

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

Dated 16th February, 2012

**Petition No.17(C) of 2012
(M.A.No.21 of 2012, M.A.No.29 of 2012)**

Bimu Cable TV Network ... Petitioner
Vs.
Digi Jodhpur Network Pvt. Ltd. ... Respondent

**Petition No.2(C) of 2012
(M.A.Nos.12 & 19 of 2012)**

Ronak Cable ... Petitioner
Vs.
Digi Jodhpur Network (P). Ltd. ... Respondent

BEFORE:

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

Petition No.17(C) of 2012

For Petitioner : Mr.Vikram Mehta, Advocate
Mr.Arjun Natarajan, Advocate

For Respondent : Mr.K.Datta, Advocate
Mr.Diggaj Pathak, Advocate

For Media Pro Enterprise India Pvt. Ltd.: Mrs.Prathiba M. Singh, Advocate
Mr.Vadivelu Deenadayalan, Advocate
Mr.Upender Thakur, Advocate

For Sun 18 Media Services North Private Ltd. : Mr.Kunal Tandon, Advocate

For MSM Discovery Pvt. Ltd. : Mr. Nitin Bhatia, Advocate

DEN Networks Ltd. : Mr.Vibhav Srivastava, Advocate

Digi Cable Network India Pvt. Ltd. : Mr.Pragyan Sharma, Advocate

Petition No.2 (C) of 2012

For Petitioner : Mr.Vikram Mehta, Advocate
Mr.Arjun Natarajan, Advocate

For Respondent : Mr.K.Datta, Advocate
Mr.Diggaj Pathak, Advocate

ORDER

These petitions by two local cable operators operating in the town of Jodhpur, have been filed inter-alia for a direction upon the Respondent to supply signals of its channels to the Petitioner's network in terms of the respective Interconnect Agreements, one of them being dated 01.01.2011.

The interim prayer has been made only to the following effect :-

“Pass an order directing the Respondent to immediately restore the signals of Zee and Star Channels to the Petitioner's Network and not to disconnect signals of any channels being provided to it under the Interconnection Agreement dated 1.1.2011 till the pendency of the present petition.”

2. Respondent No.1 is a joint venture company of Digi Cable Network

India (P) Ltd. having 51% share and Akshat Entertainment Private Ltd. having 49% share represented through one Mr. Karni Singh.

He was authorized to operate the network of the Respondent.

Disputes and differences having arisen between the said shareholders, the majority shareholders passed a resolution withdrawing the authority given to Shri Karni Singh to operate the said company.

It is now not in dispute that Digi Cable Network India Pvt. Ltd. had served a notice upon various Broadcasters in respect of its subscribers in the town of Jodhpur on the premise that it was not economically viable for it to operate in the said area.

3. Pursuant to or in furtherance of the said public notice dated 18.12.2011, Media Pro Enterprise India Pvt. Ltd., the content aggregator of Zee Group of Channels and Star Group of Channels disconnected transmission of signals to the Petitioner's network. It appears that Sun 18 Media Services North Pvt. Ltd. also disconnected the supply of its signals on 10.01.2012.

In the case of Ronak Cable (Petition No.2(C) of 2012), having regard to the fact that prima-facie it appeared to this Tribunal that a public notice has been published by Digi Cable Network India Pvt. Ltd. and not by the Respondent, it was restrained from disconnecting the Petitioner's network by an order dated 06.01.2012.

4. In the case of Bimu Cable T.V. Network however, no interim order was passed.

The matter was heard at some length on 13.01.2012.

5. Mr. Vikram Mehta, learned counsel appearing on behalf of the petitioner, however, sought leave of this Tribunal to file applications for impleadment of the concerned Broadcasters as also Den Network Pvt. Ltd, another Multi Service Operator operating in the town of Jodhpur.

Notices of the said Misc. Applications have been served upon the Broadcasters as also the said Den Network Pvt. Ltd. They have filed short replies.

6. Apart from the aforementioned parties, who are sought to be impleaded, Mr. Gaurav Juneja, learned counsel also appeared for Shri Karni Singh.

7. Mr. Mehta would contend that Sun 18 in its reply having categorically admitted that Respondent entered into an agreement in respect of one of the channels, namely 'Disney Channel', it should be directed to continue to supply signals thereof. It was furthermore

contended that so far as MSM Discovery is concerned, agreements having been entered into by and between the said Broadcaster and the Respondent, it must be held that it is liable to continue to supply the signals of its channels to the Petitioner's network.

8. Ms. Prathibha M. Singh, learned counsel appearing on behalf of Media Pro Enterprises Pvt. Ltd., on the other hand, urged that the agreement by and between the MSO and her client, has expired and a sum of Rs.1.47 crores is due from Digi Cable Network India Ltd.

9. Mr. Kunal Tandon, learned counsel appearing on behalf of Sun 18 Media Services North Private Ltd. urged that the cable operator(s) having no privity of contract with the Broadcasters, they cannot be impleaded as parties in this petition.

10. Mr. Nitin Bhatia, learned counsel appearing on behalf of MSM Discovery would urge that on the ground of default, a notice has already been served on the Respondent in terms of Clause 4.1 of the Regulations. Public Notices have also been published in two newspapers and supply of signals would be discontinued on the expiry of 21 days from the date of

publication of the said notice.

11. Having heard the learned counsel for the parties, this Tribunal is of the opinion that it has no jurisdiction to enter into a dispute between the shareholders inter-se, so far as the Respondent-Company is concerned. The aggrieved parties may, therefore, approach the competent court with regard thereto.

12. It is also not in dispute that there is no privity of contract by and between the Petitioners and the Broadcasters. Petitioners, if they so desire, may make appropriate request to the Broadcasters for supply of signals to their network directly, which we are sure, shall be considered by them on their own merits.

We are of the opinion that the Broadcasters (Media Pro Enterprise India Pvt. Ltd. & Ors., MSM Discovery India Pvt. Ltd. & Ors. and Sun 18 Media Services North Pvt. Ltd. & Ors.) are neither necessary nor proper parties to this petition.

13. So far as Den Network Ltd. is concerned, Mr. Vibhav Srivastava, learned counsel appearing on its behalf, contended that the said

company does not carry any operation in the town of Jodhpur but one of its subsidiary company does.

The application for impleadment of the said MSO has been filed on the premise that only it and the Respondent having been operating in the town of Jodhpur; the Petitioners cannot succumb to the arbitrary and excessive demand of subscription fee by it keeping in view the agreement entered into by and between the parties hereto.

This Tribunal is of the opinion that it has no jurisdiction to direct the said Den Network Ltd. or its subsidiary company to enter into a franchise agreement on the same terms & conditions, on which the parties hereto had entered into the agreements.

14. It may be noticed that the Respondent in its short reply, inter-alia, contended that Mr. Karni Singh representing Akshat Entertainment Pvt. Ltd. did not make any investment and moreover deliberately entered into agreements with the LCOs at low pay outs and, thus, it is not economically viable for the company to carry on its operation in the town of Jodhpur and, thus, it intends to close down its business.

The said contention of the Respondent is denied and disputed by Mr. Juneja. The said disputed question also cannot be, in our opinion, determined in this petition.

15. We have noticed heretofore that interim prayer made by the Petitioner was limited to Star Group of channels and Zee Group of channels. It is not in dispute that Media Pro had entered into agreements with Digi Cable for supply of its signals on a Pan India basis including the town of Jodhpur. The said agreement having come to an end, we are of the opinion, the interim prayer made by the Petitioner cannot be allowed.

16. Mr. Vikram Mehta, however, has drawn our attention to an additional affidavit filed on behalf of the Petitioner, from a perusal whereof it appears that a contention has been raised therein that Sun 18 Bouquet including the channels 'Colors', 'Nick' etc. have been disconnected without any notice, whatsoever.

It is again not in controversy that except 'Disney Channel', an agreement has been entered into by and between the said Broadcasters and the Respondent herein on pan India basis.

In absence of any prayer, no such direction, in our opinion, can be issued.

MSM Discovery being not a party in this proceeding and it having itself served a notice under Clause 4.3 of the Regulations, no interim order can be issued on the basis of the statement made in the Additional Affidavit.

17. Respondent has made allegations of manipulation of documents. It is stated that perusal of the franchisee agreement entered into by and between the parties would show that 'attestation of the same to be a true copy' has been made even prior to the execution of the document.

18. From the invoices served upon the Petitioners, it appears that the demand for a sum of Rs.20,000/- per month has been made, although in the statement of accounts of the Respondent, debit amount of Rs.40,000/- per month has been shown.

In the case of Ronak Cable, however, the invoiced amounts tally with the statement of accounts.

19. The said contention of the Respondent, in our opinion, will be gone into only at the time of the trial.

20. Petitioners have made out a prima-facie case only in respect of 'Disney Channel'.

Disney Channel is not a product of the Star or Zee Group of channels. Continuation of signals in respect of one channel only, in our opinion, would not be justified in the facts and circumstances of this case.

21. It is true that the Respondent is a separate juristic person. It may also be true that in terms of the Regulations, it as a separate legal entity ought to have issued a notice in terms of Clauses 4.1 and 4.3 of the Regulations.

22. We, however, cannot lose sight of the ground realities.

A local cable operator ordinarily supplies a large number of channels to its subscribers. For such purpose only, it enters into a franchise agreement with a Multi Service Operator.

If Media Pro Enterprises India Pvt. Ltd. discontinued supply of signals on the ground of default of the Respondent and/or its holding company, the Respondent must be held to be incapable of continuing to supply signals to the local cable operators.

We have noticed heretobefore that no prayer has been made nor could be made for issuance of a direction upon the Broadcasters to continue supply of signals.

MSM Discovery, as noticed heretobefore, has acted independently. It has served notices both under Clauses 4.1 and 4.3 of the Regulations.

23. Sun 18 Network North Ltd. is also not a party before us.

24. It may be true that it is conceded that so far as Disney Channel is concerned, the agreement had been entered into by and between it and the Respondent, but as noticed heretobefore, no such prayer has been made in the petition.

25. A person, it is well settled, cannot be directed to perform a contractual obligation, which he is otherwise incapable to perform. In the peculiar facts and circumstances of this case, therefore, we are of the opinion that the balance of convenience does not lie in favour of grant of injunction.

26. Mr. K. Datta, learned counsel appearing on behalf of the Respondent, would contend that the contracts by and between the parties hereto have frustrated.

Reliance in this behalf has been placed on *Satyabrata Ghosh Vs. Mugneeram Bangur & Co. and Anr.* 1954 SC 44.

As at present advised, we need not enter into the said question, although prima-facie it appears that supply of signals in the facts and circumstances of this case, may not be held to be physically impossible.

27. Petitioner, in the alternative, has also prayed for grant of a decree for damages against the Respondent.

28. In that view of the matter, in the event of success, the Petitioner can be compensated on monetary terms.

29. Moreover, the prayer for injunction made on behalf of the Petitioner being a limited one, no fruitful purpose would be served by directing the Respondent to continue to supply only one of the channels namely 'Disney Channel' to the Petitioner's network.

Petitioners, furthermore, have brought the said fact on record only by way of an additional affidavit. The petitions as such, have not been amended.

30. For the reasons aforementioned, M.A. No. 21 of 2012 and M.A. No.29 of 2012 in Petition No. 17 (C) of 2012 are dismissed leaving the parties to avail appropriate remedies before a competent Court of Law.

The prayer for interim injunction is refused.

Hearing of this petition shall, however, be expedited.

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(S.B. Sinha)
Chairperson

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(P.K. Rastogi)
Member

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