

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

Dated 28th May, 2012

Petition No.326 (C) of 2012

M/s. Varadraj Cable Network	...Petitioner
Vs	
Media Pro Enterprise India Pvt. Ltd.	...Respondent

BEFORE:

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

For Petitioners	: Mr.Jayant K. Mehta, Advocate Mr. Manikya Khanna, Advocate
For Respondent	Mr. Upender Thakur, Advocate, : Mr.Siddharth Khatna,Advocate for Mrs. Prathiba M. Singh, Advocate

ORDER

This petition has been filed by the petitioner against the respondent being aggrieved by notices under clause 4.1 and 4.3 of the Interconnect Regulation for disconnecting the signals of the TV channels to the petitioner's network.

2. The disconnection notice has been issued for unauthorized distribution of signals outside the area of operation as per the agreement. The relevant portion of notice under clause 4.1 of the Interconnect Regulation is reproduced below :

"8th May 2012

Sub : Unauthorised Distribution of signals.

Further note that as per the communication from IndusInd Media & Communication Limited, Belgaum, we have already sent you the notice to restrict to your area and cease and desist from unlawful distribution of signals. For the same you have sent a reply on 6th April 2012 and 7th May 2012 denying the said fact. The same is verified by our local representatives wherein it is found that you are transgressing into other areas namely Tanajigalli, Sapargali, M. Vadgaon, Bharatnagar, Tilakwadi, Hindwadi, Bhawaningar, Channama Nagar, Guruprasad Colony area, Sadhashivnagar areas, Anyaneyanagar areas, Hindalga, Azamnagar, Shahunagar, Nehrunagar, Veerabhadranagar, Shivajinagar, Ahmednagar, Malmaruthi extension area, Ganpatgalli, Malavigalli, Shivajigalli, Sambhajigalli, Gulfi Colony, Azadnagar, N. Sankargalli, Dolekargalli, Vinayknagar, Somwarpet, Laxminagar, Fullbaghgalli, Kapileswar Colony, Old Gandhinagar, Peeranwadi, etc."

The relevant portion of notice under clause 4.3 of the Interconnect Regulation is reproduced below :

"Public notice

This is to notify the customer that the signals of the channels provided by Media Pro(Zee.....Asianet Plus) to the below mentioned cable operator might be discontinued due the following reason which is that the sad operator has violated the work area which has been allotted to them & illegally transmission of signals provided by Media Pro. There is a possibility of discontinuation of signals of the above mentioned channels due to above mentioned reason within 3 weeks from the date of issue of this notice.

Name of cable operator : Varadraj Cable Network, CTS 3935/26D, Meer Arcade C/o Madiwalie Arcade club Road, Belgaum."

3. This Tribunal, in its order dated 30.01.2012 in Petition No. 266(c) of 2011 (Varadraj Cable Network Vs Star Den Media Services Pvt. Ltd.& Anr.), had directed:

"11. Therefore, I direct as follows :

- i) The petitioner, if called upon by the respondent to furnish particulars of some of the subscribers, may do so within a week from the date of receipt of such a request.*
- ii) The parties may enter into a subscription agreement on usual terms and conditions for 884 subscribers, details whereof are contained at pages 66-110 of the petition.*
- iii) Such an agreement may be entered into within two weeks from date.*
- iv) In the event the petitioner intends to supply signals to any local cable operator or any other subscriber, intimation thereof shall be given to respondent within one week from the date of giving of connections.*
- v) The petitioner shall otherwise comply with the requirements of Caluse-11 of the Regulations."*

Accordingly, the petitioner and the respondent entered into a subscription agreement on 21.02.2012. This agreement was valid upto 31.03.2012. Therefore, a fresh agreement was to be executed.

4. According to the petitioner, a copy of the agreement has not been provided to it till date. The copy of the SLR (page no. 56 to 111 of the paper-book) having a list of 884 subscribers was also made

available to the respondent.

On 28.03.2012, the respondent wrote a letter to the petitioner where it complained that the petitioner was transgressing into the territory of the IMCL by giving feed to the existing subscribers / cable operators at Belgaum as communicated by IMCL.

Again on 31.03.2012 a letter was written to the petitioner by the respondent wherein the petitioner was asked to give information to enter into a new agreement starting from 1.4.2012 for the year 2012-2013. The petitioner replied to the respondent on 06.04.2012 in response to its letter dated 28.03.2012, wherein it mentioned that :

"It is vehemently denied that we have extended the area of operation of our network has at any point of time entered into the territory, allegedly of IndusInd Media & Communication Limited the allegations are nothing but a figment of imagination which are bereft of merit and are out rightly rejected.

You may also note that we can demonstrate that we have not indulged in any kind unauthorised distribution of signals / transgression further you may visit our offices for inspection and for substantiating the truth. Kindly treat this reply as also our declaration under clause 12 of "The Telecommunication (Broadcasting and Cable Services) Interconnection (Third Amendment) Regulation 2006 (10 of 2006)"

On 23.04.2012 the respondent again wrote to the petitioner, wherein, it was mentioned that :

"23rd April 2012

As per the communication from IndusInd Media & Communication Limited, Belgaum, we have already sent you the notice to restrict to your area and cease and desist from unlawful distribution of signals. For the same you have sent a reply dated 6th April 2012 denying the said fact. The same is verified by our local representatives wherein it is found that at some places like Kapileswar Colony, Bharat Nagar, Bhavani Nagar, Tanajigalli, Sapargali, M. Vadgaon, Bharatnagar, Old Gandhinagar, Peeranwadi, Vadgaon etc., you are unauthorisedly transmitting our signals.

Further note that we are receiving series of complaints from IndusInd Media & Communication Limited, Belgaum, and local cable operators stating that you are transgressing into their area of operation and have encroached the surrounding areas. They have further stated that due to your transgression / encroachment the other MSO /cable operators are facing losses and unable to collect monthly subscription fee from their subscribers.

In view of the above we hereby call upon to you to forthwith cease and desist from unauthorized distribution of signals of Media Pro channels immediately. We have no other option except to invoke Regulations 4.3 of "The Telecommunication (Broadcasting and Cable Services) Interconnection (Third Amendment) Regulation 2006 (10 of 2006)" of TRAI."

5. The petitioner has denied any transgression of area of operation and asserts that it has been providing signals only to the 884 subscribers mentioned in the SLR.

6. The learned counsel for the petitioner contended that the notice issued by the respondent under clause 4.1 was based on hear-say and not based on any correct information collected by it. He mentioned that in 4.1 notice, the respondent has alleged that the petitioner is transgressing the area as indicated, but the areas alleged to be transgressed, are certain areas which are as per the SLR and in other areas, the petitioner does not have any subscriber. Again, surprisingly, some of the areas shown in this notice do not exist in Belgaum itself.

7. The learned counsel stated that the respondent has concocted the story to the detriment of the petitioner at the behest of the competitor MSO, IMCL, as it was earlier the sole MSO in the area.

8. The learned counsel appearing for the respondent, on the other hand, contended that only 3-4 areas mentioned in notice under 4.1 are included in the SLR given by the petitioner. The petitioner was guilty of transgression of the signals to the areas for which the petitioner was not authorised.

9. After going through the notice under clause 4.1 and the SLR, it is seen that there are large number of areas where the respondent

alleged that the petitioner is providing the signals are already indicated in the SLR submitted by the petitioner. The areas as per the SLR, petitioner not having any subscriber and non-existing areas out of the areas mentioned in 4.1 notice as indicated by the petitioner are shown below. These facts have not been rebutted.

<i>"Area as per SLR</i>	<i>Area not having subscribers of the petitioner</i>	<i>Non – existent areas</i>
<i>Bhawaningar, Tilakwadi, Sadhashiv Nagar Subash Nagar Kapileshwar Colony, Peeranwadi, Somwarpeth, Channama Nagar, Azadnagar</i>	<i>Tanajigalli, Bharat Nagar, Hindwadi, Ashok Nagar, Vijay Nagar, Hindalga, Azam Nagar, Shahu Nagar, Nehru Nagar, Veerabadhra Nagar Shivaji Nagar, Ganpat Galli, Patil Galli, VinaykNagar, Laxminagar, Old Gandhi Nagar</i>	<i>Malavigalli, Shivajigalli, Gulfi Colony, N. Sankar Galli, Dolekar Galli, Ahmed Nagar"</i>

10. It is not understood as to how the respondent can give notice under 4.1 to the petitioner on imaginary violation of the area of operations. The respondent cannot simply rely on a communication from other MSO, namely, IMCL. It will be of some relevance to mention here that the signals were supplied to the petitioner on the basis of this Tribunal order dated 30.1.2012, wherein a clear direction

was given that the parties may enter into the subscription agreement on usual terms and conditions for 884 subscribers.

11. It is surprising to note that the respondent entered into an agreement only for the period 1 & ½ months. The explanation of the respondent that its agreements are executed for a period from 1st April to 31st March of next year, does not seem to be convincing.

12. Prima facie, I am of the view that the notices issued by the respondent under clause 4.1 and 4.3 of the Interconnect Regulation are not based on facts of the case. Therefore, the respondent is directed not to give effect to the said notices under clause 4.1 and 4.3 of the Interconnect Regulations till the pendency of this petition.

13. This order is subject to any other and further order passed by this Tribunal.

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

/NC/

Later, after the order was pronounced, the counsel for the parties stated that the respondent would have no objection in joining the joint survey, which is being carried out for ascertaining the subscriber base of the petitioner between it and the Ushodaya Pvt. Ltd. in Petition No.268(C) of 2011.

It is directed accordingly.

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(P.K.Rastogi)
Member

/NC/