

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

Dated 23rd October, 2012

Petition No. 739(C) of 2012

Sangli Media Services Pvt. Ltd. : Petitioner
Vs.
Media Pro Enterprises Pvt. Ltd. : Respondent

BEFORE:

Hon'ble Mr. Justice S.B. Sinha, Chairperson

**For Petitioner : Mr. Navin Chawla, Advocate
Mr. Jayant K. Mehta, Advocate**
**For Respondent : Ms. Prathiba M. Singh, Advocate
Mr. Tejveer Singh Bhatia, Advocate
Mr. Upender Singh Thakur,
Advocate**

Judgement

By an order dated 19.10.2012 the interim prayer made by the petitioner for passing an interim order of injunction was rejected.

The reasons therefor are as under.

The petitioner is a multi service operator. It had entered into two subscription agreements one with regard to the Zee bouquet of channels and another for Star bouquet of channels with the predecessor in interest of the respondent herein. The

monthly subscription amount payable under the said agreement was Rs. 4,92,364.48/- for the period 1.1.2011 to 30.6.2011 in respect of bouquet – 1 and sum of Rs.1,64,155.84/- for the bouquet – 2 channels, thus totaling a sum of Rs. 6,56,520.32/-, so far as the Star bouquet of channels is concerned.

The agreement entered into by and between the parties in respect of Zee bouquet of channels expired in October, 2010. The parties hereto had met on 30.6.2011 with regard to the claim of the petitioner that it having lost its subscribers, it was entitled to down-gradation. The petitioner was represented by one Mr. Madhav Betgiri who appears to have been representing IMCL also apart from Mr. Nagesh Chabaria and Mr. Mahesh Sethi.

We may notice the Minutes of Meeting dated 30.6.2011.

“Present: Nagesh Chhalna – IMCL
Mahesh Shetty – IMCL
Madhav Betgiri – IMCL Representing Sangli Media Services

M/s. Sangli Media Services is being given a reduction of 30% in monthly subscription fee w.e.f. 01 September, 2010 towards loss of area/operators to competition. An amount of Rs. 68 Lakhs is being paid additionally towards dues of the network (in addition to point #2)”

The petitioner paid a sum of Rs. 8 Lakhs on or about 30.9.2011. It had also been making payments of the subscription fee from time to time but not on a regular basis. The petitioner with its letter dated 5.3.2012, annexed a statement of account wherein the petitioner accepted that it was still to pay a sum of Rs.16,08,248/-.

The petitioner also by a letter dated 31.3.2012 stated interalia as under.

“We are facing heavy competition in our area of operations from last 2 years & thus the revenue of or business is affected. We request you to kindly take a note to the same and make necessary changes in your books of accounts. The representatives of Zee and Star have agreed to reduce subscription fees payable by 35%.”

We would like to renegotiate the existing subscription agreement with you and sign a fresh agreement with retrospective effect after taking into account the loss of revenue in our area of operations.”

The petitioner issued a cheque for a sum of Rs. 15 Lakhs on that day. Interalia on the premise that the said MOM had not been given effect to some letters were addressed by the petitioner to the respondent. The respondent served a notice dated 7.9.2012 in terms of Clause 4.1 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 purported to be on the ground of default as also for non renewal of the subscription agreement. The respondent therein claimed a sum of Rs. 1,26,44,338/- as due and payable by the petitioner. The public notice also reiterated the same said grounds. The petitioner would contend that the accounts between the parties are required to be reconciled and on reconciliation it will appear that the total amount payable by the petitioner to the respondent was only to a sum of Rs. 57,40,127/-.

The matter was argued by Mr. Jayant Mehta and by Mr. Naveen Chawla.

On 18th October, Mr. Mehta handed over a cheque for the aforementioned sum to Mr. Bhatia, Ld. Counsel appearing on behalf of the respondent.

The respondent however, contends that the Minutes of Meeting had been given effect to as would appear from the fact that even in the agreement dated 26.7.2011 the monthly subscription amount payable by the petitioner was reduced to Rs. 6,56,520.32/-

It was furthermore submitted that keeping in view the fact that the respondent now has taken distribution of both Zee bouquet of channels and Star bouquet of channels although no agreement in writing had been entered into by and between the parties hereto, it is entitled to a similar reduction in subscription fee for Zee bouquet of channels also.

For the aforementioned purpose the petitioner has pleaded as under:

“Further the petitioner submits that on 30.06.2011 Respondent No. 2 has signed a Minutes of Meeting by which it was agreed by Respondent No. 2 that they would give 30% reduction in monthly subscription fees payable by petitioner w.e.f. September, 2010 due to reduction of subscribers which the Respondent No. 1 have been providing. Further Respondent No. 3 also had similarly verbally agreed to give 30% reduction for reduction of subscribers from the date mentioned above which is not being given by the Respondent No. 1 in spite of several requests. The petitioner submits that they have failed to give this reduction till date and hence this is the major reason of difference of amounts of monthly subscription fees in the statement of accounts between the petitioner and the respondent No. 1 and also due to the difference of statement of account of more than Rs. 17,00,000/- with respondent No. 2. The copy of the Minutes of Meeting dated 30.06.2012 is annexed hereto and marked as Exhibit E.”

Mr. Bhatia, the Ld. Counsel appearing on behalf of the respondent on 18.10.2012 took one day's time to produce the statement of accounts in respect of the Star Den

group of channels from a perusal whereof it appears that 8 credit notes had been issued on 31.7.2011.

It was furthermore stated that a sum of Rs. 15 Lakhs which had been paid by the petitioner and which amount is said not to have been reflected in the statement of accounts, has also been given due credit.

Before 30.6.2011 both the Star group of channels and the Zee group of channels were being distributed by Star Den Media Services and Zee turner Ltd. respectively. It is therefore, prima facie incorrect to contend that if for Star bouquet of channels the petitioner could get reduction, it must have obtained the said benefit by reason of an oral agreement from the Zee group of channels. The petitioner had of course been issuing letters claiming 30% discounts both for Zee group of channels and Star group of channels but prima facie it is difficult to accept that the Zee Turner Ltd. had also agreed for similar reduction.

Mr. Mehta and Mr. Chawla had taken this Tribunal to various letters issued by the petitioner but it appears that except a few letters some of them had been delivered to the respondent's distributor being Riddhi Distributors. It has been pointed out by Mr. Bhatia that both the petitioner and the aforementioned Riddhi Distributor was a joint venture company of IMCL. One Mr. Harish N. Gulbani was acting both for the petitioner was also acted for IMCL.

Mr. Mehta would however submit that some of the letters have directly been addressed to the respondent but no response thereto having been received, from the respondent the contents thereof may be held to have been accepted.

Upon hearing the counsels for the parties and upon considering the documents brought on record, this Tribunal is satisfied that the petitioner prima facie has failed to make out a case of any agreement by and between itself and M/s. Zee Turner Ltd., when an agreement, in writing had been entered into by and between it and M/s. Star Den only.

It is evident that credit of 30% reduction in respect of Star Group of channels had been given to the petitioner.

The agreement between the parties was entered into on 26.7.2011 i.e. subsequent to the meeting held between them on 30.6.2011, from a perusal whereof it would appear that discount of 30% in the monthly subscription fee infact had been given.

Moreover, as indicated hereto before the agreement between the petitioner and Star bouquet of channels was entered into on 27.7.2011 for the period January, 2011 to 30.6.2011.

This petition has been filed on 16.10.2012 only upon receipt of the notice under Clause 4.1 of Regulations and Public notice under Clause 4.3 thereof.

Having regard to the second proviso appended to Clause 8.1 of the Regulations and keeping in the view nature of the reliefs claimed for by the petitioner, this tribunal is of the opinion that prima facie no fault can be found out with regard to the legality and/or validity of the said notices. These are the reasons for refusing the interim prayer for injunction of the petitioner.

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(S.B. Sinha)
Chairperson

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