

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**

**NEW DELHI**

**Dated : October 19, 2012**

**Petition No.652(C) of 2012**

M/s Digi Cable Network (India) Pvt. Ltd. ...Petitioner

Vs.

M/s Media Pro Enterprise India Pvt. Ltd. ...Respondent

**BEFORE:**

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

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

For Petitioner : Mr.Navin Chawla, Advocate

For Respondent : Mr.Tejveer Singh Bhatia, Advocate

**ORDER**

1. The parties hereto are a MSO and a Content Aggregator respectively. They entered into a subscription agreement in respect of Zee Group of channels on or about 16.12.2011 which was valid till 31.3.2012.

The Petitioner had entered into an agreement with M/s Star Den India Ltd. in respect of Star Group of Channels.

2. The Respondent herein has become the content aggregator of both the Star Group of channels and Zee Group of channels with effect from 1.7.2011.

3. So far as the Star Group of channels is concerned, admittedly the agreement expired on 31.12.2011. As indicated heretofore the agreement in respect of Zee Group of channels expired on 31.3.2012.

4. The Petitioner was to pay a sum of Rs.40,00,032.57 per month for the Star Group of Channels and sum of Rs.22,17,870.00 for the Zee Group of channels towards monthly subscription fee.

The Respondent, inter alia, contends that a sum of Rs.4,03,64,000/- is owing and due from the Petitioner.

5. The Petitioner, however, offered a sum of Rs.2,45,00,000/- to the Respondent on or about 5.9.2012 and further agreed to pay the balance sum on reconciliation of the accounts.

6. The Respondent had issued a public notice in terms of Clause 4.3 of the Telecommunication (Broadcasting and Cable Service) Interconnection Regulations, 2004 (the Regulations) on or about 9.8.2012.

7. The Petitioner's offer by its e-mail dated 5.9.2012 was thus made only after publication of the said public notice.

It is not in dispute that the Respondent discontinued supply of signals of its channels to the Petitioner's network on and from 5.9.2012.

8. The Petitioner is, before us, praying, inter alia, for the following reliefs:

- a) "Set-aside and quash the impugned notice dated 6.8.2012 issued by the Respondent under Clause 4.1 and public notices dated 9.8.2012 issued under Clause 4.3 of the Interconnect Regulations;
- b) Direct the Respondent to restore its signals to the Networks of the Petitioner
- c) Direct the Respondent to execute the subscription agreement with the Petitioner on reasonable and non-discriminatory terms;

9. Mr. Naveen Chawla, learned counsel appearing on behalf of the Petitioner at the outset would contend that the public notice having been issued only on two counts, namely, of payment of the outstanding subscription amount and non-signing of the agreement and as in response thereto the Petitioner offered the entire sum of Rs.4,03,64,000/- by way of a cheque to the Respondent it cannot be said to be a defaulter .

10. So far as the ground of non-signing of the agreement is concerned, it was submitted that the Petitioner had all along been ready and willing to enter into a subscription agreement with the Respondent. According to learned counsel the Respondent has acted unreasonably in so far as it sought for about 20% growth in the amount of subscription fee.

11. Mr. Bhatia, learned counsel appearing on behalf of the Respondent, on the other hand, urged:

1. The agreements having expired on 31.12.2011 and 31.3.2012, there does not exist any basis for grant of mandatory injunction as the Petitioner has no legal right with regard thereto.
  2. The Petitioner having raised the contention that the renewal of agreement should be caused on the same terms and conditions only in its rejoinder by way of an afterthought inasmuch as the Respondent never agreed with regard thereto and, thus, it is not entitled to any equitable relief.
  3. The Petitioner has taken recourse to piracy, in support whereof the Respondent has filed a compact disc.
12. We, may at the outset notice that the Petitioner offered the said sum of Rs.2.45 crores by an e-mail dated 6.9.2012, while asking the Respondent to reactivate the channels.

The Respondent, however, by its e-mail dated 6.9.2012 contended as under:

“This is in reference to your mail addressed to us outlining details of cheques (Scan Copy) and payment of subscription dues which you plan to adhere to clear the outstanding of Rs.2,45,00,000 purportedly as per your make believe discussions with Media Pro Personnel & misrepresentation of clearance of total dues in the below mail. We hereby categorically deny your allegations. Further remind you that discussions have happened for clearance of total outstanding dues and also for execution of fresh agreement. Wherein you agreed to clear total outstanding and requested time to comply with the formalities for execution of fresh agreement.”

13. It may further be placed on record that the parties hereto met on or about 12.9.2012 in relation where to the Petitioner sent the alleged draft minutes of meeting which reads as under:.

- “1. That both the parties sit together at around 5 pm today at Digicable office.
2. That Digicable offered growth of 10% on and above the old subscription fee also
3. That Digicable also offered the DD of Rs.2.74 Cr. Towards the outstanding of total 4.04 cr till date and the balance to be paid within next 15 days.
4. That Media Pro did not agree to the growth of 10% and wanted the growth of 15,00,000/- which is more than 20% growth on monthly subscription fee for the area.
5. That neither party did not agree on any terms and conditions offered by other.
6. That Digicable asked for the lower growth as they do not have that market share in the area.”

14. The Respondent, however, denied and disputed the same in terms of an e-mail dated 13.9.2012, which is to the following effect:

“Without Prejudice

Dear Imtiaz,

In reference to your trailing mail comprising alleged Minutes of the Meeting dated 12.092012, it is very shocking and disturbing to receive from your end which is nothing but misconceived, incorrect, sham, non-est and without any basis whatsoever. It is pertinent to state herein that there was a meeting held on 12.9.2012 between us, however, due to the intransigent and non-cooperative attitude on your part, no effective and meaningful discussion could take place. Needles to state, you have been harping over evasive issue only with a view to circumvent your bounden, obligations to clear hugely accumulated admitted outstanding dues. Therefore, the reference by you to non-existing facts including the discussion about our seeking up-gradation

unreasonably and your alleged offer pertaining there which is nothing but an afterthought and invented only with a view to create paper trail.

Moreover, it is also relevant to point out that your unilaterally annexing a copy of the cheque for a sum of Rs.2.74 Cr drawn in favour of Media Pro is nothing but another attempt on your part to wriggle cut of your obligations to clear the entire admitted outstanding dues attributable to your network. In this regard, it would be rather pertinent to highlight that you have committed the same/similar malfeasance on earlier occasion and the same duly controverted by us and further the same is also part of the record of the proceeding pending before Hon'ble TDSAT. Therefore, your instant malafide attempt makes it quite evident that you have no intention whatsoever to resolve the pending issues and further your sole objective is to protract the payment of aforesaid legitimate dues liable to be paid by you. Being so, please be informed that that aforesaid cheque of Rs. 2.74 Cr, if received by us (In original), will not be acceptable as the amount therein is only a part payment and not payment in full. Having regard thereto, you are once again requested to refrain from such misdemeanors and rather engage in meaningful discussion thereby clearing your aforesaid admitted outstanding dues without any lapse whatsoever

Regards,

Venkat Sarathi"

15. The Petitioner, however, by an e-mail dated 15.9.2012 offered to hold a meeting on 17.9.2012 for negotiating the subscription deal for the current year.

The fact that Petitioner owed to the Petitioner the aforementioned sum of Rs4,03,64000/- is not in dispute. It is also not

in dispute that both the agreements in respect of Star Group of channels and Zee Group of channels have expired on 31.12.2011 and 31.3.2012 respectively.

16. The requirements of the said Regulations have been complied with as envisaged under Clause 8.1 of the Regulations.

Despite the fact that the Regulations would govern the parties, in exceptional cases, the Tribunal may allow the prayer of an interim injunction in mandatory form.

17. It is so done not only with a view to keep the relationship between the parties alive but also in the interest of the viewers.

The Petitioner itself has offered a growth of 10%. The Respondent, according to it, however, wanted more than 20% growth.

18. After the submissions of the parties were made Mr. Bhatia obtained instructions to the effect that the offer made by the Petitioner to a growth of 14% would be acceptable to the Respondent.

19. Mr. Chawla would contend that such an offer although was made before the hearing on interim prayer by the Petitioner, but submitted that when he again took instructions from the representative of the Petitioner, he declined to stick thereto contending that the Petitioner restricts its offer to 10% of growth.

20. Mr. Bhatia submitted that as the offer of 14% growth made by the Petitioner was conveyed to the appropriate authority of the

Respondent and the same having been accepted, the question of reduction in the rate of growth would not be acceptable to it.

21. We have specifically mentioned the aforementioned fact as in our opinion the Petitioner has prevaricated its stand from time to time.

In its rejoinder to the reply, the Petitioner contended that the Respondent had agreed to enter into an agreement on the same terms and conditions as contained in the earlier agreements.

22. After a public notice was published the Petitioner raised the question of reconciliation of the accounts and offered to pay only a sum of Rs.2.74 crores. However, when the same was not accepted by the Respondent the supply of signals to the Petitioner's network was disconnected, it agreed to pay the entire amount of arrears. It also made an offer of 10% growth and lastly to a growth of 14%.

23. The parties in terms of the contract as also the provisions of the Regulations are free to settle their commercial terms which may be given a retrospective effect. If no change is made to the commercial terms, the one contained in the earlier agreement would continue.

The pre-verification of the stand on the part of the Petitioner, therefore, cannot be appreciated.

24. The parties are required to enter into negotiations for the purpose of renewal of the agreement so that terms and conditions of supply of signals are settled between them. If there is no scope for

settlement of the terms and conditions, the Petitioner will have to approach this Tribunal to determine the reasonableness of the counter offer made by the Respondent.

25. Moreover the petitioner is said to be pirating the signals of the Respondent's channel.

The Respondent with a view to establish the said contention filed some CDs wherefrom also it prima facie appears that the Petitioner had been retransmitting the signals of the Respondent along with that of Hathway.

26. In a case of this nature, we are of the opinion, that the Petitioner has not been able to make out an exceptional case so as to enable us to pass an order of interim injunction in mandatory form.

For the reasons aforementioned the interim prayer made by the Petitioner must be rejected. It is directed accordingly.

**(S.B. Sinha)**  
**Chairperson**

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

**October 19, 2012**  
**`anu'**