

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

Dated 23rd November, 2012

Petition No. 836(C) of 2012

Dish TV India Ltd.

...Petitioner

Vs.

ESPN Software India Pvt. Ltd.

...Respondent

BEFORE:

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

For Petitioner

: Mr. Maninder Singh, Sr.Advocate
Mr. Tejveer Singh Bhatia, Advocate
Mr. U. Thakur, Advocate for
Mrs. Prathiba M. Singh, Advocate

For Respondent

: Mr. Mukul Rohtagi, Sr.Advocate
Mr. Gopaj Jain, Advocate
Mr. Sai Krishna Rajagopal, Advocate
Mr. Sidharth Chopra, Advocate

ORDER

The petitioner has filed the present petition against the public notices dated 5.11.2012 and 12.11.2012 by the respondent for disconnection of signals of the petitioner. The public notice dated 5.11.2012 under clause 4.3 of the interconnect regulation has been issued on the ground of non-signing of the agreement and breach of applicable regulations including reporting requirements and public notice dated 12.11.2012 has been issued on the ground of non-payment of subscription fees, breach of order of the TDSAT dated

10.04.2012 and failure to permit statutory audit.

2. It is undisputed that notice under clause 4.1 of the interconnect regulation has not been issued by the respondent before issuing these public notices.

3. Mr. Maninder Singh, the learned senior counsel appearing on behalf of the petitioner contends that in absence of 4.1 notice, the public notice issued by the respondent cannot be given effect to. However, Mr. Mukul Rohtagi, learned Senior counsel appearing on behalf of respondent contends that it is not necessary to give 4.1 notice before disconnection as there is no written agreement between the parties in terms of the second proviso to Regulation 4 of The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 as amended from time to time.

We may reproduce the Regulation 4.1 :

"4.1 No [broadcaster, multi system operator or HITS operator, as the case may be]³³ shall disconnect the TV channel signals to a distributor of TV channels without giving three weeks notice to the distributor clearly giving the reasons for the proposed action.

Provided that a notice would also be required before disconnection of signals to a distributor of TV channels if there was [a written agreement], permitting the distribution of the broadcasting service, which has expired due to efflux of time.

Provided further that no notice would be required if there is no [written agreement] , permitting the distribution of the signals."

4. It has been brought to my notice that in a dispute between the same parties, this Tribunal in its order dated 10.04.2012 in Petition No. 382(c) of 2011 had directed as under :

"153. For the reasons aforementioned the petition of Dish TV is allowed. The parties are directed to enter into an agreement with effect from 1.9.2011 which would be governed by the modified RIO."

5. It is not a case of the respondent that there was never an agreement between the parties. In terms of first proviso to Regulation 4.1, a notice is required before disconnection of signals to a distributor of TV Channel if there was a written agreement which has expired due to efflux of time.

Again in terms of the direction of this Tribunal on 10.04.2012, it cannot be said that there is no written agreement between the parties.

Therefore, I am of the view that issue of 4.1 notice in this matter is essential before disconnection of signals of the petitioner.

6. The disputes between the parties seems to be on the following aspects :

- (a) reconciliation of accounts based on the audit of the SMS system of the petitioner
- (b) signing of the agreement
- (c) introduction of India Cricket Pack by the petitioner

7. In terms of this Tribunal's order dated 10.04.2012 in Petition No. 382(c) of 2011, the petitioner was entitled to the restitution of the amount which was paid to the respondent for the months of September 2011 onwards. This amount was to be determined on the basis of SMS reports. The parties were directed to reconcile their respective accounts on this behalf.

Instead of reconciling the accounts, the petitioner determined itself based on its own record that an amount of Rs. 19.68 crores was payable by the respondent to the petitioner in terms of the orders of this Tribunal. It started adjusting this amount for the subscription amount to be paid by it to the respondent. The entire amount of Rs. 19.68 crores was adjusted out of the subscription amount to be paid by the petitioner to the respondent till September 2012. For the

month of October 2012, an amount of Rs. 1.56 crores was paid to the respondent. The respondent's contention is that the petitioner has not allowed the audit of its SMS system by the representatives of the respondent. Until and unless, the audit is allowed, then it is not possible to determine the exact amount to be refunded to the petitioner in terms of the order of this Tribunal.

8. According to the respondent, the petition had formulated one India Cricket Pack which is a hybrid pack. This pack has been provided in such a way that certain subscribers get sports channels for the period of special sports events and where India is playing for one side. It will be available for the period of 5-10 days and whenever the match is complete, the channel will get disconnected. According to the respondent such practice is making the respondent to cause huge loss as the subscribers getting such facility will not be recorded and reported to the respondent. Mr. Maninder Singh denied that any channel is activated only for 5-10 days. It is stated that the pack was introduced two years back and is given on monthly basis.

This aspect requires detailed examination after seeking detailed reply of the respondent and rejoinder by the petitioner. It is difficult to adjudicate this matter at this stage.

9. There is a dispute about the execution of the agreement. The petitioner is ready to sign the agreement in terms of the RIO as published on the website of the respondent. The respondent has provided certain reporting requirement which include the information to be given to the respondent about the names of the subscriber. According to the petitioner, seeking of such information is not mandated by the regulation and against the commercial interest of the petitioner.

Mr. Maninder Singh, has stated that there is no objection of conducting the audit of the petitioner's SMS system in accordance with the regulation.

10. The parties have been heard for interim prayer extensively. I am of the opinion that the interest of justice will be sub-served if following directions are issued to the parties :

(a) The respondent will send its representatives to the petitioner for conducting audit in terms of the regulations and the same will be completed within a period of two weeks. The petitioner will provide full cooperation to the representatives of the respondent.

- (b) The petitioner will produce all the relevant records before the representatives of the respondent conducting the audit. It will also produce the records to show the manner in which "India Cricket Pack" is maintained.
- (c) Based on the audit report, both the parties will meet and reconcile their accounts.
11. Till further hearing in this matter, the respondent is directed not to give effect to its public notices dated 5.11.2012 and 12.11.2012.
12. Put up this matter "for directions" on the date already fixed.

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(P.K.Rastogi)
Member

/NC/