

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

**Dated 30<sup>th</sup> October, 2012**

**Petition No.485(C) of 2011**

M/s Silverline Entertainment	...Petitioner
Vs.	
ESPN Software India Pvt. Ltd.	...Respondent

**BEFORE:**

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

For Petitioner	: Mr.Vikram Singh, Advocate Mr.Bhanu Pant,Advocate
----------------	---

For Respondent	: Mr.N.Ganpathy,Advocate Mr.Kartik Yadav, Advocate
----------------	---

**JUDGMENT**

This petition has been filed by the petitioner against the respondent for non-signing of the subscription agreement for the year 2011-2012. The petitioner has also requested to set aside the public notice dated 06.12.2011 threatening to disconnect the signals of the petitioner on the ground of outstanding, non-signing of the agreement and area transgression.

2. The petitioner is a Multi System Operator operating in the municipal limits of Allahabad, U.P. and respondent is a broadcaster broadcasting various sports channel.

3. The petitioner has submitted that it had entered into a written subscription agreement for the supply of signals in the year 2008 for the period of one year and later in 2009 it had entered into the agreement for another period of one year w.e.f. 1.7.2009, but the copy of the same has not been provided to it.

4. According to the petitioner, it tried to contact the respondent for execution of the agreement and wrote number of letters to the respondent for signing of the agreement. Only after the judgment of this Tribunal in Petition No. 332(c) of 2011 dated 8.4.2011, wherein this Tribunal directed the parties to hold a meeting and find out the workable solution or mechanism, it received a letter dated 18.4.2011 from the respondent wherein it sought information as required in terms of clause 11 of the Regulations.

The petitioner in its reply to this letter of the respondent sent a letter dated 2.8.2011 requesting the respondent to hold an effective meeting for entering into subscription agreement.

The respondent through a letter dated 16.08.2011 asked the petitioner to approach the Kanpur Office on 19.08.2011. Accordingly, the petitioner went to the Kanpur Office and submitted all informations like, subscriber

base and entertainment tax details, wherein it was given assurance that the agreement would be entered into shortly.

This petition has been filed by the petitioner as no agreement has been executed by the respondent.

5. According to the petitioner, the respondent had issued a similar public notice dated 10.04.2010 without citing the outstanding amount payable towards subscription dues as a ground of disconnection of signals during the subsistence of the agreement with the respondent and that was challenged by the petitioner before this Tribunal vide Petition No. 114(c) of 2010. This Tribunal had allowed the said petition vide its judgment dated 02.02.2011.

6. In its further submission, the petitioner has stated that as per the directions of this Tribunal and as demanded by the respondent through its letter dated 18.02.2011, it paid an amount of Rs. 4.5 lakhs through three cheques.

7. In order to get the renewal of the subscription agreement, the petitioner again filed Petition No. 332 (c ) of 2011 and the said petition was allowed on 8.4.2011.

8. On the other hand, the respondent submitted that it had a series of negotiations with the representatives of the petitioner since beginning especially after passing of the judgment dated 8.4.2011. The petitioner did not provide all the information as required under the Interconnect Regulations. It failed to furnish to the respondent its SLR and other details like franchisees invoices for the past six months and entertainment challans of all its operators from the last two years despite several reminders.

It denied existence of any subscription agreement dated 1.7.2009 between the petitioner and the respondent.

The petitioner had a history of cheque dishonours and even three cheques given by the petitioner to the respondent pursuant to the order dated 2.2.2011 got dishonoured. Not only that, the details of the subscription amount submitted by the petitioner through its statement of account is also not correct. It is stated that the payment of Rs. 4 lakhs which was made to the respondent vide two cheques being cheque nos. 514792 & 514793 of Rs. 2 lakhs each, whereas actually it was only for Rs. 1 lakh each amounting to Rs. 2 lakhs in total.

The respondent further submitted that the petitioner became a unit of M/s Digi Cable from the year 2009.

In furtherance of the directions of this Tribunal, the petitioner had submitted its SLR of 48 operators with 1900 subscribers whereas as per the upgradation form sent by the petitioner to the respondent, the subscriber base was 2700. The petitioner deliberately furnished incorrect and incomplete information to the respondent. In fact, the petitioner has submitted a list of 90 operators with more than 14622 connections in reply to a notice by the entertainment tax office, State of U.P.

9. The petitioner in its rejoinder denied that it is a unit of Digicable. The petitioner is altogether a different entity.

10. Regarding upgradation form signed by the petitioner and sent to the respondent, the petitioner admitted that it was carrying the signatures of the sole proprietor of the petitioner but the contents of the form were filled by the respondent in absence of the petitioner and moreover, the same was never implemented by the parties at any moment of time. It would not be out of place to mention that respondent neither chose to bring this document in earlier round of petitions nor it started billing for the said amount. The said document does not bear any date. The petitioner categorically denied that the said document was given after the direction of this Tribunal.

11. Although, the petitioner admitted the documents pertaining to payment of entertainment tax amount but denied the documents which were having the list of LCOs alongwith the subscriber number. This list of LCOs is hand written and moreover, not carrying genuine signatures of the sole proprietor of the petitioner.

12. In Petition No. 114 (c) of 2010, this Tribunal vide its order dated 02.02.2011 had directed the parties :

*"37. Be that as it may, as the same does not fall for our consideration, we are of the opinion that while setting aside the impugned notice, the interest of justice will be sub-served if in the facts and circumstances of this case and having regard to the fact that we are satisfied that the petitioner was to pay a sum of Rs.1,61,903/- per month, direct it to pay a further sum of Rs.4.5 lacs.*

*38. The aforementioned sum must be paid within a period of three weeks from date, failing which interim injunction granted in favour of the petitioner shall stand vacated."*

When the agreement was not concluded and executed between the parties, the petitioner again filed Petition No. 332 (c ) of 2010, this Tribunal issued order on 8.4.2011 in terms of the which it had been directed that :

*"26. We, therefore, are of the opinion that the parties hereto having regard to the direction issued in our order dated 2.2.2011 passed in Petition No. 114(C) of 2010, should hold a meeting and find out a mechanism by which a workable solution may be found out."*

After issue of order by this Tribunal, the respondent had written a letter to the petitioner on 16.08.2011 asking the petitioner to approach the Kanpur Office on 19.08.2011. It submitted the details to the respondent at Kanpur Office. The respondent in its letter dated 16.08.2011 asked the petitioner to :

*"Also would like to mention that the details already submitted by you with our distributor are not complete and correct. Hence, we request you to provide the following to us to analyse and verify to finalise the actual and mutually agreeable commercial terms for the fresh service agreement to be signed between us. The details required by us are as follows :*

- (a) List of cable operators affiliated with you (please mention their complete name, address, area of operation and names of its subscriber base)*
- (b) List of your direct subscribers (please mention their complete name and addresses)*
- (c) Evidence exchanged between you and your affiliated cable operators on the subscriber base (including the subscriber ase of other cable operators in that area and adjoining areas and local survey)*
- (d) Copies of the last 6 months' invoices raised by you on your cable operators*
- (e) Copies of the entertainment tax returns filed by you and your cable operators for the last 6 months.*

*It may please be noted that these lists/documents submitted by you shall be accepted by us only after due scrutiny and verification.*

*Looking forward to meet you on 19<sup>th</sup> August 2011 at our Kanpur DB office."*

It is seen from the records and as admitted by the petitioner, the petitioner supplied the informations at points (a), (b) & (e) mentioned above and it could not supply the points (c) and (d).

This has been admitted by the petitioner in its evidence and cross-examination :

*{Attention of the witness is drawn to letter dated 16.08.2011 at page 48 of the main petition (Exhibit PW 1/9)}*

*Q. Have you supplied the documents mentioned in para a) to e) of this letter to ESPN?*

*A. I have supplied a), b), e) to Mr. Amarjeet Singh, Distributor of the respondent."*

13. The respondent issued 4.3 notice and did not issue 4.1 notice.

14. The impugned public notice under clause 4.3 was issued on the ground of outstanding amount, non-signing of agreement and on the ground of transgression. However, in reply, the respondent did not say anything specifically about the transgression and during the course of hearing, the learned advocate of the respondent has submitted that he is not raising the issue of transgression. Therefore, 4.3 notice will be considered on the two grounds only, i.e. Non-signing of the agreement and Outstanding amount.

15. Regarding the issue of outstanding, there is a difference of opinion with regard to several payments between the respondent and the petitioner. In the Statement of Account submitted by the petitioner, it is seen that it contain wrong amount :

<i>"Sl. No.</i>	<i>Encashed as on</i>	<i>Particulars</i>	<i>Cheque no./ DD No.</i>	<i>Cheque amount</i>
<i>8</i>	<i>25.10.11</i>	<i>Bank of Baroda</i>	<i>514793</i>	<i>200,000.00</i>
<i>9</i>	<i>25.10.11</i>	<i>Bank of Baroda</i>	<i>514792</i>	<i>200,000.00"</i>

Whereas serial 8 and 9 Rs 2 lakhs have been paid by the two cheques bearing no. 514793 and 514792 on 25.10.2011, the respondent says that these entries are wrong and has not been paid to the respondent which has been admitted by the petitioner in its evidence :

*"Yes the signature of the photocopy of the cheques at the page no. 78-79 are mine and two cheques set forth there have been issued by me. The said cheques are marked as Exhibit RW 1/6.*

*Yes, it is correct that the total mentioned in my statement of accounts appearing at page no. 45 of the petition will not be correct on account of the wrong amounts mentioned against sl no. 8 and 9 therein."*

The respondent has filed the copies of two cheques showing an amount of Rs. 1.00 lakh each paid by the petitioner. Therefore, in view of the admission by the petitioner, the statement of account produced by it cannot be relied upon.

16. The respondent has enclosed a statement of its accounts concerned with the petitioner. The statement shows an amount of Rs. 43,096/- outstanding at the end of July 2011. The same amount of outstanding was

shown in the letter dated 26.7.2011 sent by the respondent to the petitioner.

The respondent has submitted its statement of account and it shows an outstanding balance of Rs. 3,46,958/- as on February 2012. This amount is payable by the petitioner to the respondent.

17. Regarding non-signing of the agreement, it is seen that the petitioner has been trying to approach the respondent for the execution of the new agreement and for this reason only, it has filed two petitions earlier. Both parties are trying to make allegations against each other, while, the respondent contends that the petitioner is not supplying full information although it is always willing to sign agreement, the petitioner has contended that it has supplied the entire information except those which are not relevant.

18. The petitioner is supposed to give entire information as required under clause 11.2 of the Interconnect Regulations, which reads as under :

*"Between Multi System Operator and Broadcaster*

*11.2 In non-addressable systems, negotiations on revision of subscriber base at the time of renewal of interconnection agreement between a multi system operator and a broadcaster shall take into account the changes in subscriber base of the multi system operator over the past three years, as well as the changes in subscriber base of other multi system operators operating in the area in which the multi*

*system operator is operating and its adjoining areas for the current period”.*

The petitioner has supplied the SLRs. Both the parties have to negotiate and come to conclusion on subscriber base.

19. The dispute seems to be on the subscriber base and that is the reason, parties could not be able to arrive at the negotiated figures. However, some technical issues are being raised about the supply of information by the petitioner to the respondent.

This is obvious from the facts that the respondent has mentioned a reason of transgression, which it itself has dropped. This shows that respondent company is raising frivolous reasons for disconnection and later on withdrawing the same for want of any evidence.

20. The SLR submitted by the petitioner show a subscriber base of 1900 subscriber with 48 operators. According to the respondent, the petitioner signed an upgradation form and sent to respondent showing subscriber base of 2700. The petitioner has not denied signing this document. The document shows a revision of subscription fee to 1,78,200/- w.e.f. 1.6.2009. The petitioner's contention is that this document is not dated and never acted upon by the parties.

21. The impugned notice under clause 4.3 was issued by the respondent on 6.12.2011 but notice under clause 4.1 was not issued.

The contention of the petitioner is that for disconnection, it is necessary to give notice under clause 4.1 of "The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004" as amended from time. The learned counsel for the petitioner has brought to our notice that under proviso to clause 4.1, it will be necessary to issue notice even if in the case where the agreement has expired. We may read the said proviso :

*"4.1 No [broadcaster, multi system operator or HITS operator, as the case may be]<sup>33</sup> 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]<sup>34</sup> , 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."*

However, the respondent was of the view that once the agreement period is over, any party can disconnect the transmission of signals of TV Channels. We may read the provisos under clause 8.1 :

*"8.1 Parties to an interconnection agreement for supply of TV channel signals shall begin the process of negotiations for renewal of existing agreement at least two months before the due date of expiry of the existing agreement.*

*Provided that if the negotiations for renewal of the interconnection agreement continue beyond the due date of expiry of the existing agreement then the terms and conditions of the existing agreement shall continue to apply till a new agreement is reached or for the next three months from the date of expiry of the original agreement, whichever is earlier. However, once the parties reach an agreement, the new commercial terms shall become applicable from the date of expiry of the original agreement.*

*Provided further that if the parties are not able to arrive at a mutually acceptable new agreement, then any party may disconnect the retransmission of TV channel signals at any time after the expiry of the original agreement after giving a three weeks notice in the manner specified in clause 4.3. The commercial terms of the original agreement shall apply till the date of disconnection of signals."*

Although on the face of it, it may look some confusion about the interpretation of clause 4.1 and 8.1, we have held earlier in our judgment dated 2.2.2011 in Petition No. 114(c ) of 2010, that the issue of notice under clause 4.1 the Regulation is mandatory in such case.

In fact, this is not a simple case of renewal of agreement alone, but the respondent had raised the issue of outstanding also.

22. It is admitted by the respondent that there has been a MOU between the parties upto June 2011 and the agreement has not been extended from July 2011.

The respondent has asked for certain information to be given by the petitioner, although the petitioner has given the information to certain extent but did not give full information regarding evidence exchanged between the petitioner and its affiliated cable operators on the subscriber base and did not provide copies of the last 6 months' invoices raised by the petitioner on its cable operator. According to the respondent, this information was necessary to arrive at a negotiated subscriber base.

23. Mr. Ganpathy has brought to our notice that the petitioner has filed its return with the Entertainment Tax Department where it is mentioned that Entertainment Tax @ 10,004/- was paid. It has also been admitted by the petitioner also but the petitioner has not admitted the document which has been attached by the respondent alongwith the information received through RTI from Entertainment Tax office, Allahabad.

24. As determined by this Tribunal in its judgment dated 2.2.2011, the petitioner was to pay a sum of Rs. 1,61,903/- pm, which works out to

subscriber base of 2380 taking Rs. 68/- rate of bouquet of the channels of the respondent.

25. Neither the petitioner nor the respondent came forward with some negotiated figure when the opportunity was given to them at the time of hearing.

26. As no information has been submitted by any party to come to a definite conclusion on subscriber base, I am of the view that interest of justice will be subserved, if the parties are directed to agree on increase of 10% in the subscriber base of 2380 for the year 2011-12 and another increase of 10% for the year 2012-13. The applicable taxes will be extra.

27. The petitioner will pay the entire outstanding within a period of two weeks.

28. The petition is disposed of in terms of above directions. In the facts and circumstances of the case, there shall be no order as to costs.

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

/NC/