

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

DATED 5th SEPTEMBER 2012

Petition No.135 (C) of 2012

(MA. Nos. 140, 276 & 358 of 2012)

V4 Media ...Petitioner

Vs.

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
Mr. Sharath Sampath, Advocate

For Respondent : Mrs. Prathiba M. Singh, Advocate
Mr. Tejveer Singh Bhatia, Advocate
Mr. Upender Thakur, Advocate

ORDER

The Petitioner which is a big Multi Service Operator, operating in different towns/areas of the district of Uttar Kannada has filed in his petition *inter-alia* for issuance of a direction upon the Respondent to enter into a subscription agreement with it on reasonable and non-discriminatory terms, keeping in view its request for down-gradation of its subscriber base.

2. Indisputably, the Petitioner entered into an agreement with M/s Zee Turner Ltd. on or about 30.11.2010 which was valid upto 31.3.2011. A sum of Rs.8,19,773/- per month was payable by way of subscription fee to the Respondent herein in terms thereof.

Similarly a subscription agreement was entered into for the period 1.1.2011 to 31.12.2011 by and between the Petitioner and M/s Star Den Ltd., in terms whereof a sum of Rs.12,87,407.06P per month became payable by way of subscription fee.

3. The principal contention raised by the Petitioner in this petition is that having regard to the fact that DTH operators having started their operation in a big manner in the areas in question, it had been losing its subscriber base on a regular basis, wherefor it had been requesting the Respondent to provide adequate down-gradation in the amount of subscription fee.

4. The Respondent, however, contends that the Petitioner has a monopoly in the cable business in the district of Uttar Kannada including, the district headquarter being at Mangalore and as it had not been paying the subscription fees for a long time, a sum of Rs.56,06,494/- has become payable by it.

5. By an ad-interim order of injunction passed on 15.3.2012, we directed as under:-

“i) The Petitioner by 17.3.2012 shall without prejudice to the rights and contentions pay unto the Respondent a sum of Rs.57,64,052/- by Demand Draft. The Petitioner shall furthermore go on playing the stipulated subscription amount for the month of March, 2012 onwards in terms of the agreement.

ii) As suggested by Mrs. Pratibha Singh, the Respondent may send a senior representative from its Mumbai office to Bangalore on 21.3.2012 so as to enable the parties to reconcile their accounts and/or holding further negotiations on renewal of the agreements which have expired on 31.3.2011 and 31.12.2011.

iii) The minutes of meeting must be signed by both the parties.

iv) The Respondent shall remove the on-screen display, if any, with immediate effect.”

6. Respondent has filed an application, which has been marked as M.A. No. 358 of 2012 praying *inter-alia* for the following reliefs:-

“ (a) dismiss the present petition filed by the Petitioner for being misuse and abuse of process of law;

(b) permit the respondent to give effect to its public notice dated 10.3.2012 and clause 4.1 notice dated 05.03.2012 issued in terms of Telecommunication (Broadcasting and Cable Services) Interconnect Regulations, 2004;

(c) pass any such other or further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case."

We do not think that any case has been made out for dismissing the entire petition.

7. The parties, we may notice, during pendency of this petition met for reconciliation of their accounts and for holding negotiations for renewal of the agreements and/or entering into a fresh agreement.

8. Mr. Arun Kathpalia, a learned advocate practicing in this Tribunal was appointed as a Commissioner. The learned Advocate Commissioner has submitted its report. Along therewith, a large number of documents produced by the parties, before him had also been produced.

9. The learned Commissioner noticed the respective contentions of the parties which are as under:-

“The representatives of Media Pro stated that they were willing to renew the Agreement but they wanted a reasonable growth in the subscription dues, which V4 Media was not willing to give and was instead, claiming down-gradation. It was their grievance that:

(i) No increase had been given in respect of the Zee bouquet of channels after the expiry of the subscription agreement 2008-09;

(ii) No increase had been given in respect of the Star bouquet of channels after the expiry of the subscription agreement 2008-09;

(iii) V4 Media enjoyed a complete monopoly in the area of Mangalore that it was servicing and because of this monopoly it was refusing to give any growth;

(iv) At the same time, V4 Media was not accurately disclosing its area of operations in as much as –(a) there was a discrepancy between SLRs submitted to Star and the SLRs submitted to Zee; and (b) they were operating in areas outside the Agreement and not disclosed in the SLRs to either Zee or Star;

(v) Not only was the area of operations more than disclosed, V4 Media had also been increasing the subscription fee payable by the subscribers;

(vi) Despite all this V4 Media was not willing to give any growth in view of its monopoly status.

V4 Media, on the other hand, stated that there had been no growth in its subscriber base and in fact, they had lost subscribers to DTH, and were suffering revenue losses. They also denied that the areas serviced by them were outside the Agreement. They denied that they had expanded their areas of operation. The areas had been constant for several years and the areas now being referred to by Media Pro as being beyond the Agreement, have all along been catered to by V4 Media/their LCOs to the knowledge of the officials of Media Pro/Star Den/Zee Turner. They also disputed the fact that no growth had been given to Star. They were in fact now seeking down-gradation.

Unfortunately, despite extensive meetings having taken place between the parties on the dates aforementioned and despite my counseling them, no agreement on commercial terms was arrived at between the parties and negotiations failed.”

10. The Respondent made an offer to the Petitioner herein that it was ready to enter into a fresh agreement on a subscriber base of 25000 in respect of all its channels; whereas the Petitioner made a counter-offer of the subscriber base to be at 11000.

11. Mr. Navin Chawla, learned counsel appearing on behalf of the Petitioner would contend that from the perusal of the subscription agreements entered into by and between it and M/s Zee Turner Ltd. and with M/s Star Den Ltd., it would appear that whereas the Petitioner had been paying a sum of Rs.21.00lakhs as subscription fees for the town of Mangalore, Bantwal, Moodabidri, B.C. Road, Karkala, Belthargady, it had been paying a sum of Rs.12,87,407.06p, as per the invoices raised on the following basis in respect of Zee group of channels:-

<i>Bouquets</i>	<i>Effective Period</i>	<i>Subscriber base</i>	<i>Rate(s) per subscriber per month (Rs.)</i>	<i>Monthly Subscription Fee (Rs.)</i>
<i>Bouquet 1</i>	<i>1.1.2011 to 31.12.2011</i>	<i>21,425</i>	<i>50.08</i>	<i>10,72,964.00</i>
<i>Bouquet 2</i>	<i>1.1.2011 to 31.12.2011</i>	<i>414</i>	<i>96.79</i>	<i>40,071.06</i>
<i>Bouquet 3</i> <i>Survana (on stand alone basis)</i>	<i>1.1.2011 to 31.12.2011</i>	<i>14,531</i>	<i>12</i>	<i>174,372.00</i>
Total Monthly subscription Fees (excluding taxes):				12,87,407.06
Rs				

A large number of cable operators, indisputably have been taking feed from the Petitioner.

12. Ms. Pratibha M. Singh, learned counsel appearing on behalf of the Respondent would, on the other hand, contend that the Petitioner has been enjoying a monopoly in the said towns and as such the figure of 25000 subscriber base is a reasonable one in view of the various documents submitted before the learned Advocate Commissioner.

13. Indisputably, the agreements by and between the Petitioner and the predecessors in interest of the Respondent had expired.

The terms of the agreement as also the amount of subscription fee payable thereunder, is not in dispute.

The Petitioner had been paying a sum of Rs.20,30,628/- by way of subscription fee.

However, if the offer of the Petitioner is accepted, it will only be paying a sum of Rs.16,68,810/- per month by way of subscription fee. On the other hand, the Petitioner has to pay about 200 per cent more, if the offer of the Respondent is accepted.

14. There is no doubt or dispute that the MSOs and broadcasters enter into agreements with different subscriber base in respect of different bouquets, depending upon their popularity.

Mr. Chawla, therefore, may not be correct to contend that the same basis should be applied in the instant case as the Petitioner itself made an offer of paying the subscription fee on a subscriber base of 11000 for all the channels.

15. The controversy between the parties having regard to the offer and counter-offer made by them as also the amount of subscription fee payable therefor, would be 25 per cent down gradation Vs. 85 per cent growth.

16. The agreements expired in the year 2011. In terms of clause 8.1 of the Telecommunications (Broadcasting & Cable Services) Interconnection Regulations, 2004 as amended from time to time, the negotiations for renewal of the agreement must be completed within three months from the date of the expiry of the agreement; having commenced two months prior thereto.

17. For one reason or the other, the negotiations between the parties did not fructify. The parties have neither been able to arrive at a mutual settlement themselves and/or before the learned Advocate Commissioner.

18. Which of the parties hereto is correct in their respective contentions is a matter which can be resolved only upon hearing the matter finally.

19. The interim order has been passed by this Tribunal keeping in view of the controversy between the parties as was placed before us at the relevant time.

As noticed heretofore, however, now a large number of documents have been filed by them. The Respondent has also relied upon a map to show that the Petitioner had been operating in different areas of the towns of Uttar Kannada district and not in the town of Mangalore alone.

20. It is not in dispute that bouquet 9 of the Petitioner comprises various channels of both the broadcasters, M/s Star Den and M/s Zee Turner Ltd. It has some additional channels also, like, NDTV channels.

21. Mrs. Singh would contend that from the figures contained in the report of the National Readership Survey in 2006, it would appear that in the town of Mangalore alone, there exists 88,000 cable and satellite households and thus, the subscriber base of the Petitioner may be reasonably taken at 25000.

Ms. Singh has also produced a chart showing subscription fees paid by the Petitioner to other broadcasters as also the carriage charges payable by them which read as under:-

SUBSCRIPTION - MONTHLY

Subscription	2009-2010	2010-2011	2011-2012	Since 2009 till 2012
Sun 18	3.11	4.81	6.17	
%		54%	28%	98%
ESS	10.90	11.79	12.24	
%		8%	4%	12%
Sony	9.00	10.50	11.90	
%		17%	13%	32%
ETV	1.60	1.81	2.27	
%		13%	25%	42%
Star Den	13.29	11.63	13.15	
%		-13%	13%	-1%
Zee Turner	8.91	7.43	7.43	
%		-17%	0%	-17%

CARRIAGE - ANNUAL

Carriage	2009-10	2010-11	2011-12	Feb'12	Since 2009 till 2012

Suvarna	8.00	11.00	18.00	24.00	
%		38%	64%	33%	200%
Zee Kannada	18.00	22.00	24.00		
%		22%	9%		33%
NDTV	16.00	15.43	18.00		
%		-4%	17%		13%

The aforementioned two channels are in Bouquet 9.

22. For the purpose of disposing the application for variation of an interim order, this Tribunal is required to arrive at a tentative decision.

The Petitioner, on the one hand, is asking for reduction in the subscriber base but on the other, has been claiming higher carriage charges.

23. We, therefore, are of the opinion that in the interest of the viewer, the Petitioner will pay the subscription amount by increasing 15 per cent of the subscription amount which was being paid as per the last agreement.

24. This order would be without prejudice to the rights and contentions of the parties at the final hearing and subject to neither or further order which may be passed.

25. The M.A. filed by the Respondent is accordingly disposed of.

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(S.B. Sinha)
Chairperson

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(P.K. Rastogi)
Member

HKC/