

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

DATED 3rd JULY, 2012

Petition No.392(C) OF 2012

(M.A. No. 270 of 2012)

IndusInd Media & Communication Ltd. ...Petitioner

Vs.

Media Pro Enterprise India Pvt. Ltd. & ors. ...Respondents

Petition No.393(C) OF 2012

(M.A. No. 271 of 2012)

IndusInd Media & Communication Ltd. ...Petitioner

Vs.

Media Pro Enterprise India Pvt. Ltd. & ors. ...Respondents

Petition No.394(C) OF 2012

(M.A. No. 272 of 2012)

IndusInd Media & Communication Ltd. ...Petitioner

Vs.

Media Pro Enterprise India Pvt. Ltd. & ors. ...Respondents

Petition No.395(C) OF 2012

(M.A. No. 273 of 2012)

IndusInd Media & Communication Ltd. ...Petitioner

Vs.

Media Pro Enterprise India Pvt. Ltd. & ors. ...Respondents

BEFORE:

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

For Petitioner : Mr. S. Ganesh, Senior Advocate
Mrs. Vandana Jai Singh Advocate

Mr. U.A. Rana, Advocate

For Respondent : Mr. Maninder Singh, Senior Advocate
Mr. Tejveer Singh Bhatia, Adcocate
Mr. Upender Thakur, Advocate for
Mrs. Prathiba M. Singh, Advocate

ORDER

These petitions involving similar questions of law and fact for the purpose of passing an Interim Order were heard together and are being disposed of by this common order.

2. Indisputably, the parties entered into agreements with Star Den Media Ltd. and Zee Turner Ltd., the predecessor in the interest of the Respondent herein.

The said agreements admittedly expired on different dates in the year 2011. It is also not much in dispute that parties had been negotiating for renewal of the agreement but they have not been able to arrive at a consensus with regard to the terms and conditions for renewal.

The Respondents served a notice upon the Petitioner purported to be under Clause 4.1 of the Telecommunications (Broadcasting and Cable Services) Interconnection Regulations 2004 as amended from time to time (hereinafter called and referred to for the sake of brevity as 'the said Regulations') on 6.6.2011 and 11.6.2012 which were received by the Petitioner on 11.6.2012 and 12.6.2012 respectively.

3. The Respondent also published a Public Notice purported to be under Clause 4.3 of the said Regulations on 13.6.2012.

In its notice under Clause 4.1 of the Regulations *inter-alia* it was contended that the Petitioner was not only a defaulter, but had been re-transmitting signals of the channels of the Respondent beyond their respective areas of operation and furthermore it had not also supplied the details of the local cable operators.

By a letter dated 19.6.2012, the Petitioner denied and disputed the said contentions. Parties thereafter met on several occasions. An 'On Screen Display' (OSD) was made by the Respondent said to be on the middle of the screen of the television set, which according to the Petitioner is violating the directions issued by the TRAI by way of an Explanatory Memorandum appended to the said Telecommunications (Broadcasting & Cable Services) Interconnection Regulations 2004; the relevant portion of the said Explanatory Memorandum is as under:-

“(iv) It is presumed that if a scroll is inserted, it would be done in a manner that does not affect the consumers ability to view the channel. The regulations need not specify such details.”

4. Mr. Ganesh, learned senior counsel and Ms. Vandana Jai Singh, learned counsel appearing on behalf of the Petitioner would contend that the Respondent has issued the aforementioned notices malafide to see that the Petitioner goes out of business.

According to the learned counsel, the Respondent intends to favour its own MSO.

It was furthermore submitted that the Petitioner is not only ready and willing to pay the admitted dues but also the disputed ones.

5. Mr. Maninder Singh, learned senior counsel appearing on behalf of the Respondent, however, would contend that the Petitioner has no legal right to maintain these petitions as admittedly it is a defaulter and in that view of the matter, the notices issued by the Respondent must be held to be valid and legal.

It was furthermore urged that in fact the Petitioner has gone back from its own stand by not executing a Memorandum of Understanding (MoU), wherein even deletion of some Clauses in the Agreement as was suggested by the Petitioner, has been accepted by the Respondent.

6. It is true that ordinarily this Tribunal would not interfere in such matters keeping in view the fact that the Petitioner is admittedly a defaulter and has not approached this Tribunal within a period of three months from the date of expiry of the respective agreements.

7. Mr. Maninder Singh, learned senior counsel has cited a few decisions of this Tribunal and principally relied on M/s Digi Konkan Network Private Limited Vs. M/s Media Pro Enterprises India Private

Limited being Petition No. 364 (C) of 2011 wherein an interim Order was refused to be passed on 23.9.2011 stating :-

“The question is as to whether a new agreement would be directed to be entered into upon compliance of the statutory provisions. In view of the provisions contained in Clause 11.2 of the Regulations the matter of renewal of agreement is a matter between the broadcaster and the Multi Service Operator. If upon holding detailed negotiations for such a long period namely two months prior to the expiry of the agreement till this date, the parties have not been able to arrive at any agreement, we are of the opinion that no legal right can be said to be existing in the petitioner for obtaining an order of injunction.

Commercial difficulties faced by a Multi Service Operator cannot be a ground for grant of an equitable relief by way of injunction, particularly, in a case of this nature, where the petitioner cannot be said to have acted bona fide having not paid the due amount of subscription fee for more than eight months. Even if it be assumed that the petitioner has made some payment, a huge amount must have become payable to the respondent.”

8. It was furthermore opined :-

“Keeping in view the provisions contained in the Second Proviso appended to Clause 8.1 of the Regulations the commercial terms of the agreement continued to apply to the parties.

It is one thing to say that the parties would themselves agree to commercial terms with retrospective effect but it is another thing to say that having regard to the statutory provisions, this Tribunal would pass an interim order refusing to consider the existing commercial terms between the parties despite the clear mandate contained in Clause 8.1 of the Regulations.”

9. In this case, however, the Respondent itself has brought before this Tribunal certain events which have taken place after filing of this petition.

These petitions were filed on 29.6.2012. In the meanwhile as noticed heretofore, the parties had deliberated upon entering into an agreement but admittedly certain disputes arose between them with regard to certain clauses in the Agreement which have been found to be not in terms of the Regulations in Petition No. 318 (C) of 2012.

10. Our attention in this connection has also been drawn to a letter dated 30.6.2012.

11. The said MOU was to be on a Pan India basis. The said letter was, however, issued without prejudice to the notices issued by the Respondent under Clauses 4.1 and 4.3 of the Regulations.

12. According to the Respondent in terms of the Agreements, the monthly subscription fee was Rs.5,80,84,312/- which was increased from January, 2012 to Rs.6,03,03,632/-.

The Respondent furthermore contends that the Petitioner owes to it a sum of Rs.32,93,79,670/-.

The annexure appended to the letter dated 30.6.2012 contain some statement of accounts showing an increase in the subscription fees from the respective dates when the agreements expired.

13. Submission of Mr. Maninder Singh that the Petitioner has suppressed those documents cannot be accepted at this stage as admittedly the Respondent has replied to the Petitioner's letter only on 30.6.2012.

14. Ms. Vandana Jai Singh has produced before us a chart showing the amount payable in respect of Maharashtra, Gujarat and Karnataka.

According to the Petitioner, it has paid a sum of Rs. 3.30 crores towards subscription fee which has not been taken into account by the Respondent. It is furthermore contended that the Petitioner has also deducted a sum of Rs.80,99,296/- by way of TDS which has also not been taken into account by the Respondent.

15. According to the Petitioner, therefore, the total outstanding amount is Rs.195,214,070/- and the disputed amount is Rs.12,110,609/-.

16. In these petitions, we are concerned with the agreements entered into by and between the parties for Maharashtra, Gujarat, Belgaum and Gulbarga in the State of Karnataka.

The MoU referred to by Mr. Maninder Singh include some other parts of India, *inter-alia* being Delhi, Noida and Udaipur.

17. In these petitions we are not concerned with the agreements between the parties in other states.

In the peculiar facts and circumstances of the case, we are of the opinion that having regard to the fact that the Petitioner denies and disputes the statement of accounts filed by the Respondent alongwith the MoU, interest of justice would be sub-served if the Petitioner is directed to pay to the Respondent a sum of Rs.195,214,070/- without any demur whatsoever as also a sum of Rs. 12,110,609/- without prejudice to its rights and contentions.

The said payments must be made by 3rd July, 2012.

18. The Petitioner shall also affirm an affidavit stating that it would not operate beyond the areas stipulated in the respective Agreements.

19. This order is without prejudice to the rights and contentions of the parties and subject to any other or further order which may be passed by this Tribunal.

20. Liberty is given to the Respondent to apply for modification and/or variation of this order.

21. Subject to the compliance of the aforementioned conditions, the Respondent is hereby restrained from giving effect to its Notices dated 6.6.2012, 11.6.2012 and the Public Notice dated 13.6.2012.

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

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(P.K. Rastogi)
Member

HKC/