

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

**Dated 30<sup>th</sup> April 2014**

**Petition No. 4 (C) of 2014**

**M/s. Noida Software Technology Park Ltd., New Delhi ... Petitioner**

**Vs.**

**M/o Information and Broadcasting, New Delhi & Anr. ... Respondents**

**BEFORE:**

**HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON  
HON'BLE MR. KULDIP SINGH, MEMBER**

For Petitioner : Mr. Vivek Chib, Advocate  
Mr. Joby P. Varghese, Advocate

For Respondent : Mr. Amit Yadav, Advocate  
for Mr. Ravinder Agarwal, Advocate

**ORDER**

**Kuldip Singh:**

The petitioner seeks an appropriate direction to respondent no. 1, The Ministry of Information & Broadcasting, Government of India to de-endorse the channel of

respondent No.2 - M/s. Sindhi Kachchhi Entertainment Corporation Limited from the list of channels permitted to be up-linked by the petitioner through its teleport using INSAT 4-A Satellite. A prayer, inter-alia, is also made for direction to respondent No.1 to dispose of applications seeking de-endorsement of TV channels in a time bound manner.

2. The petitioner is engaged in the business of providing up-linking facility and transponder service to the broadcasters and has been granted a license on 24.01.2003 under Section 4 of the Indian Telegraph Act, 1885 to establish, maintain and operate the up-linking hub (teleport). It has also obtained license from WPC (Wireless Planning & Coordination), Department of Telecommunications. It is operating the teleport as permitted by respondent No.1 vide its letter bearing No.1404/1(i)/2002-TV(1) dated 27.01.2003. The petitioner has annexed copies of the letter dated 27.01.2003, License, and renewal of permission granted by respondent No.1 vide letter dated 02/04/13 as Annexure P-2 (Colly). **{Pages 18 to 29 of the Paper Book}**.

3. Before we go into the merits of the case, we may briefly explain the function of a 'Up-linking Hub or Teleport'. The telecommunication port, or more commonly the Teleport, is a satellite ground station that functions as a hub connecting a satellite in a

geo-stationary orbit with terrestrial communication network. Teleports are used to provide various broadcasting as well as telecommunication services. In the case of the petitioner, the license granted to it is for up-linking the approved television channels using C-Band. The hub is to be used for up linking T.V. channels only and not for any other mode of communication.

4. The petitioner entered into an agreement dated 10.9.2010 with M/s. Sindhi Kachchhi Entertainment Corporation Limited, respondent No.2 for up-linking of respondent No.2's channel called 'S.K. TV' (hereinafter referred to as "the channel") through the petitioner's teleport on INSAT-4A satellite. In pursuance to the said agreement, respondent No.2 sought and was granted permission by respondent No.1 – the Ministry of Information & Broadcasting (MIB) vide letter dated 29.10.2010 for the use of the up-link facility of the petitioner and transponder service on reservation basis on INSAT 4A satellite for one TV channel by the name of "SK TV". The respondent was to make payment as specified in Appendix-A of the agreement between the petitioner and respondent No.2. (**Agreement is at annexure P-3 at page 30 and Appendix-A Payment Schedule is at page 41 of the Paper Book**).

It is the contention of the petitioner that there was default on the part of respondent No.2 in adhering to the payment schedule and when despite repeated reminders it failed to clear the outstanding amount to the tune of Rs.31,66,395/-, the petitioner was constrained to terminate the said agreement. Subsequently, the petitioner approached respondent No.1 – The Ministry of Information & Broadcasting seeking de-endorsement of the said channel from the list of channels permitted to be uplinked by the petitioner company through its teleport vide letter dated 16.7.2013. The request for de-endorsement of the said channel was reiterated by the petitioner vide letters dated 19.7.2013 and 29.7.2013. On its failure to get permission of respondent No.1 for de-endorsement of the said channel of respondent No.2, the petitioner filed this petition on 08.01.2014 against respondent No.1 and subsequently impleaded respondent No.2 also on 21.02.2014.

5. In its reply, the respondent No.1 – Ministry of Information & Broadcasting has submitted as under :-

- (i) The petition in its present form is not maintainable as it involves inter-se dispute between the petitioner and M/s. Sindhi Kachchhi Entertainment Corporation Limited which has not been impleaded as a party;

- (ii) As per the letter dated 13.9.2013 written by M/s. Sindhi Kachchhi Entertainment Corporation Limited, it has made excess payment to the petitioner;
- (iii) The petitioner has prayed for an omnibus order seeking a direction that all the applications of the petitioner seeking de-endorsement be disposed of in a time bound manner without laying down any factual foundation as against any other channel;
- (iv) Teleports are also free to choose the channel/broadcaster company they would provide services to and accordingly conclude contracts with them. Further, operations including payment terms are governed by the contract between the two parties and Ministry has no role to play;
- (v) Sometimes some teleports approach the Ministry for de-endorsing a channel from their teleport before the expiry of their contract. In such cases, as a consistent practice, the Ministry grants such permission after obtaining 'no objection' of the channel/broadcasting company concerned. However, as the present guidelines do not contain specific provisions in this regard and as such a policy is under process of being framed.

6. With regard to the submission of respondent No.1 regarding the petition not being maintainable due to non-impleading of M/s. Sindhi Kachchhi Entertainment Corporation Limited, this issue no longer survives as M/s. Sindhi Kachchhi Entertainment Corporation Limited has since been impleaded as Respondent No.2 and the memo of parties amended.

7. It was submitted by the learned counsel appearing for respondent No.1, The Ministry of Information & Broadcasting, that respondent no. 1 has not received “no objection” to de-endorsement of the channel from respondent no. 2 and it was waiting for the same.

8. We may note that respondent no.1 had addressed a letter to respondent No.2 on 29.8.2013 asking it to clarify and explain, before no objection is issued to the petitioner, why it has failed to intimate the Ministry about suspension of up-linking of its channel. In reply to this letter, respondent No.2 stated that since NSTPL (Petitioner) was not having transparent business dealing, it has under force majeure clause accepted suspension of its

service and was in search of other teleport or DTH operator for transmission of its channel. The relevant portion of the same is as under:

*“Since NSTPL is not having transparent business dealing. We have under force majeure clause accepted their suspension of service.*

.....

*We are in search of other teleport or DTH for Transmission of our channel very soon”*

From this letter, it is clear that respondent no.2 has not raised any objection to respondent no.1 regarding suspension of up linking of its channel and it is on the lookout for an alternative. We may also note clause 13.1 of the license granted to the petitioner, which is as under :

*“13.1 In the event of any dispute of the Licensee with any party other than Licensor due to any reason whatsoever, the dispute will be sorted out among themselves and Licensor will have no liability in any manner. However, in case of dispute arising with other parties due to non-observance of rules and regulations by the Licensee as provided in this Licence, the Licensor will have full powers to take any action against Licensee as is provided in the relevant clauses of this Licence. The Licensee undertakes to indemnify Licensor in respect of any action against Licensor*

*for acts of commission or omission on the part of the Licensee, its agents and servants.”*

From this clause it is clear that any dispute between the petitioner and respondent No.2 is to be sorted out between them. In view of this clause as well as the letter of respondent no. 2, we are unable to appreciate the submissions made by respondent No.1 that it is waiting to receive no objection from respondent no. 2 as well as regarding excess payment made by respondent No.2 to the petitioner. The respondent No.1 in its reply at para 6 has itself stated that Teleports are free to choose the channel/broadcaster to whom they would provide services and the operations including payment terms are governed by the contract between the two parties and the Ministry has no role to play. Respondent No.1 can also not delay the permission to the petitioner just because the guidelines do not contain specific provision in this regard and the policy is under process of being framed.

We may note that respondent No.2 has not appeared before the Tribunal in spite of notice and from its letters, it is evident that it has accepted the position of suspension of up linking of its channel by the petitioner and it is in search of an alternative for the same. In view of this, we do not see any reason why respondent No.1 should withhold the permission for de-endorsement of the respondent No.2's channel to the petitioner.

9. We accordingly direct respondent No.1 – The Ministry of Information & Broadcasting to de-endorse the said channel of respondent No.2 from the list of channels permitted to be up-linked by the petitioner through its teleport using INSAT 4A satellite with immediate effect.

The petition is accordingly allowed.

The cost of litigation to be paid to the petitioner is assessed at Rs.25,000/-.

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**(Aftab Alam)**

**Chairperson**

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**(Kuldip Singh)**

**Member**

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