent is a Broadcaster/Content Aggregator as described under the Regulations.

2. Petitioners claimed that after the long process of negotiations between the parties, the commercial terms of the Subscription Agreement were settled and the parties entered into a Subscription Agreement dated 14.9.2012 for the period 01.10.2012- 31.12.2012.

3. On 25.9.2012, the IRD boxes were supplied to the Petitioner in all matters except in Petition No. 833 (c) of 2012 and the payment for IRD Boxes was also made to the Respondent on 11.10.2012. According to the

Petitioner, an advance of Subscription Amount of three months for the months of October, 2012, November, 2012 and December, 2012 was paid on 14.9.2012 at the time of execution of the agreement but the Respondent has not yet activated the IRD boxes. Therefore, the Petitioner has filed these petitions inter-alia for the following reliefs:-

- (i) Direct the Respondent to activate the decoder boxes of its channels issued to the Petitioner;
- (ii) Direct the Respondent to provide counter signed copy of the Agreements.
- (iii) Direct the Respondent to enter into a fresh agreement with the Petitioner from the date of expiry of the period of three months on the same terms and conditions.

4. In its interim prayer, the Petitioners requested to direct the Respondent to activate the decoder boxes of its channels pending final hearing in the matter.

5. The Respondent asked time to seek final instructions and time to file a short reply. When the matter was called for hearing on the interim matter on 23.11.2012, the Respondent did not file the reply, however, he argued on the interim matter.

6. Mr. Jayant Mehta, learned counsel appearing on behalf of the Petitioner brought to our notice the copy of the agreement signed on 14.9.2012. The agreement shows the document number as well as period of validity starting from 01.10.2012 to 31.12.2012. The validation form shows the monthly amount to be paid to the Respondent.

7. However, Mr. A. C. Mishra, learned counsel appearing on behalf of the Respondent pointed out that these agreements have not been signed by the Respondent. It is noticed that these agreement have been signed only by the Petitioners. The counsel has shown the payment of subscription amount dated 14.9.2012 for three months by way of post-dated cheques of 31.10.2012, 30.11.2012 and 31.12.2012 for an amount of Rs.54,836/- in Petition No 827 (C) of 2012. This paper is at page 31 of the paperbook, which shows that the distributor of the Respondent has received the same.

Similarly a document dated 25.9.2012 has been shown which shows that IRD boxes has been supplied to the Petitioner where the distributor of the Respondent as well as the Petitioners have signed.

8. The Petitioner has reminded the Respondent on 5.11.2012 wherein the Respondent was requested to activate the IRD boxes as well as return the counter-signed copy of the agreement signed between the parties on 14.9.2012.

9. The Respondent was reminded again on 12.11.2012. The Respondent has produced a chart before us about these petitions.

We may reproduce the letter dated 5.11.2012 as under:-

<b>S.No.</b>	<b>Petition No.</b>	<b>Nature of Firm</b>	<b>Status of P&amp;T Certificates</b>
1.	827 (C) of 2012	Sole Proprietary	Expired on 31.7.2012
2.	828 (C) of 2012	Partnership	Expired on 13.6.2012
3.	829 (C) of 2012	Sole Proprietary	Expired on 15.7.2012
4.	830 (C) of 2012	Sole Proprietary	Valid till 2.3.2013
5.	831 (C) of 2012	Sole Proprietary	Valid till 16.3.2013
6.	832 (C) of 2012	Partnership	Expired on 27.10.2012
7.	833 (C) of 2012	Partnership	Valid till 18.6.2013
8.	834 (C) of 2012	Partnership	Expired on 09.10.2012

10. Mr. A.C. Mishra, learned counsel contends that the subscription amount has not been signed by the Respondent, therefore, the agreement copy produced by the Petitioner is not binding on it. In Petition No. 827 (C) of 2012, No. 828 (C) of 2012, No. 829 (C) of 2012, No. 832 (C) of 2012 and Petition No. 834 (C) of 2012, there is no valid postal certificate as on date. Similarly, the Petitioners in Petition Nos. 828 (C) of 2012, 832 (C) of 2012, 833 (C) of 2012 and 834 (C) of 2012 are the partnership firms but registered partnership deal has not been filed. Therefore, the Petitioners are not entitled for the activation of the IRD boxes.

11. Mr. Mehta, learned counsel has pointed out that although these petitions has been filed on 19.11.2012, the Respondent has chosen to send an e-mail to the Petitioner on 22.11.2012 after filing of these petitions. This e-mail does not mention anywhere that the agreement between the party has not been executed. The Respondent has raised an issue of Postal Registration Certificate for the first time. Mr. Mehta, submits that he is ready to submit the Postal Registration Certificate immediately to the Respondent wherever period of registration has expired.

12. Mr. Mishra, learned counsel later agreed that the Respondent will activate the IRD boxes of the Petitioners in the petitions having valid Postal Registration Certificates. However, he has a strong objection for activation of those IRD boxes wherever the partnership firm has not been registered as according to him, it is necessary that partnership firm should be registered as required under Section 69 of the Indian Partnership Act, 1932.

13. Mr. Mehta, has brought to our notice that Section 69 of the Indian Partnership Act, 1932 is not applicable in these cases, as the distributor of TV channel means any person including an individual and group of persons, public or body corporate firm or any organization.

14. Mr. Mehta has also brought to our notice a judgment of this Tribunal dated 27.7.2011 in Petition No. 67 (C) of 2009 and in judgement dated 14.8.2012 in Petition No. 50 (C) of 2012 and 51 (C) of 2012 wherein it was held that Section 69 of the Indian Partnership Act is not applicable for supply of signals to the cable operators.

15. In view of our clear findings in various judgements, prima-facie, I am of the view that Section 69 (2) of the Indian Partnership Act is not applicable in these cases, where the Petitioners seek signals of the Respondent.

16. Therefore, in view of the aforementioned reasons by way of interim order, it is directed that Respondent will activate the IRD Boxes supplied to the Petitioner within a period of three days from the date.

However these orders will be without prejudice to the rights and contentions of parties and is subject to any other or further orders.

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

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