

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

DATED 5th JULY, 2012

Petition No.420(C) OF 2012

Manthan Broadband Services Pvt. 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. Ramji Srinivasan, Senior Advocate
Mr. Navin Chawla, Advocate
Ms. Nidhi Parashar, Advocate
Mr. Vivek Paul Oriel, Advocate
Mr. Kawaljeet Singh Bhattia, Advocate

For Respondent No.1&3 : Mrs. Prathiba M. Singh, Advocate
Mr. Tejveer Singh Bhatia, Advocate
Mr. Upender Thakur, Advocate

For Respondent No. 2 : Mr. Saurav Srivastava, Advocate

ORDER

The Petitioner is a Multi Service Operator having a large number of networks inter-alia covering the States of West Bengal, Orissa, Jharkhand, Bihar, Assam, etc.

2. The Petitioner has been paying the subscription charges in terms of the Agreement entered into by and between the parties thereto. On or about 14.6.2012, the Respondent 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 the following grounds :- (i) non-payment of subscription fees; (ii) non-signing of Subscription Agreement; and (iii) un-authorized transmission of signals.

3. The Petitioner would contend that having regard to the Memorandum of Understanding (MoU) entered into by and between the parties hereto on 20.1.2012, the accounts between them has been settled and payments have been made in terms thereof.

It is furthermore the contention of the Petitioner that it has signed a copy of the agreement on 24.1.2012 but the Respondent has not counter signed the same.

It is also the contention of the Petitioner that the Petitioner is entitled to two months' time for making payments for the subscription fees by way of industrial practice and in fact it has made payments to the Respondent even in the month of June, 2012 after the notice under Clause 4.1 was issued and the Public notice was published.

4. Mr. Srinivasan, learned senior counsel appearing for the Petitioner would furthermore contend that keeping in view the bonafide of the Petitioner and it being not a defaulter, it is entitled to an order of injunction, as prayed for.

5. Mrs. Pratibha Singh, learned counsel appearing for the Respondent would contend that:-

- (i) The Petitioner has been supplying signals to various new and large operators without obtaining the Respondent's approval therefor and without depositing the subscription fee therein.
- (ii) It was urged that MoU is in two parts; the first part relating to payment of monthly subscription fees and the second part being the reconciliation of accounts.
- (iii) It is not correct to contend that credit period of two months was agreed to be allowing in terms of any industrial practice or otherwise.
- (iv) The Petitioner admittedly having not paid the monthly subscription fees for the month of May, June, July @ 2.43 crores per month, it is not entitled to any equitable relief.

- (v) The Petitioner has also not submitted the documents as asked for by the Respondent which would be evident from paragraph 3 of the petition itself.
- (vi) The Petitioner has sent the SLR only on 14.6.2012 and in that view of the matter, the grounds on which the notice under Clause 4.1 of the Regulations was issued must be held to be unassailable.

A chart has been placed before us by Ms. Singh to show that till now the Petitioner owes a sum of Rs. 8.08 crores above.

6. The Petitioner has made out a prima-facie case. The questions which have been raised by the parties before us are required to be considered in some details.

7. We, therefore, are of the opinion that the Petitioner has made out a prima-facie case for the purpose of consideration of its interim prayer of injunction. The balance of convenience also lies in favour of the Petitioner as in the event the Respondent gives effect to its notices under Clause 4.1 and 4.3 of the Regulations, the Petitioner's business shall come to a standstill. In that view of the matter, it would also suffer irreparable injury, in the event an order of injunction, as prayed for, is not granted.

8. Having heard the learned counsel for the parties, we are of the opinion that interest of justice will be sub-served if the Petitioner for the present is directed to pay the subscription fees @ 2.43 crores for the month of May, 2012 and June, 2012 within one week from date and subscription fees for the month of July, 2012 by 7th August, 2012 and for the subsequent months by 7th of next month following and in the event such payments are made, the Respondent till further orders shall not give effect to its notice under clause 4.1 and public notice under clause 4.3 of the Regulations.

9. This Order however, would be subject to the following:-

- (i) For the purpose of further reconciliation of the accounts, the Petitioner must meet an authorized representative of the Respondent with all documents including those which pertained to new LCOs who have joined the network of the Petitioner within one week from date.
- (ii) On reconciliation of the accounts, if any, the Petitioner in the event is found to be liable for any other or further payment, such payment should be made to the Respondent within one week from the date when the reconciliation of accounts takes place.
- (iii) The Petitioner shall operate within the area of its operation as mentioned in the MoU and /or different agreements.

10. Keeping in view the fact that causes of action in respect of each of the network of the Petitioner appears to be different, the Petitioner shall file separate petitions in respect of each of its network.

11. However, in the said petitions, the Petitioner need not file the common documents which have already been filed in this petition. However, those documents pertaining into the network in question, if any, must be annexed with these separate petitions.

12. Such further petitions should be filed within two weeks from date.

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(S.B. Sinha)
Chairperson

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(P.K. Rastogi)
Member

HKC/5.7.2012