

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

DATED 2nd February 2012

PETITION No.172(C) of 2011

M/s Amar Cable Entertainment Pvt. Ltd. ...Petitioner
Versus
ESPN Software India Pvt. Ltd. ...Respondent

BEFORE:

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

For Petitioner : Mr. Rabin Majumdar, Advocate
For Respondent : Mr. N. Ganpathy, Advocate

ORDER

This petition has been filed to direct the Respondent Company to supply its signals to the petitioner.

2. The Petitioner Company is a registered Cable television service Operator and has been running a Cable Television Network Operator business since 29.05.2007. The respondent is a broadcaster.

3. According to the Petitioner, it had issued written request to the Respondent Company on 18.12.2010 for providing Decoder Boxes and

Signals of ESPN group channels and again reminded the respondent for the same as it did not receive any response from it. Initially, it was having 2345 subscribers but the subscriber base has been reduced to 1490 as it did not receive the ESPN Network's channels. It has already submitted true copies of :

- a) Certificate of Incorporation issued by R.O.C., W.B.,
 - b) Postal Registration Certificate issued by the Head Post Office of Siliguri, W.B
 - c) Certificate of Enlistment issued by the Siliguri Municipal Corporation, Siliguri, W. B.
 - d) Registration Certificate issued by the Central Excise Department
 - e) Details of the equipments used by the Petitioner Company for the transmission,
 - f) List of the sub-cable operators under the Petitioner Company,
 - g) Map of the area
 - h) List of subscribers/ customers of the Petitioner Company,
4. The respondent has filed a short reply wherein it has submitted that the petitioner did not make any request to the respondent to provide its signals as stated. The petitioner also failed to provide material information requested for by the respondent pursuant to the interim direction dated 24.03.2011 for a meeting between the parties

passed by this Tribunal. The respondent denied the receiving of letter dated 18.12.2010 and reminder dated 20.01.2011 also. Therefore, the present petition is pre-mature and not maintainable.

5. The petitioner has filed Certificate of Incorporation under the Companies Act issued by R.O.C., W.B. and Postal Registration Certificate with Registration No. 103 dated 16.06.2010 issued by the Head Post Office of Siliguri, W.B. It has also filed Registration Certificate issued by the Central Excise Department, which is related to Service Tax.

6. Annexure P-6 at page 17 of the paper book shows a list of sub cable operators wherein it mentions 21 franchisee names, address and declared subscribers base alongwith area of operation. The list of subscriber base shows the name of 1490 persons. A perusal of the same shows the names and address of the subscribers. However, in the column of address only Siliguri or Siliguri and adjoining is mentioned against the name of the subscriber. It did not show detailed address of these persons and cannot be verified by the respondent.

Similarly, list of the sub cable operators, although shows the column of the names and addresses and area of operation, but it mentions only ward or area. It does not give their detailed address where it can be easily identified.

7. Although, the respondent has taken a stand that it did not receive the request letter and the reminder from the petitioner for supply of signals, we had directed both the parties to have a meeting. The meeting between the petitioner and the respondent took place on 30.03.2011 where according to the minutes of the meeting some of the documents were handed over by the petitioner to the respondent but representatives of the respondent have asked for additional information on the documents supplied and some more documents to be submitted. We may read the minutes of the meeting:

"This has reference to Hon'ble TDSAT order dated 24.03.2011, and the meeting we had in our Kolkata Office today.

Today's meeting was attended by the following persons :

1. *Mr. Prabir Choudhury – Director, Aamar Cable Entertainment Pvt. Ltd.*
2. *Mr. Raju Sarkar – Director, Aamar Cable Entertainment Pvt. Ltd.*
3. *Sanjay Das – Associate Director, ESPN Software India Pvt. Ltd.*
4. *Sanjay Saraf – Proprietor, Dati Corporation*

During the course of discussions the following documents were handed over :

- 1. List of subscribers (only names)*
- 2. Copies of your Memorandum and Articles of Association*
- 3. Certificate of registration as a cable operator*
- 4. Service tax no. and PAN no.*
- 5. proposed area of operation*
- 6. Certificate of Enlistment issued by Siliguri Municipal Corporation*

Representatives of ESPN conveyed the following to the representatives of Aamar Cable Entertainment Pvt. Ltd. :

- 1. ESPN has requested for some time to verify the submitted documents.*
- 2. It is not possible to verify the subscriber details based on the list provided by Aamar Cable which contains only names. Hence, ESPN has requested for complete list of direct subscribers of Aamar Cable with their names and detailed addresses.*
- 3. Aamar Cable also needs to furnish complete list of subscribers of all their feed holders with their names and detailed addresses.*
- 4. Aamar Cable also needs to submit Income Tax returns of the last three years.*
- 5. Aamar Cable also needs to submit Balance sheet of the last three years.*

Upon receipt of all the required documents from Aamar Cable, ESPN will verify the same and conduct surveys, if required, to take the discussion further.

Through this letter, we request you to submit the required documents listed above"

8. The petitioner sent a list of subscribers with full names and address on 29.04.2011 to the respondent. However, the respondent again on 05.05.2011 requested for further information which may be

read as :

"We are in receipt of your letter dated 29.04.2011 and have noted the contents therein.

Through our letter dated 30.03.2011, we had requested for the following details :

- 1. Complete list of your direct subscribers with their names and detailed addresses.*
- 2. Complete list of subscribers of all your sub operators/feed holders with their names and detailed addresses.*
- 3. Income Tax returns of the last three years.*
- 4. Balance sheet of the last three years.*

However, alongwith your letter dated 29.04.2011, you have enclosed a list of 1490 subscribers containing their names and locality only, which is impossible to verify in case a door to door survey is required. Through this letter once again we request you to submit all the documents mentioned above. It is imperative, while providing address you should give details of door no., house no. road no. road name, area, town and pin code.

Upon receipt of all the required documents we shall verify the same and conduct surveys, if required, to take the discussion further."

9. The counsel for the petitioner contended that a joint survey conducted by the Advocate Commissioner in the Case of petitioner and MSM Discovery where the Commissioner held that the subscriber base was 1508. The learned counsel for the respondent objected to this saying that ESPN is not concerned with the joint survey conducted in any third party case.

However, it is noticed that that the commissioner's report in Petition No. 45(C) of 2010 has been set aside by this Tribunal order dated 15.11.2011. Therefore, it cannot be relied upon.

The respondent further submitted an additional affidavit on 03.10.2011 where it pointed out that the respondent has conducted the verification of the SLR supplied by the Petitioner. According to its report, there were about 23 cable operators with 1540 declared sub-base as on 30.08.2011. According to its verification as per ground level survey, the actual connectivity was 18548. The Petitioner has questioned the veracity and reliability of this report as only true copy has been submitted.

10. I am of the view that the main question of dispute between the parties is related to subscriber base; while the petitioner insist the subscriber base as 1540, the counsel of the Respondent contends that the subscriber base is much higher.

11. I am of the view that interest of justice will be sub-served if I issue directions on similar lines as in Petition No. 379(c) of 2011 between the petitioner herein and MSM Discovery Pvt. Ltd. issued today. Accordingly, I direct that the respondent will supply the signals

to the petitioner's network on subscriber base of 2500 for a period of three months. The joint survey will be conducted within a period of one month from date. The actual subscriber base shall be determined on the basis of joint survey and on the basis of negotiations held in terms thereof.

12. Put up this matter again on 04.05.2012 for further orders.

/NC/

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(P.K. Rastogi)
Member