

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

**Dated 2<sup>nd</sup> July, 2015**

**Petition No.103(C) of 2015**

Welcome Cable Network Pvt. Ltd. ...Petitioner

Versus

Taj Television India Pvt. Ltd. ...Respondent

**BEFORE:**

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

For Petitioner : Mr. Vikram Singh, Advocate

For Respondent : Mr. Upender Thakur, Advocate.

**ORDER**

The petitioner is seeking renewal of its subscription agreement with the respondent for the sports channels of the respondent and a fresh agreement for its General Entertainment Channels (GEC).

The petitioner is a MSO operating in the area of Greater Noida, UP. The respondent is a broadcaster.

It is the case of the petitioner that it had earlier entered into a subscription agreement with the respondent for its sports channels in the year 2013. On 13.10.2014, the petitioner wrote a letter to the respondent

requesting for renewal of the said agreement as well as signals of GEC channels. The present petition was filed under clause 3.2 of the Interconnect Regulations, 2004 on 3.3.2015 as the petitioner was unable to get the signals of the respondent. As per the petitioner, it has supplied all the relevant documents and is eligible for renewal of its agreement for sports channels as well as a fresh agreement for the GEC channels of the respondent.

As per the respondent, the petitioner is a defaulter and therefore, not entitled to get the signals of the respondent in terms of Ist proviso of clause 3.2 of the Interconnect Regulations. As per the respondent, the petitioner alongwith its affiliated/associated networks namely, Neon News Pvt. Ltd., Vaishno Infocom Izynet, All in All Consultants Pvt. Ltd., Welcome Cable Network Pvt. Ltd. owes to it around Rs. 78,01,052/- as on 31.3.2015. The respondent refers to a Memorandum of Understanding (MOU) dated 31.10.2014 executed between the present petitioner and other entities having one common director namely, Mr. Kailash Gupta with Media Pro Enterprise India Pvt. Ltd., in terms of which the present petitioner has duly agreed and undertaken to clear the outstanding dues of approximately Rs. 39 lakhs upto 31.3.2014. It is further the case of the respondent that as per clause 4.15 of the duly executed agreement between the petitioner and Media Pro, the petitioner is required to clear the outstanding of its joint ventures/affiliated/associated/partner networks in different parts of

cities/countries in DAS and non-DAS areas. As per respondent, in terms of this clause, the present petitioner is also liable to clear the total outstanding of its affiliated/associated networks, which has accumulated to the tune of Rs. 78,01,052/- as on 31.3.2015. In view of this outstanding, the present respondent has already issued disconnection notice under clause 4.1 of the Interconnect Regulations. The cheques issued by the present petitioner and its affiliates / associated network towards payment of outstanding subscription fees have also been dis-honoured on presentation for encashment. The respondent also refers to letter dated 10.12.2014, sent by the petitioner, as per which it has transferred, sold, conveyed and assigned all their rights, title and interest in favour of one M/s Nova Digital & Broadband Pvt. Ltd.

Vide Order dated 29.4.2015, the Tribunal framed the following issues :

- (i) Whether the petitioner has made out a case for execution of subscription agreement with the respondent?
- (ii) Whether the petitioner is entitled for the renewal of its subscription agreement in respect of the sports channels distributed by the respondent?
- (iii) Whether the petitioner is entitled to get the signals of General Entertainment channels from the respondent? If yes, on what terms and conditions?
- (iv) Whether the petitioner is a "defaulter" within the meaning of the interconnect regulations?
- (v) Whether the petitioner through its director Mr. Kailash Gupta is in breach of the MOU dated 31.10.2014 executed with Media

Pro?

- (vi) Whether the petitioner through its director Mr. Kailash Gupta is under obligation to clear all outstanding dues in respect of its other approximate seven affiliated / associated networks/entities?
- (vii) Whether the petitioner is guilty of suppression before this Hon'ble Tribunal?

Mr. Vikram Singh, counsel appearing for the petitioner submitted that there is no *privity of contract* between Media Pro Enterprise Pvt. Ltd. and the respondent, namely, M/s Taj Television India Pvt. Ltd. and it cannot claim the money due to Media Pro Enterprise Pvt. Ltd. He further submitted that just because there is common director between different entities, the petitioner is not liable to pay the outstanding dues of other such entities. With regard to his statement, he relied on the following judgments of the Supreme Court:

- (A) Alembic Glass Industries Ltd. Vs. Collector of Central Excise & Customs<sup>1</sup>
- (B) Electronic Corporation of India Ltd. & Ors. Vs. Secretary, Revenue Department, Govt. of Andhra Pradesh & Ors.<sup>2</sup>
- (C) Utkal Alloys (P) Ltd. Vs. Commr. of Central Excise and Customs<sup>3</sup>

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<sup>1</sup> (2002) 9 SCC 463

<sup>2</sup> (1999) 4 SCC 458

Mr. Vikram Singh also submitted that the only other MSO in the area of Greater Noida is Siti Cable and as the respondent wants to favour it, the petitioner is being denied the signals.

No doubt that a company being an independent legal entity cannot be held responsible for the default of another company merely because there is a common director between the two. However, the facts of the present case are on a different footing.

We may note that the petitioner had already approached the Tribunal vide Petition Nos. 316(C) of 2013 (Neon News Pvt. Ltd., Mathura, U.P. Vs. Media Pro Enterprise India Pvt. Ltd), Petition No.100 (C) of 2014(Vaishno Infocom Ezynet Pvt. Ltd., Mathura Vs. Media Pro Enterprise India Pvt. Ltd., Mumbai) and Petition No. 194(C) of 2014(M/s Welcome Cable Network Pvt. Ltd., Bulandsahar, UP Vs. Media Pro Enterprise India Pvt. Ltd., Mumbai). These Petitions were dismissed as withdrawn in terms of Tribunal's order dated 18.11.2014.

It is the contention of the respondent that these petitions were withdrawn pursuant to the MOU dated 31.10.2014, in terms of which, the

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<sup>3</sup> 2005(101) ECC 49

present petitioner has duly agreed and undertaken to clear the outstanding dues. The MOU is available in the paper book at Page Nos. 77 to 80 and the same is not denied by the petitioner.

We may note that as per this MOU, M/s Welcome Cable Network Pvt. Ltd., the petitioner herein, is an affiliate / associate network of Neon News Pvt. Ltd. The relevant part of the MOU is as under :

*"MEMORANDUM OF UNDERSTANDING*

*This Memorandum of Understanding is made on this 31<sup>st</sup> day of October 2014.*

*BETWEEN*

*MEDIA PRO ENTERPRISE INDIA PRIVATE LIMITED, a company incorporated and registered under the Companies Act, 1956 and having its registered office at 7<sup>th</sup> Floor, Blue Wave, Behind Kuber Chambers, off Link Road, Andheri (west), Mumbai, 400053 (hereinafter referred to as "MEDIA PRO", which shall include its successors and permitted assigns) of the FIRST PART:*

*AND*

*NEON NEWS PVT. LTD. having its registered office at Ground Floor, Lakmani Building, Daiwal Nagar Krishna Nagar, Mathura, UP-281001 alongwith its following affiliate / associate networks:*

- 1. Vaishno Infocom Ezynet Pvt. Ltd., Bulandshahar*
- 2. Vaishno Infocom Ezynet Pvt. Ltd., Khurja*
- 3. All in All Consultant Pvt. Ltd., Kasganj*
- 4. All in All Consultant Pvt. Ltd., Aligarh*
- 5. Vaishno Infocom Ezynet Pvt. Ltd., Mussorie*
- 6. M/s Welcome Cable Network Pvt. Ltd., Sikandarabad*
- 7. All in All Consultant Pvt. Ltd., Kasimpur*

*Neon News Pvt. Ltd. and its affiliate /associate Networks are herein after referred to as "Neon Networks" which expression shall mean and include its affiliates, successors and permitted assigns)."*

We also note from this MOU that Neon Network agreed to make the payment of balance outstanding of Rs. 38,98,205/- to Media Pro and also agreed to execute subscription agreement with respective broadcasters/successor entities of Media Pro for the period commencing from 1.4.2014 onwards. It also undertook to withdraw the cases pending adjudication including before the Tribunal. The relevant part of the MOU is as under :

- "2. *That after issuance of aforesaid credit notes in statements of accounts of Neon Networks until 31.03.2014, the outstanding dues payable by Media Pro Services availed until 31<sup>st</sup> March 2014 is Rs. 38,98,205/- (Rupees Thirty Eight Thousand Two Hundred Five Only).*
3. *That Neon Networks agrees to make payment of balance outstanding dues of Rs. 38,98,205/- to Media pro through Cheque / Demand Draft at the time of signing of this MOU.*
4. *That since erstwhile agreements between Neon Networks have expired by efflux to time, Neon Networks agrees to execute subscription agreements with Media Pro for period until 31<sup>st</sup> March 2014 and with respective broadcasters / successor entities of Media Pro for the period commencing from 1<sup>st</sup> April 2014.*
5. *Neon Networks agrees and undertakes to withdraw all cases pending adjudication before the Courts of law anywhere in India including cases pending before the Hon'ble TDSAT where Media Pro Enterprise India Pvt. Ltd. or any of its successor entity is made a party in respect of dispute pertaining to Media Pro channels."*

From the above, it is apparent that the petitioner alongwith other affiliates / associate networks collectively referred to as Neon Networks had agreed to clear the outstanding dues of M/s Media Pro and execute agreements with the respective broadcasters/ successors of Media Pro. The petitions, as indicated above, were subsequently withdrawn.

We may recall here the relationship between M/s Media Pro Enterprises (India) Pvt. Ltd. and M/s Taj Television – the respondent. Prior to the TRAI regulations dated 10.2.2014, M/s Media Pro Enterprises (India) Pvt. Ltd. was acting as an agent distributing the signals of Zee (which are now being distributed by the respondent), Star and some other channels. Subsequent to the TRAI regulations dated 10.2.2014, it stopped distributing the signals of the respondent. However, for the agreements executed by it with various redistributors of signals that were still in force, 47% of the subscription amount was to be paid to M/s Taj television, the respondent herein.

It also appears that the petitioner has sold or is in the process of selling its network to another entity namely, M/s Nova Digital & Broadband Pvt. Ltd. and is somehow, trying to get the signals from the respondent.

The letter dated 10.12.2014, written by the petitioner in this regard, is quite clear. Relevant part of this letter is as under :

*"Sub : Request for transfer of decoders in favour of M/s Nova Digital & Broadband Pvt. Ltd.*

*Dear Sir,*

*This is to inform that we have transferred, sold, conveyed and assigned all our rights, title and interest whatsoever in and over to our MSO Assets and business in favour of M/s Nova Digital & Broadband Pvt. Ltd.*

*Therefore, we hereby request you to transfer the decoders standing in our names to M/s Nova Digital & Broadband Pvt. Ltd.*

*We have no objection whatsoever if the decoders are transferred in favour of M/s Nova Digital & Broadband Pvt. Ltd. Any obligation, for the period commencing from 1 December 2014 shall be the responsibility of M/s Nova Digital & Broadband Pvt. Ltd.*

*Thanking you,*

*Yours faithfully*

*For – Welcome Cable Network Pvt. Ltd.*

*Sd/-*

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*Kailash Gupta  
Director*

*(Customer Code – 155721)  
Sikandrabad"*

Though Mr. Vikram Singh argued that this letter is in regard to Sikandarabad, as the customer code mentioned was for Sikandarabad only, the letter nowhere says that the rights assigned are only in regard to Sikandarabad.

Since the petitioner has failed to clear all outstanding dues of the respondent, it must be held as a 'defaulter' within the meaning of the interconnect regulations. In view of the default in payment, it is not entitled to the execution of the fresh subscription agreement as well as renewal of the same for sports channels of the respondent.

In view of the foregoing facts, we find that the petitioner has not made out any case for execution of the fresh subscription agreement as well as renewal of the same for sports channels of the respondent.

The petition is dismissed with cost of the litigation assessed at Rs. 25,000/-.

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

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

/NC/