

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

DATED 2ND NOVEMBER 2012

Petition No.744 (C) of 2012

Aadharsh Cable Network ... Petitioner

Vs.

Digi Cable Network (India) Pvt. Ltd. ... Respondent

BEFORE:

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

For Petitioner : Mr. Yoginder Handoo, Advocate

For Respondent : Mr. Sharath Sampath, Advocate

ORDER

The Petitioner is a local cable operator. The Respondent is a Multi Service Operator operating on a Pan India basis.

2. The Petitioner has filed a petition before this Tribunal which was marked as Petition No. 253 (C) of 2011.

By reason of a judgment and order dated 10.02.2012, the said petition was dismissed.

It was, however, observed :-

“It, however, goes with saying that if a fresh request is made by the Petitioner for supply of signals, the Respondent No.1 would consider the same in terms of Clause 3.2 of the Regulations.”

3. In view of the aforementioned observations, the Petitioner made a request to the Respondent for supply of signals to its network.

The Petitioner contends that an agreement had been entered into on or about 12.6.2012 in terms whereof the Petitioner was to pay the subscription fees for a sum of Rs.10,000/- per month.

The connection was said to have been given on 12.6.2012. A purported document was drawn up on the said date wherein the name of one Mr. S. K. Saxena appears. The said connection was purportedly given during 12’0 clock in the night to 3.15 A.M. in the morning.

A complaint was allegedly received at 5.30 P.M. on the same date, which was also said to have been rectified at 6.30 P.M.

Yet again, a complaint was made on 13.7.2012 at 7 P.M. and rectified at 8 P.M.

4. According to the Petitioner, for the purpose of obtaining supply of signals by the Respondent he has paid a sum of Rs.5 lacs by a demand draft dated 09.6.2012. Allegedly it furthermore paid a sum of Rs.2 lacs in cash to one Shri Manish Mathur of the Respondent.

5. It is furthermore the case of the Petitioner that when its signals were disconnected, he was again asked to pay a sum of Rs.20,000/- on 31.8.2012 whereupon the signals were restored. A receipt was allegedly issued by some officer of the Respondent in respect of the said sum.

6. When, however, the Petitioner's network was again disconnected, he sent a telegram on 29.8.2012 which is to the following effect :-

“UHV DISCONNECTED SIGNAL SERVICES TO OUR NETWORK ON 23.8.2012 FROM 4 P.M. ONWARDS WITHOUT FOLLOWING DUE PROCEDURE HENCE WE REQUEST YOU TO KINDLY RESTORE THE SAME IMMEDIATELY TO AVOID INCONVENIENCE TO OUR SUBSCRIBERS PLEASE”

7. Mr. Yoginder Handoo, learned counsel appearing on behalf of the Petitioner would contend that the Respondent acted illegally and unfairly in

disconnecting the supply of signals to the Petitioner's network despite receiving a huge amount.

The learned counsel urged that the Petitioner was bound to respond to the Petitioner's letters dated 28.9.2012.

In any event, the network could not have been disconnected on the ground of act of piracy or otherwise.

8. Mr. Sharath Sampath, learned counsel appearing on behalf of the Respondent submitted that when the aforementioned employee of the Respondent, Mr. Saxena resigned on 28.8.2012 and a FIR was lodged against him for taking away various documents including the books containing the documents referred to by the Petitioner and the Respondent and thus, there is absolutely no way that he could connect the Petitioner's network or obtain the subscription fees for the month of July and August, 2012 for which he was not authorized at all.

9. It has been pointed out that the Respondent has lodged a First Information Report also against the Petitioner inter-alia for piracy of the signals.

10. It may, however, be placed on record that the aforementioned demand draft for a sum of Rs.5 lacs was returned by the Respondent on 05.9.2012 itself.

It is not in dispute that the network of the Petitioner stands disconnected.

11. There exists a controversy as to whether the Respondent has entered into any oral agreement with the Petitioner on 12.6.2012 or not.

Ex-facie it is doubtful that the Petitioner pursuant to an agreement was to pay the subscription fees to the Respondent at the rate of Rs.10,000/- per month.

If it is a small cable operator, as has been submitted by Mr. Handoo, it is difficult to agree with his contention that the Petitioner has paid a sum of Rs.7 lacs in advance which would cover 70 months' monthly subscription fees.

12. Prima facie, having regard to the fact that Mr. Saxena, who had purported to have given connection to the Petitioner's network, resigned from the services prior to 28.8.2012, no case has been made out by the Petitioner for obtaining an ad-interim injunction in mandatory term in view of the fact that a First Information Report was lodged on 28.8.2012, stating:-

“With subject to the above we would like to state that our Business Manager Name T.P. Saxena has sent his resignation from his official email id on 24th August 2012 and after that he is disappeared from office and not even answering phone calls.

We found that with his disappearing lot of company assets are also gone missing, few company assets and missing documents from our branch office located at 22.3.302, atta-ur-rehman Estate, 3rd floor, beside Mir Chowk police station, Mandi Mir Alam Road, Hyderabad-500002 we have mention below, we request you to please take the appropriate action and find out the culprit.

List of missing assets and other office documents.

- (1) Laptop*
- (2) Collected cash and Cheques from Cable operators (Unidentified)*
- (3) Bank pay in slips*
- (4) Printer*
- (5) Subscription collection receipt Book Nos. 290, 291, 292, 293, 294 and 295.*
- (6) Other internal documents and Registrar (Attendance Registrar, Material issue note book, Complaint note book, Rental agreements, SAF forms, STB Issue Delivery challans etc.*
- (7) Nodes*
- (8) Chairs, Tables and other furniture’s.*
- (9) Set top Boxes.”*

Prima facie, therefore, there is a possibility that the said Shri Saxena has used some of the aforementioned documents.

It appears to be unlikely that some documents would be issued in such quick-succession. It is, therefore, likely that the said documents have been created for the purpose of filing the present petition.

13. Mr. Manish Mathur had also lodged First Information Report against the Petitioner on 25.8.2012.

14. Apart from the said fact, the purported document showing grant of connection on 12.6.2012 contains a lot of over-writing and cutting. It is doubtful that connection would be given at 12'0 clock in the night and the technician would be in the Petitioner's network up to 3.50 A.M. and again in the evening a complaint would be received and the same would be attended to.

In the document dated 13.7.2012 also, there are some over-writings.

15. Although, the learned counsel of the parties have taken me through various correspondences and e. mails, which may not be considered in details at this stage; keeping in view the fact that the Respondent categorically stated that no agreement had been entered into by and between the parties hereto, I am of the opinion that no strong prima facie case has been made out.

16. Moreover, it is difficult to accept that the Petitioner will hand over a sum of Rs.2 lacs in cash to an officer of the Respondent without obtaining any receipt therefor.

It must also be placed on record that the Respondent has denied that any of its officers has received the said sum.

17. It is true that the Petitioner has handed up a demand draft of Rs.5 lacs but the same has not been encashed.

18. The balance of convenience also in the opinion of this Tribunal, is not in favour of the Petitioner in view of the fact that the Respondent has made serious allegations against it.

In the event this petition is dismissed, the Petitioner would be obtaining supply of signals in violation of the Regulations.

19. The interim prayer made by the Petitioner is, therefore, rejected.

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(S.B. Sinha)
Chairperson

rkc