

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

Dated 19th May 2015

**MA No.130 of 2015 in
Petition No.15(C) of 2015**

Siti Cable Network Ltd., New DelhiPetitioner

Versus

Star India Pvt. Ltd., New DelhiRespondent

BEFORE:

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

For Petitioner : Mr. Tejveer Singh Bhatia, Advocate
Mr. Upender Thakur, Advocate

For Respondent : Mr. Rajsekhar Rao, Advocate
Mr. Saurabh Srivastava, Advocate
Ms. Shilpa Gupta, Advocate
Ms. Meherunissa Anand, Advocate

For Applicant (in MA No.130/15) : Mr. Samir Sagar Vashishta, Advocate
Ms. Nachiketa Suri, Advocate

ORDER

By Aftab Alam, Chairperson –This miscellaneous application is filed by M/s Siti Vision Digital Media Pvt. Ltd. (**Siti Vision**) seeking to get itself impleaded as a respondent in these proceedings. The applicant is a multi-system operator, engaged in the business of supplying,

distributing/retransmitting television channels of different broadcasters to its customers through digital addressable systems in the DAS notified areas of Hyderabad and non-DAS areas of GHMC. The applicant describes itself as a subsidiary company of the petitioner.

The main petition is filed by M/s Siti Cable Network (**Siti Cable**). It is a multi-system operator operating in different parts of the country. It filed the petition challenging the disconnection notice dated 06.01.2015 issued by the respondent Star India Pvt. Ltd. (**Star**) under clause 6.1 of the DAS Regulations for a number of DAS notified areas, including Hyderabad and public notice dated 07.01.2015 published under various newspapers under clause 6.1 of the Regulations. The disconnection notices were issued on grounds of (i) non-signing of subscription agreement for the interim period, (ii) non-payment of subscription fee and/or outstanding arrears and (iii) failure to provide subscriber reports.

Here it needs to clarify that the petitioner Siti Cable had an interconnect agreement with M/s Media Pro which was a content aggregator and distributor and which prior to February 2014 used to act as an agent on behalf of several broadcasters, including Star. It was on the basis of this agreement that Siti Cable got Star's channels for redistribution in different parts of the country where Siti Cable was operating. It needs to be further made clear that the applicant Siti Vision did not have any separate agreement with either Media Pro

or with Star and it was on the basis of the petitioner's agreement with Media Pro that Siti Vision also received the Star channels for redistribution in the DAS areas of Hyderabad and non-DAS areas of GHMC. The agreement between Siti Cable and Media Pro came to end on 01.04.2014 and around that time, Media Pro ceased to act as an agent for Star in terms of the amendment introduced in the Regulations by TRAI.

After a gap of a few months, both Siti Cable and Siti Vision entered into RIO based agreements with Star India with effect from 10.11.2014.

The dues claimed in the disconnection notices impugned in the petition filed by Siti Cable Network are for the period of the interregnum (01.04.2014 to 09.11.2014). It also needs to be noted that in the notice under clause 6.1, the dues of the different areas were separately stated and the dues of Siti Vision, Phase-II Hyderabad was shown as Rs.2,22,34,144=00.

When the petition first came up for preliminary hearing on 27.01.2015, Mr. Meet Malhotra, Senior Advocate appearing for the petitioner Siti Cable candidly admitted that the petitioner had dues of Star but submitted that the amount of dues was not as high as indicated in the impugned notice. He also handed over a cheque of Rs.10 crores to the counsel for Star which was accepted as an on-account payment against the dues. The order passed on that date further records that both sides agreed to negotiate and reconcile their respective accounts to determine the exact amount owed by the petitioner to the

respondent. On that date, the Tribunal directed Star not to give effect to its disconnection notice.

The petition was next taken up on 11.02.2015. On that date, counsel for Star raised the issue of its dues against Siti Vision. Thereupon, Mr. Malhotra stated that “the respondent is free to proceed against its Hyderabad based MSO Siti Vision Digital Media Pvt. Ltd. which is not a part of this petition”. In view of the statement made on behalf of Siti Cable, Star filed an application (MA No.53 of 2015) for getting Siti Vision added as a respondent in the petition. The miscellaneous application came up for orders on 19.02.2015. On that date, Mr. Tejveer Singh Bhatia, counsel appearing on behalf of Siti Cable stated that the petitioner would pay the dues of Star that may be established against Siti Vision. In view of the definite statement made on behalf of the petitioner, the miscellaneous application was disposed of without any direction to add Siti Vision as one of the respondents. The relevant part of the order dated 19.02.2015 is as under:

“In view of the statement made on behalf of the petitioner as recorded in the order passed on 11.2.2015, Mr. Salman Khurshid, learned senior advocate appearing for the respondent requests that the M.A. (M.A. No.53 of 2015) for impleadment of Siti Vision Digital Media Pvt. Ltd. as one of the parties in this petition, may be allowed.

Mr. Tejveer Singh Bhatia, counsel appearing for the petitioner states that he has no objection to the request and added that in case it is established that Star Vision Digital Media Pvt. Ltd. owes any dues to the respondent, the present petitioner would certainly clear off those dues.

In view of the clear stand taken by the petitioner, the M.A. stands disposed of.”

Shortly thereafter, Star filed another miscellaneous application making the grievance that Siti Cable had not made any payment to it after the payment of Rs.10 crores made in court on 27.01.2015. It was further stated on its behalf that despite issuance of invoices, it was not receiving any payments from Siti Cable. While dealing with this application, the Tribunal noted (vide order dated 11.03.2015) that the basic controversy between the parties was in regard to the determination of the amount of dues of Star against Siti Cable which could be ascertained through reconciliation of accounts before a Chartered Accountant.

Accordingly, the Tribunal passed the following order:

“From the submissions of the counsel for the two sides and the statements made in the M.A. and the contents of the emails exchanged between the parties, some of which are enclosed with the M.A., it appears that it is basically a controversy of accounting which can be easily resolved by reconciliation of accounts of the two sides.

Having regard to the fact that according to the petitioner’s own admission it owes to the respondent an amount of Rs.11 crores and odd, we direct the petitioner to make another on-account payment of Rs.10 crores to the respondent by 13.3.2015.

Further, to cut short the controversy the two sides are directed to hold a reconciliation of account before a neutral Chartered Accountant. In our Mediation Centre, we have Mr.Rohit Vaswani who is also a Chartered Accountant. We request Mr.Vaswani to oversee the reconciliation of accounts of the two sides.”

On the basis of reconciliation of accounts, the Chartered Accountant Mr.Vaswani quantified Star’s dues against Siti Cable upto 09.11.2014 at Rs.7.66 crores. The order dated 08.04.2015 takes note of this fact. The order further notes that before the Chartered Accountant, Siti Cable sought to change its stand and disown its liability for payment of the dues of Siti Vision. The order also

notes that despite the determination of its dues, Siti Cable did not make payment to Star within the time as directed by the earlier orders. The relevant part of the order passed on 08.04.2015 is as under:

“The invoices were raised by the respondent on 26 March 2015 and in terms of the order dated 11 March 2015, the petitioner was required to make payment of the entire dues by 31 March 2015. However, the petitioner has once again defaulted and has not made any payment to the respondent. It also appears that before the Chartered Accountant the petitioner sought to change its stand from what was categorically stated on its behalf before us, as noted in the order dated 19 February 2015. In those circumstances, it would have been fully justified to lift the interim protection granted to it and to allow the respondent to discontinue its supply of signals to the petitioner. However, Mr. Upender Thakur, counsel for the petitioner made a fervent appeal not to discontinue the supply of signals to the petitioner and submitted that the discontinuance of signals would cause immense loss to it. He further stated (on the basis of instructions received by him from the representative of the petitioner who is present in the court) that the petitioner shall definitely and without fail make payment of the entire sum of Rs.3.57 crores plus Rs.4.09 crores adding upto Rs.7.66 crores within 10 days from today. We accept the submission made by Mr. Thakur subject, however, to saddling the petitioner with interest @ 12% per annum.”

Siti Cable failed to make payment as directed in that order and consequently at one stage the Star deactivated the supply of its channels to it in the different areas where it operated, including the DAS notified areas of Hyderabad and non-DAS areas of GHMC.

It was at this stage that the present miscellaneous application was filed by Siti Vision on 22.04.2015.

Mr. Samir Sagar Vashishta, counsel appearing for the applicant submitted that Siti Vision was a separate entity and the petitioner Siti Cable could not claim the right to represent it. When it was pointed out to him that Siti Cable was committed to pay its dues to Star, Mr. Vashishta submitted that the applicant must be heard for the quantification of its dues against the Star.

Mr.Vashishta also strongly relied upon an agreement (Memo of Understanding) executed between Siti Vision and Media Pro on 24.03.2015 in terms of which the dues of Siti Vision to Media Pro were reduced from Rs.6,98,37,088=00 to Rs.3,14,26,689=00.

The timing and the manner of filing this application for impleadment casts some doubt in regard to its bonafide. Mr. Vashishta was unable to clarify the exact relationship between Siti Cable and Siti Vision. Though in the miscellaneous application the applicant is described as a subsidiary company of the petitioner, Mr.Vashishta sometimes said it was a joint venture and sometimes a subsidiary. He was unable to say as to when the applicant came to learn about the present proceedings going on before the Tribunal. He was also unable to reply as to how many Directors were common between the two companies. The reliance placed on the memo of understanding between Siti Vision and Media Pro is equally misconceived because that is in respect of the dues of Siti Vision to Media Pro **upto 31.03.2014** as is evident from the recital in paragraph (E) whereas the present proceedings are concerned with the dues to Star India for the period 01.04.2014 to 09.11.2014.

Though having made the above adverse comments on the application of Siti Vision, we are yet inclined to take it in the proceedings as a respondent in addition to Siti Cable. This is for the reason that this would not cause any prejudice to Star but would rather safeguard and secure its interests against both Siti Cable and Siti Vision. Here it may also be recalled that Star itself had

earlier made an application for impleadment of Siti Vision which was disposed of in view of the statement made on behalf of Siti Cable. It is, however, made clear that the impleadment of Siti Vision will be without prejudice to Star's claim against Siti Cable to pay its dues also against Siti Vision and the impleadment of Siti Vision will not relieve Siti Cable from the commitment made on its behalf as noted in the order dated 19.02.2015.

Subject to the conditions indicated above, Siti Vision is directed to be added as respondent no.2 in the petition on payment of cost of Rs.10,000=00. The cost amount must be paid within three weeks to the TDSAT Employees Welfare Association failing which this order shall stand recalled and the miscellaneous application will stand rejected.

An amended memo of parties may be filed within one week from today. Siti Vision may file any supplementary application/affidavit within three weeks from today.

MA stands disposed of.

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(Aftab Alam)
Chairperson

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(Kuldip Singh)
Member