

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

**Dated November 2.11.2012**

**Petition No.279 (C) of 2012**

Home Broadband Services ...Petitioner

Vs

SUN 18 Media Services North Pvt. Ltd. ...Respondent

**Petition No.281 (C) of 2012**

Home Broadband Services ...Petitioner

Vs

ESPN Software India Pvt. Ltd. ...Respondent

**BEFORE:**

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

For Petitioner : Mr. Rahul Kumar, Advocate  
Ms. Snigdha Sharma, Advocate

For Respondent : Mr. Kunal Tandon, Advocate  
(Pet. No. 279 (C) of 2012)

For Respondent : Mr.N.Ganpathy, Advocate  
(Pet. No. 281(C) of 2012) Mr.Kartik Yadav, Advocate

## J U D G M E N T

1. The petitioner is a Multi Service Operator, the respondents herein are broadcasters.
  
2. The petitioner being desirous of obtaining supply of signals of the channels of the respondents' by letters dated 26.07.2010 and 09.08.2012 requested them to supply their respective decoders so as to enable the petitioner to provide cable TV services in Raj Nagar extension, Ghaziabad.
  
3. We may notice the factual matrix involved herein for Petition No. 279 (C) of 2012.
  
4. The petitioner contends that it being a new operator there was a possibility of his acquiring potential customers in the future i.e. 2-3 years down the line and on that premise, it did not supply any Subscription Line Report (SLR).
  
5. The petitioner furthermore filled up an application form as suggested by SUN 18 Media Services North Pvt. Ltd.

6. The petitioner filled up the said form on or about 15.10.2010 which according to the respondent was an incomplete one.
7. It may be placed on record that in the said request the petitioner asked for signals for the entire town of Ghaziabad.
8. Having regard to the fact that the respondents did not accede to the said request, the petitioner filed a petition before this Tribunal which was marked as Petition No. 194(C) 2011.

By reason of a judgment and order dated 04.07.2011 the said petition was disposed of inter alia directing:

"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 ten days 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 that it 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."

9. The petitioner, inter alia, on the premise that the respondent

did not comply with the said directions of this Tribunal filed Execution Applications which by an order dated 01.03.2012, were dismissed.

10. However, we may place on record that during pendency of the said Execution Application, various directions were issued to the parties thereto from time to time with regard to supply of requisite documents to the respondents herein by the Petitioner as also how and in what manner the subscriber base of the petitioner could be determined.

Whereas on or about 01.12.2011, the petitioner contended that it is in a position to obtain the connection on a subscriber base of 600-750, by a letter dated 10.01.2012, it agreed to enter into an agreement on the subscriber base of one thousand subscribers.

11. The respondents, however, contended that keeping in view the population of the town of Ghaziabad, the SLR submitted by the petitioner was on a lower side.
12. It may further be placed on record that pursuant to a direction issued by this Tribunal the headend of the petitioner was inspected.

13. The respondents in their replies raised various objections as regards supply of signals of their channels to the petitioner's network.

14. Some of the said objections are as under:

- a. The petitioner does not have any headend.
- b. The petitioner has changed its area of operation from time to time.
- c. The petitioner does not have any cable infrastructure.
- d. The subscriber base of the petitioner is extremely low.
- e. The petitioner has not obtained any permission from the District Magistrate as is required under the UP Cable TV Network (Exhibition) Rules, 1997.
- f. The petitioner has not produced any document and no fresh requests having been made by the petitioner.
- g. After dismissal of the said petition being Petition No. 194(C) of 2011 as also the Execution Application, these petitions are not maintainable.

15. Mr. Rahul Kumar, learned counsel appearing on behalf of the petitioner would contend that the respondents having statutory

obligations to supply signals of their respective channels, they cannot be heard to say that the statutory duties shall not be performed by them.

It was furthermore urged that apart from other documents, from the petitioner's letter dated 31.01.2012 addressed to the SUN 18 Media Services Ltd., it would appear, that the petitioner supplied all the relevant informations/documents which are as under:

1. "Detailed Diagram/ Map of Ghaziabad " with the location marked of our Head End/ Control Room/NOC (Network Operating Centre) ANNEXURE-A
2. Details of proposed area of our operations Raj Nagar Extension and the entire City of Ghaziabad (as per the Map provided of Ghaziabad Master Plan 2021 Proposed Land Use (Same as marked on ANNEXURE -A)
3. Details of our franchisees/ Cable operators/ sub operators along with their addresses and their respective areas of operations in Ghaziabad city with their connectivity/ subscriber base, postal registration and E-Tax registration wherever applicable as ANNEXURE - B-1, B-2, B-3, B-4, B-5 and B-G (Where the total subscriber no is 614 subscribers) and Details of the Builders Society in Raj Nagar Extension NH-58 with the no of flats being constructed and their tentative time for handing over the possession - (AS ANNEXURE - C)
4. SLR (Subscriber Line Report) as per the

format on our letter head incorporating all the information/details as given above ANNEXURE B-1, B-2, B-3, B-4, B-5 and B-6 (Marked as ANNEXURE C-1).

5. Details of Network :

a) 8 No's Space Link make Dish Antenna 12 ft Diameter, CATV RF Modulators - CISCO SA, RF Combiners- Zinwell - 96 Frequencies in Analogue, Harmonics Optical transport, Optical Nodes - CISCO -SA, APC - 10 KVA UPS, Mahindra GENSET 35KVA, 96 core Finolex- Optica<sup>1</sup> Fibre Cable, 8 Ton Air-conditioning.

b) Analogue, Digital with addressability will be installed once the system gets operational after the Pay channels are provided to us.

c) The Equipment used conforms to the BIS standards as well the International Communication certification

d) Mode of transmission of signals is hybrid, overhead, as well underground wherever applicable as per the operational requirements on a hybrid fibre Co-axial CATV distribution plant. The permission of the City municipality with the Fee paid - ANNEXURE- G

6. Copy of our Post office Registration/Licence - ANNEXURE-D

7. Registration Certificate issued under Service Tax - ANNEXURE - E

8. Entertainment Tax Registration - ANNEXURE -F

9. Copy of the PAN CARD No AAFFH7853M- ANNEXURE-H

10. Latest Income Tax return - ANNEXURE-I

11. Latest Service Tax return- ANNEXURE- L

12. Certified Copy of the registered Partnership Deed - ANNEXURE- J

13. Separate power of attorney signed by all the partners of the firm - ANNEXURE- K"

Learned counsel submitted that the said documents having been supplied and the informations sought for by the respondents in its letter dated 30.01.2012, they cannot deny the petitioner's right to obtain supply the signals of their channels.

16. Mr. Tandon appearing on behalf of SUN 18 Media, and Mr. Yadav appearing on behalf of the ESPN, on the other hand would support their respective contentions as contained in the replies.

17. It is difficult to agree with the submission of Mr. Rahul Kumar that the petitioner has made out a case for issuance of a direction upon the respondents herein to supply signals of their channels.

18. There appears to be a serious dispute as to whether the petitioner's headend is in operational form.

19. The respondents in this behalf contended that:

- i) The dish antenna installed on the roof of a premises are not connected to any FTA receivers or pay channels decoders.
- ii) The modulators were installed in racks without power supply.
- iii) Channels-cum-minor, an amplifier had not been installed in headend.
- iv) Televisions sets were disconnected from power supply.
- v) No finolex optic fiber was connected with any apparatus for the purpose of supply of signal on the ground.
- vi) In the control room no FTA or pay channel was being run.

20. It has furthermore been stated that the equipments installed at the headend of the petitioner do not conform to the BIS standard.

21. The petitioner does not have a registered certificate nor has it obtained any permission in terms of the Uttar Pradesh Cable TV Network (Exhibition) Rule, 1997.

22. Several objections apart from the above have also been raised by the ESPN including the one that there exists a huge discrepancy in the list of cable operators. The postal registration certificate for two of the operators, it was urged, show validity period for more than one year i.e. for three years. Mr. Rahul Kumar would urge that although, the petitioner has sought for supply of signals from both the broadcasters, their defence is not common.

23. That may be so but the question which arises for consideration is that in terms of the provisions of the Cable TV Network Act and the rules framed thereunder as also the provisions of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 as amended from time to time (hereinafter called and referred to for the sake of brevity as 'the said Regulations'), the MSOs are required to show a legal right in regard thereto. A legal right must be an enforceable one in a Court of law, wherefor it has to be

established that conditions precedent laid down in a statute have been fulfilled.

24. A Multi Service Operator must be a registered cable operator in terms of Section 3 of the 1995 Act. In terms of the proviso appended to Regulation 3.2 it should not be a defaulter.

25. It must have a headend the equipments installed therein must conform to the BIS standard.

26. In terms of clause 9 of the Regulations, the signal seeker must furnish a SLR as also the subscriber base of the local cable operator.

27. The petitioner in the opinion of this Tribunal has failed to satisfy the aforementioned basic requirement.

28. Moreover, if the petitioner has laid underground cable or over-head cable, it must also obtain the requisite poll permission.

29. The documents filed by the petitioner do not inspire confidence. According to the respondents, except one cable operator others have no existence on the ground. The respondents have furthermore stated that the conditions of the headend do not conform to the requirements as would appear from paragraph 8 of the reply.

30. It appears from the materials brought on record that there is nothing to show that the petitioner is in a position to start its operation forthwith.

31. Moreover, there is a dispute with regard to the subscriber base of the petitioner.

32. On or about 1.12.2011 the petitioner in its letter dated 1.12.2011, stated as under:-

"After delivery of your Decoders and IRD and their activation from your end, we would require minimum one week for testing and placement of channels and another week or 10 days thereafter for testing and balancing of our distribution plant. Kindly note that we have all the necessary equipment, man power and infrastructure in place and at our disposal to be used immediately after the delivery of your Decoders and IRD for your distributed pay TV channels.

We are hopeful that with our committed efforts we would be in a position to connect 600 to 750 subscribers within a period 6-7 months after receiving your Decoders and IRD and their activation. The chart depicting the monthwise. subscriber is as under:

We are hopeful that with our committed efforts we would be in a position to connect 600 to 750 subscribers within a period 6-7 months after receiving your Decoders and IRD and their activation."

33. It, however, as indicated heretobefore by its letter dated 10.1.2012 offered 1000 to enter into agreements on a subscriber base. According to the petitioner it intends to carry on its operation in a large number of areas. The petitioner, however, now intends to confine its operation in Raj Nagar.

34. The respondents contend that in the areas which are proposed to be covered by the petitioner in Ghaziabad, the population would be about 3 lakhs.

35. We, however, need not go into the question.

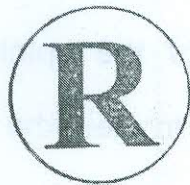
36. Several other contentions have also been raised by the respondents herein but we are of the opinion that it is not necessary to go thereinto keeping in view the fact that not only

the petitioners have failed to satisfy this Tribunal with regard to the requirements of the aforesaid Act and Rules.

37. Moreover, admittedly, the petitioner has not obtained any permission of the District Magistrate in terms of the UP Rules although, one of the LCOs had taken such permission. The petitioner has merely filed an application before the District Magistrate.

38. For the reasons aforementioned, the petitions are dismissed without any order as to costs.

39. There cannot, however, be any doubt or dispute that the petitioners as and when are in a position to re-transmit the signals supplied by the broadcasters, it would be at liberty to approach the Respondent.



[Redacted]  
**(S.B. Sinha)**  
**Chairperson**

[Redacted]  
**(P.K. Rastogi)**  
**Member**

**November 2, 2012**  
**'ns'/MM**