

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

DATED 1st MARCH, 2012

E.A.No.19 of 2011 in PETITION No.187(C) of 2011

Home Broadband Services, Gurgaon ...Petitioner
Versus
ESPN Software India Pvt. Ltd. ...Respondent

E.A. No.20 of 2011 In PETITION No.192(C) of 2011

Home Broadband Services, Gurgaon ...Petitioner
Versus
Star Den Media Services Pvt. Ltd., Gurgaon ...Respondent

E.A. No.21 of 2011 In PETITION No.194(C) of 2011

Home Broadband Services ...Petitioner
Versus
Sun 18 Media Services North Pvt. Ltd., ...Respondent

AND

E.A.No22 of 2011 in PETITION No.196(C) of 2011

Home Broadband Services, Gurgaon ...Petitioner
Versus
Media Pro Enterprises Ltd. (P) Ltd. ...Respondent

BEFORE:

HON'BLE MR. JUSTICE S.B.SINHA, CHAIRPERSON

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

- For Petitioner : Mr. K.K.Rai, Senior Advocate
Ms. Snigdha Sharma, Advocate
Mr. Gaurang Kanth, Advocate
- For Respondent-ESPN : Mr. N. Ganpathy, Advocate
- For Respondent-Media Pro : Mr. Tejveer Singh Bhatia, Advocate
Mr.Vadivelu Deenadayalan, Advocate
Mr.Upender Thakur, Advocate for
Mrs.Prathiba M. Singh, Advocate
- For Respondent-Sun 18 Media : Mr. Kunal Tandon, Advocate

ORDER

These four Execution Applications involving common questions of law and fact were taken up for hearing together and are being disposed of by this common judgment.

2. The Decree Holder is a multi service operator; whereas the Judgment Debtors/Respondents are Broadcasters/Content Aggregators.

3. The Decree Holder filed petitions before this Tribunal for appropriate directions upon the Judgment Debtors herein for supply of signals of their respective channels to its network in terms of Clause 3.2 of the Telecommunication (Broadcasting & Cable Services)

Interconnection Regulations 2004, as amended from time to time (The Regulations).

4. Keeping in view the materials placed on record as also the purport and object for which the said Regulations have been framed, this Tribunal was of the opinion that it was desirable that the dispute between the parties be negotiated subject of course, to compliance of the regulatory provisions.

In that view of the matter, it was directed:-

“Having heard the learned counsel for the parties, we dispose of this petition directing them to meet on a mutually convenient date and at a mutually convenient place within two weeks from date. The authorized representative of the petitioner shall carry with him all the relevant documents so as to enable them to satisfy the authorized representative of the respondent who is otherwise entitled to receive the supply of signals in respect of the channels of the respondent broadcaster and also hold negotiations for the purpose of determining the subscriber base.

In the event the parties hereto agree on a negotiated subscriber base, supply of signals to the petitioner’s network in respect of its channels may be completed by the respondent within two weeks thereafter on usual terms.”

5. Inter-alia on the premise that despite the said order, the Judgment Debtors failed and/or neglected to comply therewith these Execution Applications have been filed.

We may notice some of the reliefs prayed for in one of these Applications:-

“(b) Decide the terms of the interconnect on which Media Pro shall supply the signals to the Petitioner and direct Media Pro to supply the signals of its channels to the Petitioner network on the said terms decided by the Ld. Tribunal.

(c) Direct Media Pro to give the details of the amount charged from DEN networks in Ghaziabad towards pay channel subscription and also carriage fee /channel placement fee paid to DEN Networks by the Respondents to facilitate the Ld. Tribunal to understand and decide the terms of business between the Petitioner and Media Pro.

(d) Direct the Respondent to pay damages on per day basis as may be determined by the Hon’ble Tribunal, in case of any further default by the Petitioner in providing IRDS/decoders activated to receive the signals of the channels.”

On the question raised as to whether the Petitioner itself has complied with the said order, the statement of Mr. K.K. Rai, learned senior counsel appearing on behalf of the Decree Holder was recorded that the said order dated 23.11.2011 had been complied with by the Petitioner.

6. The Execution Applications do not disclose as to by what mode and manner, the decree(s) passed by this Tribunal should be executed.

7. Despite the same, with a view to get the disputes and differences between the parties hereto settled if possible, directions were issued from time to time.

For the aforementioned purpose by an order dated 23.11.2011 the Decree Holder was asked to furnish its subscriber base.

8. Respondents filed their respective replies.

The matter was heard and the following directions were issued by an order dated 10.1.2012, which reads as under:-

“We, therefore, are of the opinion that ESPN Software India Pvt. Ltd. and Media Pro Enterprise India Pvt. Ltd. as also Sun 18 Media Services North Pvt. Ltd. may intimate to the Decree Holder, having regard to the documents which are already on record, whether they require any other or further document to be supplied. Such intimation must be carried out within a period of two days.

The Decree Holder shall furnish the names of the cable operators and the names of the Societies to whom it intends to retransmit the signals of the respective channels of the Judgment Debtor and their subscriber base in terms of Clause 9.2 of the Regulations within a period of two days. The representative of the Judgment Debtor must visit the

headend of the Petitioner within one week from date.

The Decree Holder shall furnish the requisite documents sought for from the Judgment Debtors within a period of one week from the date of receipt of such intimation from the Judgment Debtors.

The parties may meet at a mutually convenient place on the following dates:

With Media Pro Enterprise India Pvt. Ltd. on 31.1.2012, with ESPN Software India Pvt. Ltd on 1.12.2012 and with Sun 18 Media Services North Pvt. Ltd. on 2.1.20212.”

9. A prayer for adjournment was made on behalf of the Judgment Debtors to verify the documents of the Decree Holder which was allowed. Whereas Media Pro and Sun 18 have filed their affidavits, ESPN did not.

10. Mr. Ganpathy, learned counsel appearing on behalf of the Judgment Debtor would contend that only in the evening of 21st February, 2012, a letter has been sent to the Decree Holder pointing out various discrepancies in the registration certificate issued in favour of its local cable operators.

11. We have, moreover, been taken through the replies filed by Media Pro Enterprises and SUN 18 Network.

12. Media Pro Enterprises contends that from a perusal of the certificates issued by the concerned Postal Authorities in favour of the Local Cable Operators, it would be evident that there exist serious discrepancies therein. In its affidavit, the said Judgment Debtors categorically stated that except one, no other local cable operators had been operating from the addresses where their headend/office are said to be located.

13. Sun 18 Network has also drawn our attention to a large number of certificates to contend that neither any reliance can be placed thereupon nor having regard to the fact that most of the certificates having been granted after the order under execution was passed, can be taken into consideration. It had furthermore, been pointed out that the equipment installed at headend of the Petitioner do not satisfy the standards laid down under the Regulations.

14. Mr. K.K. Rai, learned senior counsel appearing on behalf of the Decree Holder however would contend that the allegations made by the Judgment Debtors are not correct. To that effect, our attention has been drawn to a large number of documents.

15. In terms of the provisions of the Telecom Regulatory Authority of India Act, 1997, an order passed by this Tribunal can be executed as a decree.

Section 19 of the said Act, reads as under:-

“19. Every order made by the Authority under this Act or the order made by the High Court in any appeal against any order of the Authority shall, on a certificate issued by any officer of the Authority or the Registrar of the High Court , as the case may be, be deemed to be decree of the civil court and shall be executable in the same manner as a decree of that court.”

16. The decrees granted in favour of the Decree Holder were limited in nature. The Judgment Debtors in their replies raised the question of maintainability of these Execution Applications contending that in terms of the said orders, meeting had taken place and steps had been taken for Redressal of the grievances of the Decree Holder and, thus, nothing further was required to be done.

17. A direction issued by a court of law by way of mandatory injunction or otherwise was required to be executed in the manner as laid down in Order XXI of the Code of Civil Procedures.

Order XXI Rule 11 (2) of the Code of Civil Procedures provides for the manner in which the Execution Applications are required to be filed; Clause (j) thereof reads as under:-

*“(2) **Written application.**—Save as otherwise provided by sub-rule (1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely:—*

(j) the mode in which the assistance of the Court is required, whether—

(i) by the delivery of any property specifically decreed;

(ii) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property;

(iii) by the arrest and detention in prison of any person;

(iv) by the appointment of a receiver;

(v) otherwise as the nature of the relief granted may require.”

18. As indicated heretofore, no such prayer has been made in the instant case.

For the purpose of obtaining a relief as provided for under Clause 3.2 of the Regulations, some basic statutory requirements are required to be complied with; Clause 9.2 being one of them.

19. The term ‘Subscriber Base’ has been defined in Clause 2 (p) of the Regulations.

It reads as under:-

“2.(p) “subscriber base” means the number of subscribers –

(i) as agreed to by two service providers in a non-addressable system on the basis of which payments are made by one service provider to the other, or

(ii) as reflected by the Subscriber Management System, where addressable systems are employed.”

20. Holding of negotiations, therefore, is necessary for arriving at an agreement on subscriber base. It is from that point of view alone, directions for holding meeting of the parties were issued to the parties, with the relevant documents, so that a broad consensus could be arrived at on the issue of the subscriber base of the Decree Holder.

In an Execution Application, this court would not be concerned with the disputed questions of fact.

If by reason of events arising subsequent to the passing of a decree, a fresh cause of action has arisen which would require determination of disputed questions of fact, a fresh petition under Section 14 of the Act would be maintainable but not an Execution Application.

21. We therefore, are of the opinion that it is not possible for this Tribunal to go into the aforementioned disputed questions, particularly, having regard to the fact that it has been contended that the Decree Holder itself to be blamed therefor.

In the case of Media Pro Enterprises, a meeting had taken place and minutes of meeting were drawn up; para 3 whereof reads as under:-

“3. Furthermore, when the representatives of M/s Home Broadband were confronted with survey report submitted by them to M/s Star Den Media Services Pvt. Ltd. alongwith their letter dated 26.7.2010 wherein it has admitted by the said network that the total number of Cable TV households to be 250000-300000 in number. The copy of the said survey report relied upon by the said network is annexed hereto and is marked as Annexure A-1.”

22. According to the Judgment Debtors, the documents required were to be intimated to the Decree Holder within two days. The Judgment Debtor complied therewith. A reminder was also issued, however, no document was filed by the Decree Holder.

A meeting was held on 01.02.2012, when the documents were filed. There exists a dispute as to whether in the said meeting a map was supplied or not. According to Media Pro, the relevant map was supplied and on 17.2.2012 and the affidavit was filed on 19.2.2012 upon conducting a verification process.

23. So far as the Registration Certificates issued in favour of the Local Cable Operators are concerned, it appears that three out of six cable operators were issued the certificates only on 18.1.2012. So far as some other certificates are concerned, the registration certificate had been granted for a period of three years with retrospective effect from 31.3.2008. although Section 3 of the Cable TV Registration Network Act, 1995 and the rules framed thereunder postulate grant of certificate for one year only.

24. According to SUN 18, even the Decree Holder does not have a properly functioning Headend which, of course, is denied and disputed by it.

25. For the reasons aforementioned, we are of the opinion that these Execution Applications are not maintainable. They are dismissed accordingly.

The Decree Holder may take recourse to the remedies available to it in law.

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(S.B. Sinha)
Chairperson

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(P.K. Rastogi)
Member

HKC/