

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

Dated 30th January 2012

**PETITION No. 266(c) of 2011
(M.A.No.187 of 2011)**

Varadraj Cable Network, ...Petitioner
Vs
Star Den Media Services Pvt. Ltd.& Anr. ...Respondents

BEFORE:

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

For Petitioner : Mr.Jayant K. Mehta,Advocate
Mr. Tejveer Singh Bhatia,Advocate
Mr.Surendra Kumar,Advocate

For Respondent – Media Pro : Mr.Saurabh Srivastava,Advocate

JUDGMENT

This petition has been filed by the petitioner under Clause 3.2 of the Telecommunication (Broadcasting and Cable Services Interconnection) Regulation 2004 dated 10.12.2004 (as amended) praying for directing the respondent to provide signals of its TV channels to the petitioner on equitable, reasonable and non-discriminatory terms and conditions.

2. The petitioner is currently an MSO. According to the petitioner, it had an agreement with M/s. Wire & Wireless India Ltd., whereunder it was supplying signals of various broadcasters including the respondent on its HITS platform. As signals were stopped from 31.3.2010 by M/s. WWIL, the petitioner requested the respondent for supply of TV channels for the first time on 09.09.2010 and again reminded on 02.11.2010. The respondent offered its channels for a monthly subscription fee of Rs. 15 lakhs vide its letter dated 8.11.2010 for its bouquet of channels.

3. According to the petitioner, its subscriber base was merely 800 subscribers and as the figure of Rs. 15 lakhs was entirely inflated, it wrote a letter on 09.12.2010 to the respondent and requested it to negotiate the subscriber base taking into consideration the current network of the petitioner. It further submitted that it had supplied all the requisite information sought by the respondent in its letter dated 01.02.2011 through petitioner's letter dated 17.03.2011 and sent reminder of the same on 24.04.2011 but respondent has not given any response to it so far.

4. On the other hand, the respondent submitted that the documents filed by the petitioner are intended to misrepresent this Tribunal on the actual contents of the letters of the Petitioner and to mislead this Tribunal by fabricating the documents. In fact, the petitioner vide its letters dated 8.09.2010 and 2.11.2010 represented to the Respondent that it has been catering to a subscriber base of more than 1500, which later increased to more than 3000 subscriber base and subsequently increased to a whopping number of more than 5000 subscriber numbers. The Petitioner admittedly furnished no documents or information as required under the Regulations.

5. The Respondent as early as in November 2010 vide its letter dated 08.11.2010 offered signals for a monthly subscription amount of Rs. 15,00,000/- (exclusive of taxes) at 15,000 subscribers to start with the negotiations. The petitioner is not exempted from complying with the requirements as stipulated by the Regulations which are mandatory in nature. In fact, the petitioner did not furnish various documents alongwith its letter dated 17.03.2011 but disclosed them only alongwith this petition for the first time.

6. The Petition vide its letter dated 09.12.2010 falsely claimed that its subscriber base had reduced to 800 subscribers from 5000 contrary to its earlier representations.

7. The contention of the petitioner is that he has supplied all the information and filed all the documents as required under the regulations by its letter dated 17.03.2011. The relevant portion of the said letter reads as under :

“10. With reference to para 10, we are enclosing hereto following information sought by you :

- (a) Valid and subsisting postal certificate
- (b) Details of SLR as per our local survey
- (c) List of cable operators
- (d) Copy of the latest monthly invoices which will demonstrate that we have to receive payments from WWIL HITS. We owes no o/s dues to any MSO.
- (e) Details of your exact area of operation
- (f) Details of you exact area of operation on a Map
- (g) Entertainment Tax details and return filed with Income Tax Authorities.”

On the aspect of subscriber base, the petitioner has mentioned that it had around 1000 subscribers and also it had the potential to increase the subscriber base but due to delay in providing the signals by respondent, its subscriber base has been reduced from 1000 to 800

subscribes only and that the petitioner had suffered huge loss.

8. The respondent has opposed this petition on certain technical aspects saying that this petition is not maintainable on the ground that the petitioner has not supplied all the information and documents as required under the regulation. Although, the respondent has raised the issue that the petitioner had requested on 08.09.2010 and reminded on 02.11.2010 for issuance of Star Turner Channels etc. The petitioner has said that there was a typing mistake to that extent.

However, the respondent has taken a substantial stand that the petitioner has resorted to under declaration and the SLR submitted by the petitioner is not verifiable and full information has not been supplied as required for the verification of the subscribers.

9. I have been informed that the petitioner has filed number of other petitions for supply of signals to it from other broadcasters like Sun TV(Petition No. 265(c) of 2011), MSM Discovery (Petition No. 267(c) of 2011). Petition No. 265(c) of 2011 was withdrawn by the petitioner and Petition No. 267(c) of 2011 was disposed of by an order

dated 27.07.2011.

The respondent while arguing this petition submitted that in Petition No. 265(c) of 2011 which was withdrawn, the petitioner has agreed with Sun TV for an agreement for an amount of Rs. 4,04,433/- per month. The learned counsel for the respondent submitted that he is ready for supply of signals and execute the agreement with the petitioner if the subscriber base as agreed between the petitioner and the Sun TV be fixed between the petitioner and the respondent herein.

According to the petitioner, the regional channels of Sun TV has very huge viewership and the same subscriber base cannot be adopted for Star Turner channels in Southern India as the viewership is much less.

10. In our order dated 27.07.2011 in Petition No. 267(c) of 2011 this Tribunal has issued certain directions. I am of the opinion that interest of justice will be sub-served if a direction is issued on the similar lines as Star Channels and MSM can be considered having similar viewership.

11. Therefore, I direct as follows :

- i) The petitioner, if called upon by the respondent to furnish particulars of some of the subscribers, may do so within a week from the date of receipt of such a request.
- ii) The parties may enter into a subscription agreement on usual terms and conditions for 884 subscribers, details whereof are contained at pages 66-110 of the petition.
- iii) Such an agreement may be entered into within two weeks from date.
- iv) In the event the petitioner intends to supply signals to any local cable operator or any other subscriber, intimation thereof shall be given to respondent within one week from the date of giving of connections.
- v) The petitioner shall otherwise comply with the requirements of Caluse-11 of the Regulations.

12. This petition is disposed of on the aforementioned terms. There shall be no order as to costs.

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(P.K. Rastogi)
Member

/NC/