

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**

**NEW DELHI**

Dated 21st February, 2014

**Petition No. 385 (C) of 2013**  
**(M.A. Nos. 2 & 6 of 2014)**

Kable First India Pvt. Ltd. ... Petitioner

Vs.

IndiaCast UTV Media Distribution Pvt. Ltd. ... Respondent

**BEFORE:**

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

For Petitioner : Mr. Meet Malhotra, Sr. Advocate  
Mr. Vineet Bhagat, Advocate  
Mr. Ravi S. Chauhan, Advocate  
Ms. Neha Jain, Advocate  
Ms. Pallak, Advocate

For Respondent : Mr. Ramji Srinivasan, Sr. Advocate  
Mr. Kunal Tandon, Advocate

**ORDER**

Miscellaneous Application No. 2 of 2014 has been filed by the applicant/petitioner seeking the permission of this Tribunal to switch off the signals of 27 channels of the respondent as mentioned in the notices issued

by the petitioner under clauses 6.3 and 6.5 of the Regulations and directing the respondent to charge the petitioner only for the channels which the petitioner intends to transmit.

The respondent/applicant has in turn filed the Miscellaneous Application No.6 of 2014 seeking the vacation of the interim order of the Tribunal dated 13.11.2013 and allowing the respondent to disconnect the supply of signals of its channels to the petitioner. The applicant/respondent has also sought direction to the petitioner to pay a sum of Rs.1,44,57,780.01 payable up to 31.12.2013 and such further amount as may become payable till the supply of signals of the respondent's channels to the petitioner is continued.

2. As per terms of offer (MOU) signed between the parties, the term of the same starts on 16.4.2013 and ends on 31.3.2014 and comprises of the following periods :

Period 1: April 16, 2013 to June 30,2013  
Period 2: July 1, 2013 to September 30.2013  
Period 3: October 1, 2013 to December 31, 2013  
Period 4: January 1, 2014 to March 31, 2014

The subscription fees payable by the petitioner to the respondent are as under:

Period 1: (20th April, 2013 to 30th June, 2013) –  
Rs.10,00,000/- (Rupees Ten Lacs only) per month  
based on Rs.8/- per set top box per month for a  
minimum guaranteed 1,25,000 subscribers.

Period 2: (1st July, 2013 to 30th September, 2013) –  
Rs.15,00,000/- (Rupees fifteen Lacs only) per month  
based on Rs.10/- per set top box per month for a  
minimum guaranteed 1,50,000 subscribers.

Period 3: (1st October, 2013 to 31st December, 2013) –  
Rs.18,00,000/- (Rupees Eighteen Lacs only) per  
month based on Rs.9/- per set top box per month for  
a minimum guaranteed 2,00,000 subscribers.

Period 4: (1st January, 2014 to 31st March, 2014) –  
Rs.30,00,000/- (Rupees Thirty Lacs only) per month  
based on Rs.12/- per set top box per month for a  
minimum guaranteed 2,50,000 subscribers.

In the event the average subscribers of Kable First increase more than the minimum guaranteed subscribers in a particular month in each period as specified above, Kable First shall pay an additional license fee on each additional subscriber as stated below:-

Period 1: April 20, 2013 to June 30,2013 – additional license fee at the rate of Rs. 8/- per subscriber.

Period 2: July 1, 2013 to September 30,2013 – additional license fee at the rate of Rs. 10/- per subscriber.

Period 3: October 1, 2013 to December 31,2013 – additional license fee at the rate of Rs. 9/- per subscriber.

Period 4: January 1, 2014 to March 31, 2014 – additional license fee at the rate of Rs. 12/- per subscriber.”

3. The respondent in turn is required to pay the monthly marketing fees to the petitioner which are as under:-

Period 1: (20th April, 2013 to 30th June, 2013) – Rs.8,00,000/- (Rupees Eight Lac only) per month based on Rs.6.4/- per set top box per month for a minimum guaranteed 1,25,000 subscribers.

Period 2: (1st July, 2013 to 30th September, 2013) – Rs.6,25,000/- (Rupees Six Lac Twenty five Thousand only) per month based on Rs.4.17/- per set top box per month for a minimum guaranteed 1,50,000 subscribers.

Period 3: (1st October, 2013 to 31st December, 2013) – Rs.6,00,000/- (Rupees six Lac only) per month based on Rs.3/- per set top box per month for a minimum guaranteed 2,00,000 subscribers.

Period 4: (1st January, 2014 to 31st March, 2014) – Rs.10,00,000/- (Rupees Ten Lac only) per month based on Rs. 4/- per set top box per month for a minimum guaranteed 2,50,000 subscribers.

In the event the average subscribers of Kable First increase more than the minimum guaranteed subscribers in a particular month in each period as specified above, an additional marketing fee for each additional subscriber is to be paid as stated below:-

Period 1: April 20, 2013 to June 30,2013 – additional marketing fee at the rate of Rs. 6.40 per subscriber.

Period 2: July 1, 2013 to September 30,2013 – additional marketing fee at the rate of Rs. 4.17 per subscriber.

Period 3: October 1, 2013 to December 31,2013 – additional marketing fee at the rate of Rs. 3/- per subscriber.

Period 4: January 1, 2014 to March 31, 2014 – additional marketing fee at the rate of Rs. 4/- per subscriber.”

4. On 21.8.2013, a letter was written by the petitioner to the respondent for re-negotiation of the terms of offer, inter-alia on the ground that the emergence of 5 more new MSOs had resulted in losing its market share and also stating that DAS terms of offer had expired on 30<sup>th</sup> May, 2013. In this letter, the petitioner stated that it would like to keep its subscription cost to a maximum of Rs.6,50,000/- per

month instead of the existing Rs.10,00,000/- per month and in case this subscription amount was not acceptable, the respondent was requested to forward the RIO agreement which the petitioner proposed to sign with immediate effect. Subsequently by letter dated 19.9.2013, a reminder was also sent by the petitioner.

5. On 23.9.2013, the respondent replied the petitioner's letters and denied that the term of offer had expired on 30.5.2013. Amongst other things, the petitioner was also asked to clear their entire outstanding and abide by terms of the MoU till the expiry of the same. It, however, attached a copy of the RIO (Reference Interim Offer) for reference purpose.

6. On 10.10.2013, the respondent issued a disconnection notice under clause 6.1 of the Interconnect Regulations. Aggrieved by this notice and the respondent not acceding to its request for a fresh agreement, the petitioner approached this Tribunal on 24.8.2013. Tribunal vide its order dated 13.11.2013 made the following interim arrangement:

*“Having heard the counsel for the parties on the prayer for interim relief made by the petitioner, we direct that the petitioner shall continue to receive the signals from the*

*respondent subject to payment of Rs. 35 Lakhs (in addition to Rs. 30 Lakhs as per our direction dated November 1, 2013) within two weeks from today and filing an undertaking before the Tribunal that they will continue to carry all the channels of the respondent at the frequency and packages as per the Terms of Offer dated April 16, 2013 (at page 32 of the petition). The undertaking must be filed within one week from today.*

*Needless to say that during the pendency of this petition, both sides shall comply with their respective liabilities under the Terms of the Offer.”*

7. On 02.12.2013, a miscellaneous application [M.A. No. 330 of 2013] was filed by the petitioner seeking a review/modification/clarification of the Tribunal's order dated 13.11.2013. The same was disposed of in terms of the order dated 06.12.2013 which is as under:-

*“In course of hearing of this M.A., it seems that the parties have been able to find a reasonable meeting ground.*

*As per the understanding arrived here, the petitioner shall negotiate with the respondent to terminate the existing interconnect agreement between the two sides and to replace it by a fresh agreement based on the respondent's RIO terms.*

*It is, however, clearly understood that before a fresh agreement is executed on RIO terms, the petitioner must clear all its dues under the existing agreement.*

*To determine the petitioner's dues, the parties agree to hold a reconciliation of accounts.*

*With the aforesaid observations, the M.A. stands disposed of.”*

8. Mr. Meet Malhotra, learned senior counsel appearing for the petitioner submitted that the clause of minimum guarantee in the terms of offer is bad in law. In this regard, he referred to clause 5(21) of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 which is as under:-

*“(21) No service provider shall demand from any other service provider a minimum guaranteed amount as subscription fee for the channels provided by such service provider.”*

9. Mr. Ramji Srinivasan, learned senior counsel appearing for the respondent, however, submitted that this clause is applicable only in respect of RIO and the parties can always enter into a mutually agreed agreement in which case this clause would not apply. He further argued that the same was signed by the petitioner on his own volition

and without any coercion. Mr. Srinivasan further submitted that the initial request of the petitioner dated 21.8.2013 was for re-negotiation and signing of the RIO was only suggested as an alternative. The terms of offer were more beneficial to the petitioner during the initial periods and it was required to pay more in the later periods when the business was expected to grow. The petitioner approached the tribunal after about six months which is not a reasonable period. With regard to the 5 new MSOs, he submitted that they were existing earlier also which is, however, denied by Mr. Vineet Bhagat, learned counsel appearing for the petitioner.

Mr. Srinivasan relied upon the judgement of the Tribunal in Petition No. 430 of 2011 (Bharti Airtel Ltd. Vs. Tata Teleservices Ltd. & Anr.) decided on 30.8.2012 and argued that the agreement between the parties cannot be rescinded.

10. In view of the understanding arrived at between the parties on 6.12.2013 before the Tribunal, the termination of the existing agreement and migration to an agreement based on the respondent's RIO terms is no more an issue. The only issues that need to be adjudicated are the date on which such a migration shall become effective and the amounts that the parties owe to each other in terms of the existing agreement. At this interim stage, the question that arises before us is what channels of the respondent the petitioner

shall carry and what payments he shall make to the respondent till the petition is finally decided. In this regard, we may note that there is no “must carry” clause for paid channels of a broadcaster (respondent in this case is the agent for broadcasters) by a Multi System Operator (petitioner). Further, the petitioner can subscribe to any of the respondent’s channels on a-la-carte basis and pay for these as per the RIO rates for actual number of subscribers viewing these channels.

11. In view of the forgoing, we feel that the interest of justice shall be sub-served if the interim arrangement is modified as under:

- (i) The petitioner shall be free to carry the channels which it wants to subscribe as stated in para 13 of its M.A. No. 2 of 2014 and not to carry the rest twenty seven channels.
- (ii) The petitioner shall from 1<sup>st</sup> of March 2014, pay the respondent monthly for these channels on the a-la-carte rates specified by the respondent in its RIO and for the number of subscribers subscribing to these channels and as per the applicable Regulations in this regard. For the period December, 2013 to 28<sup>th</sup> February, 2014, the petitioner shall pay the respondent for seven channels at the RIO rates and as per the subscriber base given by it in its M.A. [No. 2/2013] at para 13. This payment shall be made in two equal installments, the first within two

weeks and the other within two weeks thereafter. However, this payment and the dues that the parties may owe to each other in terms of the old agreement shall abide by the final outcome of the petition.

- (iii) The respondent shall not insist on carriage of its channels and shall, henceforth, not be liable to pay for the same.

Miscellaneous Applications No. 2 & 6 of 2014 are disposed of with the above directions.

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**(Aftab Alam)**  
**Chairperson**

.....  
**(Kuldip Singh)**  
**Member**

*HKC/17.2.2014*