

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

**Dated 23rd October, 2012**

**M.A. No. 603 of 2012**

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**PETITION No. 727(C) of 2012**

M/s Indusind Media and Communication Ltd. ... Petitioner

Vs

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

**BEFORE:**

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

For Petitioner : Mr. Arjun Natarajan, Advocate for  
Ms. Vandana Jai Singh, Advocate

For Respondent : Mr. Maninder Singh, Sr. Advocate  
Mr. Tejveer Singh Bhatia, Advocate  
Mr. Upender Thakur, Advocate for  
Ms. Prathiba M. Singh, Advocate

**ORDER**

The order in this case on the interim prayer made by the Petitioner was passed on 12.10.2012.

2. This petition has been filed on 15.10.2012 for clarification and/or for initiation of a proceeding under Section 20 of the Telecom Regulatory Authority of India Act.

Apart from the said application, an additional affidavit has been filed on behalf of the Petitioner affirmed by one Mr. Sandeep Arya, whereby an allegation has been made as regards complaints received by the Petitioner from its subscribers owing to its inability to supply the signals by the Respondent on 16.10.2012.

The Applicant-Petitioner has also sought to bring on record the minutes of meeting held by and between the parties on or about 15.10.2012.

3. Mr. Maninder Singh, learned senior counsel appearing on behalf of the Respondent raised a preliminary objection with regard to the maintainability of this application inter-alia on the premise that if an order passed by a Court of law is being interpreted differently, no proceeding can be initiated for violation thereof.

Strong reliance has been placed in this behalf on the Parent's Association of Children Vs. M.A. Khan and Another reported in (2009) 2 SCC 641.

Learned senior counsel furthermore would draw the attention of this Tribunal to an affidavit affirmed by one Mr. Raghvender Singh, wherein allegedly the First Information Report has been lodged having regard to threatening were said to have been issued by same person said to be acting on behalf of Mr. Raj Thackeray.

4. Upon hearing the counsel for the parties at some length, the following short order was passed :-

*“Having heard the learned counsel for the parties, the following directions are issued :*

- i) The Respondent shall restore the supply of signals to the CAS area within 12 hours from now.*
- ii) Apart from the affidavit filed on behalf of the Petitioner, this Tribunal records an undertaking of Ms.Vandana Jaisingh upon obtaining appropriate instructions from Brig (Retd) S. Raghunathan Chari, VP-Technical of the Petitioner Company that retransmission of signals in the non-CAS areas are being carried out from its non-CAS headends situated at Andheri, New Bombay and Kandivali which have been upgraded so as to enable the Petitioner to supply signals on digital platform. It has furthermore been undertaken that the Petitioner has not been and not in future shall transgress its area of operation namely supply of signals to an area which is neither subject*

*matter of the CAS agreement nor the subject matter of the non-CAS agreement.”*

5. In terms of the said order, reasons therefor are being assigned.

6. In this Tribunal's order dated 12.10.2012 it was directed as under :-

*“However, in the event the Petitioner disconnects the digital signals supplied to the non-CAS areas forthwith and subject to an undertaking it shall reimburse the Respondent to the said extent and allow the PWC to commence its audit only on issuance of a letter that it is bound by the NDA Clause in the agreement, the Respondent may not give effect to its 4.3 notice in regard to the CAS area.*

*PWC would be entitled to conduct an audit with regard to this aspect of the matter also.*

*16. An affidavit has been filed by the Petitioner together with an application. The said application has been allowed. It has been stated that the Petitioner has already stopped supply of signals in the non-CAS area from its CAS headend and upgraded its non-CAS headend.*

*To the aforementioned effect, an affidavit has been filed.*

*The Petitioner furthermore stated that it is ready and willing to enter into a new agreement in respect of DAS area.*

*In this view of the matter, it is furthermore directed that the parties hereto may enter into negotiations with such growth for which they think that is reasonable and proper. The parties may also give effect to such growth from such date as they may think fit and proper.”*

7. It was, therefore, contended that on receipt of a copy of the said order, the Petitioner intended to serve its undertaking furnished by it supported by an affidavit but, as at that point of time the office of the Respondent was closed, the same could not be done.

The Respondents were thereafter contacted to accept the said affidavit. A request was also made to a representative of the Respondent – Mr. Rahul Srivastava, who had come to the office of the Petitioner for the purpose of reconciliation of accounts, but he declined to do so.

The parties hereto have entered into different agreements for CAS and non-CAS areas in the towns of Delhi and Mumbai.

In this petition as well as Petition No. 676 (C) of 2012, the Petitioner had prayed for stay of notice(s) issued by the Respondent under clause 4.1 and Public Notice under clause 4.3 of the Regulations. The premise on which the said notices were issued inter-alia was that (i) the Petitioner has not allowed

PWC to conduct an audit; and (ii) it has been supplying digital signals from its CAS head ends to non-CAS areas.

8. In respect of Delhi agreement, the Petitioner was restrained from supplying digital signals to non-CAS areas from its CAS head end.

However, an affidavit was filed on behalf of the Petitioner, stating that it has already stopped the same. It was furthermore contended that the Petitioner has upgraded its head ends.

In that view of the matter, in Petition No. 676 (C) of 2012 the following directions were issued :-

*“11. So far as the third aspect of the matter viz. retransmission of signals in the digital form in the non CAS areas is concerned, the affidavit filed by the Petitioner itself may be noticed.*

*It reads as under:*

*“(i) That Shahdara and Jagatpuri are reflected in the said SLR. Therefore, the Petitioner is authorized to operate in the said area. In fact, the said SLR bears the names of affiliates in Shahdara at serial numbers 100, 101, 146, 159, 160 namely Puppy Cable Network, Sai Cable Network, DNT Cable, Dheer Cable, Vinod Cable T.V. Network.*

*(ii) That the Respondent has been raising invoices upon the Petitioner in line with the said SLR and the Petitioner has been making payments in*

- terms of such invoices. Therefore, there is no question of any unauthorized operation.
- (iii) That the Petitioner only has one set of decoder boxes for digital headend.
  - (iv) That digital signals are supplied for CAS and Non-CAS areas form the same headend through 2 different feeds.
  - (v) The CAS feeds for pay channels are encrypted whereas as regards Non-CAS areas it is un-encrypted.
  - (vi) That CAS signals are not being distributed in Non-CAS areas.”

In an affidavit affirmed by Shri Sunil Singh Mohan, the deponent annexed therewith a copy of the First Information Report lodged by the Respondent upon getting an investigation made by one 'Investigating Agency' namely M/s Pinkerton.

Perusal of the said FIR would go to show that allegations have been made therein that two of its LCOs namely Dhir Cable Network and Vinod Cable Network have been retransmitting digital signals of the Respondent in Shahdara and/or Jagatpuri Area.

14. The notification dated 10.7.2003 issued by the Central Government clearly goes to show that the notified CAS area are in South Delhi.

Shahdara, therefore, being not a part of the South Delhi, the said CAS notification will have no application.

To the said effect an affidavit has been affirmed on behalf of the Respondent by one Raghavender Singh on 8.10.2012 wherein it was contended that separate IRD boxes had been issued to the Petitioner one for the CAS areas and the other for the non CAS areas.

So far as the Viewing Card numbers issued to the Petitioner is concerned the same find place in the FIR.

*In his affidavit, Shri Raghavender Singh has given the number of the IRD boxes issued to IMCL.*

*However, in the event the Petitioner disconnects the digital signals supplied to the non-CAS areas forthwith and subject to an undertaking it shall reimburse the Respondent to the said extent and allow the PWC to commence its audit only on issuance of a letter that it is bound by the NDA Clause in the agreement, the Respondent may not give effect to its 4.3 notice in regard to the CAS area.*

*PWC would be entitled to conduct an audit with regard to this aspect of the matter also.*

16. *An affidavit has been filed by the Petitioner together with an application. The said application has been allowed. It has been stated that the Petitioner has already stopped supply of signals in the non-CAS area from its CAS headend and upgraded its non-CAS headend.*

*To the aforementioned effect, an affidavit has been filed.*

*The Petitioner furthermore stated that it is ready and willing to enter into a new agreement in respect of DAS area.*

*In this view of the matter, it is furthermore directed that the parties hereto may enter into negotiations with such growth for which they think that is reasonable and proper. The parties may also give effect to such growth from such date as they may think fit and proper.”*

17. *A high ranking officer of the Petitioner for the aforementioned purpose must meet a high ranking officer of the Respondent at its Mumbai Office on 15.10.2012.”*

*In the event, however, the parties fail to arrive at a settlement, it would be open to them to take recourse to such remedy which is available to it in law.”*

9. The said order was made applicable mutatis mutandis to this petition also. The sum and substance of the said order would, therefore, be :-

- (i) The Respondent is to restore the signals;
- (ii) The Petitioner shall not supply signals to its customers on digital platform in the non-CAS areas from its CAS head end;
- (iii) It, however, having upgraded its non-CAS head end, would be entitled to do so i.e. digital signals to non-CAS areas;
- (iv) PWC would be entitled to carry on its audit only on issuance of a letter that it is ready and willing to abide by the non-disclosure agreement contained in the subscription agreements;
- (v) PWC shall also make audit of the Petitioner's books of accounts with regard to the non-CAS areas so as to enable it to assess the additional amount payable by the Petitioner, if any;

- (vi) The said order was subject to any order which we may pass in the application filed by the Respondent for variation of the interim orders;
- (vii) The parties should hold negotiations for entering into an agreement in the DAS regime, which is to come into effect on and from 1<sup>st</sup> November, 2012 wherefor negotiations may be held.

10. If the order is read as a whole, as has been done heretobefore, in the opinion of this Tribunal there is no ambiguity.

11. Although no time frame has been given for restoration of the signals by the Respondent, it was expected that it would do so within a reasonable time.

12. The order being not susceptible to two meanings, but the Respondent having been interpreting it differently, this clarification issued shall govern the parties.

In that view of the matter, the decision of the Supreme Court in Parents Association of Students Vs. M.A. Khan and Another reported in (2009) 2 SCC 641 is not applicable. In the event the Petitioner has brought in extraneous influence for implementation of this Tribunals' order, which is denied and disputed by the Petitioner, law shall take its own course.

13. It shall be open to the Respondent to take recourse to such remedies as against the Petitioner as may be permissible in law, so far as its allegation that the Petitioner has not stopped its operation in respect of an area which is neither covered by the CAS agreements or the non-CAS agreements including consideration thereof by this Tribunal at a future date..

The reasons in support of this Tribunal's order dated 16.10.2012.

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

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