

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**

**NEW DELHI**

**DATED 21<sup>st</sup> SEPTEMBER 2012**

**Petition No.588(C) of 2012**

(With M.A. Nos. 543 & 544 of 2012)

ESPN Software India Private Ltd. ...Petitioner

Vs.

Den Network Ltd. ...Respondent

**Petition No.589(C) of 2012**

ESPN Software India Private Ltd. ...Petitioner

Vs.

Hathway Cable & Datacom Ltd. ...Respondent

**Petition No.590(C) of 2012**

ESPN Software India Private Ltd. ...Petitioner

Vs.

Wire & Wireless India Ltd. ...Respondent

AND

**Petition No.591(C) of 2012**

ESPN Software India Private Ltd. ...Petitioner

Vs.

IndusInd Media & Communication Ltd. ...Respondent

**BEFORE:**

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

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

For Petitioner : Mr. N. Ganpathy, Advocate  
Mr. Sharath Sampath, Advocate

For Respondent : Mr. Vibhav Srivastav, Advocate  
(Den Network) Ms. Prabhjot Kaur, Advocate

For Respondent : Mr. Arun Kathpalia, Advocate  
(Hathway) Mr. Nasir Husain, Advocate

For Respondent : Mr. Tejveer Singh Bhatia, Advocate  
(WWIL)

For Respondent : Ms. Vandana D. Jaisingh, Advocate  
(IMCL)

**ORDER**

These applications involving common questions of fact and law were taken up for hearing together and are being disposed of by this common judgment.

2. The Petitioner is a broadcaster. The Respondents herein are MSOs.

Inter-alia on the premise that the Respondents with a view to give effect to the order of the Ministry of Information & Broadcasting, Union of India in terms of a notification for digitalization of all

networks in the town of Delhi, the Respondents stopped re-transmission of signals of its channels, has filed this petition.

3. The parties hereto admittedly have entered into subscription agreements.

Although a contention has been raised in these petitions that the Respondents have stopped re-transmission supply of signals of its channels, each one of them denies and disputes the same.

These two applications have been filed by the Petitioners: (i) for impleading the Telecom Regulatory Authority of India (TRAI) as a party; and (ii) to appoint a technical officer of the TRAI to make an investigation and submit a report to this Tribunal as to whether the three channels of the Petitioner have been de-activated/blocked by the Respondents on their analog network.

4. So far as the first application is concerned, according to the Petitioner, the TRAI despite a complaint has failed and/or neglected to take any action which it is otherwise obligated to do in terms of the TRAI Regulations.

The TRAI, on the other hand, submits that the complaint made by the Petitioner in terms of its letter dated 23.8.2012 which was received by it on 27.8.2012, has been acted upon and the

Respondents have been asked to submit their comments thereupon in terms of a letter dated 29.9.2012, where to only Den Network had responded.

5. Mr. Bhatia, learned counsel appearing on behalf of WWIL would contend that having regard to the fact that an important sporting event is going to take place, namely, T 20 World Cup for which the Petitioner is the sole distributor, it is inconceivable that the Respondents are not interested in taking supply of the signals of the three channels of the Petitioner.

Mr. Vibhav Srivastava, learned counsel appearing on behalf of the Den Networks would, however, contend that the Petitioner has filed its petition only to obtain a higher frequency to be used by the MSOs and the LCOs without payment of any carriage fee or placement charges.

6. Mr. Saket Singh, learned counsel appearing on behalf of the TRAI submitted that in view of the fact that action has been taken by the Regulator, it is not a necessary party to this petition. Moreover there is no technical expert whose services can be spared by it for the purposes mentioned in the second application filed by the Petitioner.

It was urged that another public sector undertaking, namely, BECIL has the technical competence with regard thereto and, thus,

may be appointed as a Commissioner, as has been prayed for by the Petitioner.

7. Having regard to the rival contentions of the parties, we are of the opinion that in view of the categorical statements made before us by the MSOs that they had not stopped / disrupted the supply of signals of the channels of the Petitioner, there is no reason as to why the same should not be believed, particularly, in view of the fact that it is not denied or disputed that the Petitioner is the sole distributor of some important international sporting events which are going to take place soon.

8. There cannot be any doubt or dispute that the Petitioner without payment of any placement charges as also the carriage charges cannot indirectly pressurize the Respondents herein and/or any other LCO to place the channels on higher frequencies.

9. The question which arises for consideration is as to whether the acts on the part of the Respondents a deliberate one, which according to the Petitioner has been resorted to for the purpose of acquisition and distribution of the STBs.

The Regulator has framed the Regulations directing all the service providers to maintain the quality of service. Whereas on the one hand the broadcaster is not entitled to insist on the MSO/LCOs

that a better quality of services be provided either directly or indirectly so as to put their channels on a better frequency, it is not in dispute that quality of signals is required to be maintained.

10. Keeping in view the statements made at the Bar, as also the fact that at least one of the MSOs viz M/s Media Pro Enterprises Ltd. has no objection for appointment of a Commissioner, we are of the opinion BECIL being a public sector undertaking may be appointed for the said purpose.

11. We may notice para 4 of the application:-

*“4. That in view of the stand taken by the MSOs including the Respondent in the present petition, it would be necessary for this Hon’ble Court to appoint a technical officer of the TRAI or other suitably qualified technical personnel or an advocate commissioner who may be assisted by technically qualified personnel of the Petitioner to ascertain the following:-*

*(a) Whether the services of three channels of the Petitioner have been deactivated/blocked by the Respondents on their analogue network?*

*(b) Whether the viewers attached to the analogue network of the Respondent have not been able to view the*

*services of the Petitioner since August 23, 2012 and onwards?*

*(c) To record the statements of the viewers as to whether they were or they were not receiving the services of the Petitioner from the period August 23, 2012 and onwards.*

*(d) To undertake video recordings in some of the cable homes which would fall in the DAS areas from November 1, 2012.”*

12. As a Commissioner an officer of the BECIL may not only visit the head ends of the Respondent but also may make some surprise inspections. In the event, any occasion arises therefor or should he think otherwise to be necessary may obtain the technical assistance of the parties hereto.

13. It is made clear that the fees and other expenses incurred by the BECIL shall be borne by the Petitioner.

14. Keeping in view the stand taken by the TRAI and having regard to the fact that it has already taken cognizance of the complaints made by the Petitioner, we are of the opinion that at this stage, it may not be impleaded as a party Respondent in these proceedings. The prayer for impleadment of the TRAI, therefore, is rejected.

However, so far as the M.A. No. 544 of 2012 and similar applications filed are concerned, the BECIL is requested to nominate one of its officers as a Commissioner for the aforementioned purpose.

Let these matters be posted after four weeks awaiting the report of the BECIL.

Let a copy of this order be sent to the Managing Director of BECIL with a request to him to depute a suitable person to act as a Commissioner.

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

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

*HKC/*