

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated : June 25, 2012

Petition No.357(C) of 2012

M/s Gujarat Telelinks Pvt. Ltd. & Anr. ... Petitioner

Vs.

Media Pro Enterprises India Pvt. Ltd. ... Respondent

BEFORE:

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

For Petitioner : Mr.Jayant K. Mehta, Mr. Nasir Hussain
& Mr. Sukant Vikram, Advocates

For Respondent : Mr. Maninder Singh, Sr.Advocate with
Mrs. Pratibha M. Singh with Mr. Rejveer
Singh Bhatia, Mr. Sidharth Khatana

ORDER

1. The Petitioner is a Multi Service Operator operating in different parts of the country. In this petition we are concerned with the agreement between the parties in the State of Assam only.

2. The Respondent is a content aggregator. It, inter alia, is engaged in the business of transmission of channels of the Star Den, Star Group of Channels and Zee Group of Channels. Star Den Pvt. Ltd. and Zee Turner Pvt. Ltd. were earlier the content aggregators in respect of Star group of channels and Zee group of channels respectively.

3. A Memorandum of Understanding was entered into with Star Den on or about 14.6.2011, whereas a Memorandum of Understanding was entered into with Zee Turner on or about 20.6.2011. The Respondent became the content aggregator of Star Group of Channels and Zee Group of Channels with effect from 1.7.2011.

4. The parties had entered into agreements as regards retransmission of signals of the channels of the Respondent.

The Petitioner fell in arrears with regard where to a meeting was held between the parties on or about 27.3.2012 relating to various direct and acquired headends of the Petitioner in the States of Jharkhand, West Bengal and Assam.

5. By a letter dated 12.5.2012 the Respondent called upon the Petitioner to pay a sum of Rs.3,59,99,412/- in respect of various

headends of the Petitioner located in the States of West Bengal, Jharkhand and Assam.

6. The said notice was to be treated to be one under Clause 4.1 of the Telecommunication (Broadcasting & Cable Services) Interconnection Regulation 2004 (The Regulations). On or about 19.12.2011 the Petitioner No.2 by a letter addressed to the Respondent while assuring that they stand by their commitments informed that one Manthan Broadband Services Pvt. Ltd in Tisnukia was expanding its network in Dulliajan town adopting unfair practice. It is said to have furnished a Subscriber Line Report on or about 24.2.2012. According to the Petitioner the Respondent did not respond to the said letter.

7. Another notice under Clause 4.1 of the Regulations was issued wherein it was alleged that the Petitioner had shown no inclination to renew the agreement as the details of the local cable operators attached to its network had not been furnished. A meeting is said to have been held on or about 25.4.2012. The Respondent, however, by a letter dated 2.5.2012 denied and disputed the allegation of the Petitioner that it had no inclination to settle the disputes and differences between them, contending that it had called upon its

Ahmadabad Office for negotiations and settlements for various pending disputes pertaining to its operations in East Zone in West Bengal, Jharkhand, and Assam.

8. By reason of a letter dated 24.3.2012, a request was made by the Petitioner to confirm a suitable date so that parties could meet and settle their disputes.

9. The First Petitioner by its letter dated 4.5.2012 while supplying the SLR, inter alia, alleged that the Respondent failed to take anti piracy measures for which it made commitments in the MoU dated 16.6.2011.

10. The Petitioner again vide its letter dated 5.5.2012 expressed its readiness to meet the representatives of the Respondent for discussion at their Guwahati Office on 7th or 8th May, 2012.

11. By a notice dated 30.4.2012 the Respondent demanded a sum of Rs.93,49,609/-. The Petitioner denied and disputed the said demand, inter alia, on the premise that the matter is pending before this Tribunal.

12. The Respondent is said to have started 'on screen display' that 'the channel will be deactivated due to non-payment and non-renewal of agreement'; with regard where to the Petitioner lodged a protest by its letter dated 15.5.2012.

13. This petition has been filed on or about 31.5.2012 praying, inter alia, for the following reliefs:

"(i) Declare the impugned notices dated 12.5.2012 and 16.5.2012 to be illegal, null and void;

(ii) Declare the notice dated 23.4.2012 issued by the Respondent under Regulation 4.1 of the Interconnect Regulations, 2004 to be illegal, null and void;

(iii) Direct the Respondent to negotiate with the Petitioners for concluding and signing subscription agreements on a fair and non-discriminatory basis;"

14. Mr. Jayant Mehta, learned counsel appearing on behalf of the Petitioner would contend that:

(i) keeping in view the fact that the Respondent having arbitrarily and unilaterally enhanced subscription amount of Rs.10,39,999.95 to a sum of Rs.17,39,999.95 from February, 2012 and having not taken any action with regard to acts of piracy by some of the erstwhile LCOs of the Petitioners, the Petitioner is entitled to an interim relief;

(ii) It has made excess payments as a result whereof it is entitled to refund of a sum of Rs.1,05,00,286.82 on the following premise:

"EXCESS PAYMENT MADE TILL 31 MAY 2012 TO ZEE TURNER, STAR DEN AND MEDIA PRO

A	EXCESS PAYMENT TO ZEE TURNER AS PER STATEMENT AND MARK "A"	Rs. 2,450,651.85
B	EXCESS PAYMENT MADE TO STAR DEN MEDIA SERVICES PVT LTD AS PERSTATEMENT AND MARK "B"	Rs. 4,709,375.52
C	EXCESS PAYEMTN MADE TO MEDIA PRO ENTERPRISE INDIA PVT LTD "C"	Rs. 1,234,023.85
D	OUTSTANDING OF THE OPERATORS WHO JOINED UNIQUE COMMUNICATION TILL SEP 2011 (DETAIL ENCLOSED SEPERATLY MARKED "D")	Rs.1,137,220.00
E	EXCESS PAYMENT MADE TO MEDIA PRO ENTERPRISE INDIA PVT LTD 01.10.2011 TO 31.05.2012 "E"	Rs.969,015.60

PAYMENT RECEIVABLE FROM MEDIAPRO TILL 31 MAY 2012 Rs.10,500,286.82

(RUPEES ONE CRORE FIVE LAC TWO HUNDRED EIGHTY SIX AND EIGHTY TWO PAISE ONLY)

BILLING AS PER SETTLEMENT DEED AND MOU Rs.1,740,000.00

LESS: 1. SUBSCRIPTION OF OUTGOING OPERATORS Rs. 416,000.00
2. GROWTH EFFECTED UNDER THE MOU
AND SETTLEMENT DEED Rs. 334,026.95 Rs.750,026.95

**ACTUALL MONTHLY SUBSCRIPTION AS PER PETITIONER
ON 31.09.2011** Rs.989,973.05

**AGREED TO MAKE PAYMENT @ 11,00,000 PER MONTH WITH EFFECT FROM
OCTOBER 2011. TILL SETTLEMENT IS MADE MUTUALLY"**

15. Mr. Maninder Singh, learned senior counsel appearing on behalf of the Respondent, on the other hand, urged:

1. The Petitioner having failed to pay a huge sum of Rs.3,59,99,412/- in terms of the minutes of the meeting dated 27.3.2012 (which the Petitioner has failed and neglected to file) is not entitled to any equitable relief.
 2. The agreements between the parties having expired on 31.3.2011, it has no legal right to obtain an interim order of injunction from this Tribunal.
 3. The Petitioner having failed to honour the settlement deed as would appear from the Respondent's letter dated 12.5.2012, it must be held to have disentitled itself from obtaining an interim order in its favour.
16. This petition is confined to the State of Assam only, although the MoU between the parties was entered into in relation to three States.
17. The Petitioner has not filed any petition questioning the notices of disconnection so far as the States of Jharkhand and West Bengal are concerned.
18. Mr. Maninder Singh, however, would contend that the Petitioner cannot dissect the MoU and claim interim relief only in respect of State of Assam.

19. We are, however, as at present advised would proceed on the basis that this petition is maintainable with regard to the grievances of the Petitioner in respect of the State of Assam only.

According to the Petitioner, as indicated heretofore, it has allegedly made an excess payment. The said question requires determination upon considering the factual aspects of the matter at an appropriate stage, keeping in view the fact that the Respondent denies and disputes the same.

20. Moreover, the question as to whether the Petitioner was entitled to make unilateral deduction towards the subscription fee payable by it under the agreement is a matter which will fall for consideration at a later stage. Admittedly the Petitioner was bound to pay a sum of Rs.11,00,000/- per month. It has made unilateral deduction which, prima facie, it was not entitled to. It has also not furnished the details as to on what basis it has made excess payments. The onus of proof in this behalf having regard to the terms of MoU was on the Petitioner. Although the agreements between the parties have expired, it is evident that they had been negotiating for a settlement of their disputes and renewal of the agreements.

21. Petition No.451 of 2011 filed by the Petitioner No.2 against the Respondent is pending consideration.

Therein an application for impleadment of the Petitioner No.1 has been filed, as it is stated to be the parent company of Petitioner No.2

22. The Respondent claims that a huge sum of money is due from the Petitioner. However, prima facie, it appears that the Petitioner's case that it had made excess payments is not correct. The Respondent by its letter dated 30.4.2012 asked the Petitioner to confirm the balance payable to it being a sum of Rs.93,49,609/-. Except stating that the matter is pending before this Tribunal, the Petitioner did not raise any contention as to how it disputes any particular sum to be payable by it to the Respondent. According to the Respondent the total amount of subscription fee payable by the Petitioner is Rs.17,40,000/- per month.

23. One of the controversies between the parties is as to whether M/s. Unique Communication with regard to whom the allegation of piracy has been made is still the LCO of the Petitioner or not and/or whether the said Unique Cable Network has merged with the Petitioner.

24. We, therefore, are of the opinion that in the event the Petitioner deposits a sum of Rs.93,49,609/- within a period of two weeks from date without prejudice to its rights and contentions of the parties in this petition as well as in Petition No.451 of 2011, the Respondent shall not discontinue supply of signals to its network. The Respondent, however, would be entitled to apply for variation/modification of this order upon filing a short reply, if it so desires. The Petitioner must also go on paying the monthly feed charges in terms of the agreement.

25. We make it clear that pendency of this petition shall not stand in the way of the parties to continue to hold negotiations. We, however, make it clear that this order is confined to the State of Assam only and the Respondent would be entitled to take recourse to such step as is permissible in law with regard to enforcement of its claim for the State of Jharkhand and West Bengal.

(S.B. Sinha)
Chairperson

(P.K. Rastogi)
Member

June 25, 2012
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