

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

Dated 31st May, 2012

M.A. No. 185 of 2012

In

Petition No.143 (C) of 2012

M/s Chhatisgarh Network

...Petitioner

Vs.

M/s MSM Discovery Pvt. Ltd.

...Respondent

BEFORE:

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

For Petitioner

: Mr.Sharath Sampath, Advocate

For Respondent

: Mr. Angad Singh Dugal, Advocate
Mr. Nittin Bhatia, Advocate

ORDER

M.A. No. 185 of 2012

This petition has been filed against the respondent for issuing notice dated 21.02.2012 under Regulation 4.1. The petitioner has prayed for the following reliefs :

“(a) direct the respondent to enter into a subscription agreement with the petitioner for the year 2012 on such terms and conditions as mutually agreed between the parties

(b) direct the respondent not to force the Neo Bouquet of channels upon the petitioner as a pre condition for entering into a fresh agreement.

(c) Pass an order quashing the 4.1 notice dated 21.02.2012 issued by the respondent”

As no public notice was issued, therefore, no interim relief was considered necessary by this Tribunal at that time.

During the pendency of this petition, the respondent issued a public notice on 25.04.2012 under Regulation 4.3 for disconnecting the signals of the petitioner.

2. This M.A has been filed on 03.05.2012 seeking an ad-interim order restraining the respondent from disconnecting the signals of the petitioner on the basis of public notices dated 25.04.2012 and notice under clause 4.1 dated 21.02.2012.

3. The petitioner is an MSO providing cable TV services to various parts of Raigarh. The parties entered into an subscription agreement on 10.06.2011 for the period 1.1.2011 to 31.12.2011. The total subscription fees payable by the petitioner under the agreement was Rs. 2,04,351/- per month.

4. According to the petitioner, it got a letter dated 25.10.2011 from the respondent wherein the petitioner was requested to commence the process of negotiations for the renewal of the agreement. It visited

the office of the respondent and handed over a copy of the SLR to Mr. S. Sinha, Area Sales Manager of the respondent and it also informed that the petitioner was not interested in subscribing to the Neo Bouquet of channels as there was no demand for the same. Mr. Sinha assured that the SLR would be verified jointly and he would communicate the date of such verification and thereafter would enter into the fresh agreement.

The petitioner once again received a letter from the respondent on 8.12.2011, wherein the petitioner was again requested to come forward for negotiations. On 30.12.2011, the petitioner wrote a letter to the respondent where it mentioned that it was ready for executing the new agreement.

5. It is seen from the notice dated 21.02.2012 that the respondent issued a 4.1 notice, wherein the petitioner was informed that its signals will be deactivated as it failed to submit the SLR and other informations as required under the relevant regulation and did not sign the new agreement.

6. On 07.03.2012, the petitioner sent a reply to the letter dated 21.02.2012, stating :

"To,

*MSM Discovery Pvt. Ltd.
Mumbai*

Date : 07.03.2012

Sub : Reply to you letter dated 21.02.2012 received by us on 05.03.2012

Sir,

At the outset, I deny all the contents of your letter dated 21.02.2012. I state my reply to the same as under :

1. This is to remind you that I have always been ready and willing to enter into an agreement with you for the period 01.01.2012 to 31.12.2012. Please note that on receipt of your letter dated 25.10.2011; I had personally come to your office and handed over my SLR to Mr. S. Sinha, your Area Sales Manager. He assured me that the same would be verified jointly by us and he also told me that he would communicate the date for such verification to me. I waited for his communication but he never got back to me on the same.

2. I was again shocked to receive you letter dated 08.12.2011 alleging that I have not come forward for an agreement with you. I in response to the same vide my letter dated 30.12.2011 informed you that I am ready and willing to enter into a subscription agreement and also made payment for the month of December 2011. I further requested you to call me a meeting so that the new agreement can be entered into.

3. Even thereafter, in the month of January 2012, I approached your office and again requested you for entering into an agreement and once submitted a copy of my SLR. I have now received this letter contrary to all my efforts in wanting to sign a fresh subscription agreement.

4. I therefore, once again submit my SLR enclosed herewith and request you to call me for a meeting at the earliest so that we can negotiate and a fresh agreement can be entered into."

A copy of the SLR was enclosed with the letter. The SLR indicate

the Sl. No., Name, Number, and Area. According to the respondent, it does not give full details of the address of the cable operators so that the information provided by the petitioner could be verified. The total subscriber base was shown as 4344.

7. The respondent wrote a letter to the petitioner again on 14.03.2012, wherein it was mentioned that the petitioner failed to negotiate the subscriber base, SLR submitted was non verifiable and having an outstanding of Rs. 2,79,941/-. The relevant paras are as below :

"We wish to reiterate that the agreement has expired on 31.12.2011 and a fresh agreement is required to be executed for the period 01.01.2012 to 31.12.2012 for which you were informed well in advance verbally as well as in writing but due to reasons best known to you we received no response from your side till 07.03.2012 and also from your said letter it is evidence that you are only interested in building correspondences. We note, with considerable regret, that neither you took the initiative to negotiate, nor respondent meaningfully to our request to negotiate a subscriber base and execute a fresh agreement in terms thereof. You also failed to provide monthly SLRs for the last 24 months except the document purported to be an SLR on 07.03.2012 which please note is not even an SLR in terms of TRAI Regulations dated 04.09.2006 being non verifiable as important details like address, areas are missing thereby making it well neigh impossible for us to negotiate a subscriber base with you. We were compelled to write to you time and again whereby we pointed out how your not providing monthly SLR was a calculated impediment crated by you to deliberately frustrate negotiation of a subscriber base with you. As an alternative, we had also asked you to provide us the negotiated subscriber numbers on bases of which you have entered into agreement with other broadcasters, comparable with us, but you failed to do even this. In this regard we wish to state that we have sufficient evidence with us that your subscriber base has grown manifold and as on ate you have

atleast 10000(Ten Thousand) subscribers.

As per the terms of the subscription agreement, you had agreed to pay subscription charges to MSMD towards the services provided to you by MSMD and consequently availed till date. That the said signals were provided to you on the condition that you shall pay the monthly subscription charges without any default and on time. However, you have been irregular in making the payment of subscription fees and therefore willfully committed default in payments. That despite availing the signals of The One Alliance channels regularly you have failed to maintain the financial discipline and as such the outstanding dues have kept on increasing every month and the statement of account reveals that your outstanding as on date is Rs. 279941/- (Two Lacs Seventy Nine Thousand Nine Hundred Forty One only)."

8. The respondent during the pendency of this petition issued a public notice dated 25.04.2012 for disconnecting the signals of the petitioner due to non-renewal of the agreement. The petitioner further submitted that it had approached this Tribunal on 27.03.2012. At that time, 4.3 notice had not been issued. On 9.4.2012 there was a meeting wherein the petitioner submitted that it does not want to continue the Neo Sports Bouquets as there was no demand in the area. The reply has been filed in the main petition on 16.04.2012 and two weeks time was given to file the rejoinder. However, on 25.04.2012, impugned 4.3 notice was given by the respondent.

9. The main contention of the respondent is that the petitioner has failed to give adequate information for entering into new agreement after the expiry of earlier agreement on 31.12.2011.

10. I cannot appreciate the submission of the petitioner that it has given the Subscriber Line Report to the respondent for its verification. Regulation clearly provides that information should be provided in such a way so that the respondent has an opportunity to verify the same. Here, the SLR submitted by the petitioner contains only Sl. No., Name, Number, and Area of operation. It is necessary that the clear and distinct address of the cable operators is provided by the petitioner so that proper verification can be done by the respondent.

The petitioner is also supposed to give list of its cable operators on monthly basis so that proper negotiation could be done by both the parties.

11. The respondent has raised mainly three issues:

- (a) The petitioner did not supply full address of the LCOs connected with the petitioner.
- (b) The petitioner being only MSO in whole Raidurg town will have much higher connectivity than presently declared by it as 4344.
- (c) Outstanding amount.

12. The respondent submits that the city of Raigarh has a subscriber base of more than 2,00,000. However, in reply to the M.A, the respondent submitted that the population of Raigarh city is approximately 4,00,000 and hence reasonable to conclude that the universe of cable and satellite households are likely to be at least 1,00,000.

13. Further, in its reply, the respondent admitted that the outstanding amount against the petitioner as on date i.e. 16.4.2012 was Rs. 59,050/- .

14. I am of the opinion that the submissions of the respondent about the universe of subscribers seems to be big estimate with wide variations and the outstanding amount is insignificant being less than one month subscription amount.

15. I feel that the main issue between the parties seems to be settlement of subscriber base between the parties. The other aspect, of course, is that the petitioner wants to discontinue the signals of Neo Sports bouquet of channel as there is no demand in the area.

16. After seeing the record and hearing both the parties, I am of the opinion that the petitioner is not a defaulter but it has not supplied full details of SLR as required by the respondent for verification. However, the petitioner is entitled for discontinuation of the signals of the Neo Sports bouquet after issuing notices under clause 4.2 and 4.3 of the Regulation.

17. The parties are having long standing relationship, therefore, I am of the opinion that end of justice will be sub-served if following directions are given to the parties :

(a) The petitioner shall supply full details of its LCOs alongwith their names, addresses, connectivity & area of operation, contact numbers and subscriber base within a period of one week.

(b) The respondent will verify the data submitted by the petitioner within a period of 10 days.

(c) The respondent may seek any additional information which could be necessary to arrive at the correct subscriber base of the petitioner.

(d) Thereafter, negotiations may be made between the parties within one week and in the event of settlement between the parties, a subscription agreement may be executed for the year 2012.

(e) In case no settlement is arrived at, the position of each party may be put up in form of minutes of meeting and should be submitted to this Tribunal before the next date of hearing.

(f) Notices under regulations 4.1 and 4.3 will not be given effect to during the pendency of this petition.

(g) During this period, the petitioner will continue to pay subscription amount to the respondent as per existing agreement.

18. Put up the matter on 9.7.2012 for further directions. In the meantime, if settlement is arrived at, liberty is granted to mention.

.....
(P.K.Rastogi)
Member

/NC/