

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated 22nd April, 2014

Petition No. 84(C) of 2013

Wiretel Digital Networks Pvt. Ltd. ...Petitioner

Vs.

ESPN Software India Pvt. Ltd. ...Respondent

Petition No. 85(C) of 2013

Wiretel Digital Networks Pvt. Ltd. ...Petitioner

Vs.

Media Pro Enterprise India Pvt. Ltd. ...Respondent

Petition No. 86(C) of 2013

Wiretel Digital Networks Pvt. Ltd. ... Petitioner

Vs.

MSM Discovery Pvt. Ltd. ... Respondent

Petition No. 87(C) of 2013

Wiretel Digital Networks Pvt. Ltd. ...Petitioner

Vs.

Sun Distribution Service Pvt. Ltd. ...Respondent

Petition No. 88(C) of 2013

Wiretel Digital Networks Pvt. Ltd. ...Petitioner

Vs.

Eenadu Television Pvt. Ltd. ...Respondent

Petition No. 89(C) of 2013

Wiretel Digital Networks Pvt. Ltd. ...Petitioner

Vs.

Maa Television Network Ltd. ...Respondent

BEFORE:

HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON

HON'BLE MR. KULDIP SINGH, MEMBER

For Petitioner (in P. Nos. 84(C), 85(C),: Mr. J.K. Mehta, Advocate
86(C), 87(C), & 89(C) of 2013)

Mr. Arjun Natarajan, Advocate

For Petitioner (in P.No. 88(C) of 2013) : Mr. Arjun Natarajan, Advocate

For Respondents (Pet. No. 84(C) of 2013) : Mr. N. Ganpathy, Advocate

(Pet. No. 85 (C) of 2013) : Mr. Tejveer Singh Bhatia, Advocate
Mr. U. Thakur, Advocate
Mr. Yatin Grover, Advocate for
Singh & Singh LLP Law Firm

(Pet. No. 86 (C) of 2013) : Mr. A. Amanullah, Advocate
Mr. A.C. Mishra, Advocate

(Pet. No. 87 (C) of 2013) : Mr. Abhishek Malhotra, Advocate
Mr. Nittin Bhatia, Advocate

(Pet. No. 88 (C) of 2013) : Mr. K. Vijay Kumar, Advocate
Mr. Balaji Srinivasan, Advocate
Mr. Prabhat Ranjan, Manager (Legal)

(Pet. No. 89 (C) of 2013) : Mr. H.N. Rath, Advocate

ORDER

Kuldip Singh:

The main issues that arise for consideration in these petitions are whether the petitioner can voluntarily provide services through DAS (Digital Addressable System) mode in areas which are not yet notified for providing

DAS service; if so, whether the Digital Addressable System installed by the petitioner has any shortcomings and whether it is entitled to receive the signals from the respondents?

2. The petitioner is a Multi System Operator (MSO) who has been granted permission under Rule 11E of The Cable Television Networks Rules, 1994 by the Ministry of Information & Broadcasting, Government of India on 29.6.2012 for operating in areas notified under Section 4A of The Cable Television Networks (Regulation) Act, 1995. The respondents are broadcasters/agents acting on behalf of the broadcasters. The petitioner has been trying to enter into interconnect agreement and obtain signals of the respondents since November 2012 and not being successful in its efforts, the present petition has been filed on 15.02.2013.

3. Since the facts and the law involved are similar in all the petitions in the batch, the same are being disposed of by this common order. The facts are taken from Petition No. 84 (C) of 2013 in which ESPN Software India Pvt. Ltd. is the respondent.

4. The petitioner vide letter dated 28.11.2012 expressed its desire to obtain signals of the respondent (ESPN Software in Petition No. 84 (C) of 2013) [Similar request was also made to the other respondents]. Some correspondence was exchanged between the parties with regard to the time line for implementation of DAS in Mangalagiri town (Guntur District) where the head-end of the petitioner is located and where the channels of the respondents were to be provided. Subsequently, when the petitioner approached the Tribunal, the Tribunal vide order dated 18.02.2013 directed the petitioner to meet the respondents within two weeks to resolve the disputes and differences among themselves clarifying that the meeting will be held without prejudice to the rights and contentions of the parties. During the pendency of the matter before the Tribunal, some efforts were made in each of these cases to arrive at a negotiated settlement and in some cases (Petition No. 84 (C), 85 (C) and 86 (C) of 2013) technical audits were also held at the instance of the respective respondents.

5. The main contention of the respondents is that, as per the notification dated 11.11.2011 issued by the Ministry of Information & Broadcasting, only two cities of Andhra Pradesh namely Hyderabad and Vishakhapatnam have been notified where the DAS regime is to be implemented as on date. All the other areas of Andhra Pradesh fall under Phase III and Phase IV of the DAS regime where the DAS Regulations are yet to be enforced and that the

Mangalagiri town of Guntur District, where the head-end of the petitioner is located and where the signals of the respondents are sought, is at present not under DAS regime.

6. Mr. N. Ganpathy, learned counsel appearing for ESPN Software, and Mr. Tejveer Singh Bhatia, learned counsel appearing for Media Pro Enterprises, submitted that the permission granted by the Ministry of Information & Broadcasting to the petitioner is for operating as a Multi System Operator in the Digital Addressable System (DAS) in the notified cities/towns/areas of Andhra Pradesh occurring against Phase II, Phase III and Phase IV as per the notification of the Government of India dated 11.11.2011. As per them the permission granted to the petitioner is not valid in the areas which have not yet come under the DAS regime. They further submitted that the petitioner has sought signals for whole of Andhra Pradesh and since on date excepting two cities, Hyderabad and Vishakhapatnam, no other areas of Andhra Pradesh fall under DAS notified areas, the Telecommunication (Broadcasting & Cable Television Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 do not apply to these areas and the petitioner cannot seek relief under the same. As per them, The Telecommunication (Broadcasting & Cable Services) Interconnection Regulations, 2004 and more particularly, clause 13.2B of the same, shall apply to a MSO such as the petitioner in this case.

7. The permission granted by the Ministry of Information & Broadcasting to the petitioner is at page 123 to 124 of the Paper Book. The relevant portion of the same is as under:-

*“I am directed to refer to your application dated 8.5.2012 on the above cited subject and to say that this Ministry has examined your application and decided to grant permission to you under Rule 11E of the Cable Television Networks Rules, 1994 for operating as a Multi System Operator (MSO) in the Digital Addressable System (DAS) notified **cities/towns/areas of the State of Andhra Pradesh occurring against Phase-II, Phase-III and Phase-IV** of the notification of Government of India in the Ministry of Information & Broadcasting number S.O. 2534(E), dated the 11th November, 2011.”*

Mr. Tejveer Singh Bhatia referred to the rejoinder of the petitioner (Petition No. 85 (C) of 2013) and submitted that para 72 of the same shows how the petitioner itself understood its permission to operate in DAS areas. The relevant portion is as under:-

“The petitioner can very well cater to DAS notified cities/towns/ areas of the State of Andhra Pradesh occurring against Phase-II, III and IV of MIB’s Notification dated 11.11.2011. As on date DAS is operational in cities/towns/areas of the State of Andhra Pradesh occurring against Phase-II of the Notification. Hence the case set up

by the Respondent as regards voluntary DAS allegedly being subject to the mutual consent of the parties is of no relevance with reference to cities/towns/areas of the State of Andhra Pradesh occurring against Phase-II of MIB's Notification dated 11.11.2011."

Let us examine the permission granted to the petitioner. The permission is for operating as a Multi System Operator (MSO) in the Digital Addressable System (DAS) notified cities/towns/areas of the State of Andhra Pradesh **occurring (emphasis applied)** against Phase-II, Phase-III and Phase-IV of the notification of Government of India in the Ministry of Information & Broadcasting number S.O. 2534(E), dated the 11th November, 2011.

On behalf of the respondent, it is contended that the use of the word 'occurring', in the permission granted by the Ministry, would show that the permission to operate in all the areas would come into effect from the dates of implementation of Phase-II, Phase-III and Phase-IV of the Notification, as the case may be. We find it difficult to accept the submission because too much stress is being put on the word "occurring" and the inference drawn appears to be contrary to the provisions of the regulations.

We, therefore, proceed to examine the claim of the petitioner in light of the relevant provisions of the Act and regulations. We note that otherwise also the petitioner was registered by the postal authorities at Mangalagiri vide Registration No.142 dated 4.4.2012 for running a cable television network in

the State of Andhra Pradesh for the period from 4.4.2012 to 3.4.2013. (page 121 of the Paper Book). The permission, under clause 11 of the Cable Television Networks Rules, 1994, which provides that no Multi System Operator shall provide cable television network services with Addressable Systems in any one or more notified areas without a valid permission from the Central Government, is required only for operating in DAS notified areas. For areas other than DAS areas, the cable operator has to be registered under Section 3 of The Cable Television Networks (Regulation) Act, 1995, which reads as under :-

“3. Cable television network not to be operated except after registration. – No person shall operate a cable television network unless he is registered as a cable operator under this Act.”

Further, sub-section 1 of Section 4 of The Cable Television Networks (Regulation) Act, 1995 provides as under:-

“4. Registration as cable operator. – (1) Any person who is desirous of operating or is operating a cable television network may apply for registration or renewal of registration, as a cable operator to the registering authority.”

Section 2 (h) defines registering authority as under :-

“2(h). “registering authority” means such authority as the Central Government may, by notification in the Official Gazette, specify to perform the functions of the registering authority under this Act (without such local limits of jurisdiction as may be determined by that Government;”

The registering authority is notified vide S.O. 718 (E), dated 29th September, 1994 as the Head Post Master of a Head Post Office of the area within whose territorial jurisdiction the office of the cable operator is situated.

Since the petitioner in this case had valid registration as a cable operator as well as permission to operate in DAS notified areas from the Ministry of Information & Broadcasting when it applied for signals of the respondents, the respondents could not have denied its signals to the petitioner on this ground.

8. Clause 13.2(B) and 13.2(B)1 of The Telecommunication (Broadcasting & Cable Services) Interconnect Regulations, 2004 provides as under :-

“13.2B Reference Interconnect Offers for addressable systems other than direct to home service.

13.2B.1 *Every broadcaster, providing broadcasting services before the date of commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulation,*

*2009 (4 of 2009) and continues to provide such services after such commencement shall, within thirty days from the date of such commencement, submit its Reference Interconnect Offer specifying, inter-alia, the technical and commercial terms and conditions including those listed in Schedule III **for interconnection with addressable systems other than***

(a) cable service in areas notified by the Central Government under sub-section (1) of section 4A of the Cable Television Networks (Regulation) Act, 1995 (7 of 1995);(emphasis supplied)

(b) the direct to home service, to the Authority.”

From the above, it is clear that **cable services with addressable systems** can also be provided in the areas other than those notified under DAS regime. Rather, the broadcasters are mandated to publish Reference Interconnect Offer for the same. We are, therefore, unable to agree with the contention of the respondents that the petitioner cannot provide signals by its digital head-end (which is an addressable system) at Mangalagiri in Guntur District to areas which are not yet under DAS regime.

Undisputedly, the service based on Digital Addressable Systems (DAS) is much better and beneficial to the subscribers as well as the Broadcasters (respondents). To the subscribers (end users), it provides better quality and the option to choose the channels of their choice on a-la-carte basis; to the

Broadcasters, it provides increased transparency with regard to the subscribers subscribing to their channels as well as better protection against piracy of their signals as compared to the Analogue regime. As a matter of fact, it is a challenging task for the distributors of signals, such as the petitioner in this case, to migrate to DAS regime in view of the costs involved in setting up Digital Head-End equipment and Set Top Boxes required at the subscriber end and it is, perhaps, the main reason why the same is being implemented in phases. In our view, if someone is implementing it voluntarily before the mandatory date, it is a laudable effort.

9. Coming to the issue of technical deficiency in the head-end of the petitioner, we note that the respondent vide letter dated 28.9.2013 has pointed out the following deficiencies :-

CAS

- (i) STB & VC are not paired.

SMS

- (i) Rental of the equipment are not captured in the itemized billing.
- (ii) SMS and CA not integrated.

The letter further states that the respondent also requires “Covert FP”.

Mr. Jayant Mehta, learned counsel appearing for the petitioner stated that all the issues have been addressed except for “Covert FP”. He further stated that vide e. mail dated 9.4.2013 from Media Pro, a final inspection was scheduled on 12.4.2013 and no deficiency has been pointed by M/s. Media Pro since then.

With regard to the issue of “Covert FP” (Finger Printing), Schedule I of the DAS Regulations, 2012 provides for certain requirements that include the overt FP and On Screen Display Messages. There is no mention of any Covert FP in the same. The respondents have not pointed out any deficiency in the “overt FP” required as per the regulations. We are, therefore, unable to agree with the contention of the respondents regarding any shortcomings in the head-end of the petitioner.

10. In view of our findings, we direct as under:-

- (i) The petitioner shall ensure that its registration certificate from the registering authority (Post Master, Mangalagiri) remains valid;
- (ii) The respondents shall enter into agreement with the petitioner on the basis of their Reference Interconnect Offer (RIO) within two weeks. The RIO for the purpose shall be as applicable to the

addressable systems other than DTH, and for areas under DAS regime or otherwise, as the case may be.

All the above petitions are accordingly allowed with no order as to costs.

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(Aftab Alam)
Chairperson

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(Kuldip Singh)
Member

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