

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

Dated 20th January, 2016

**Broadcasting Petition No.444 (c) of 2015
(M.A. No. 457 of 2015)**

IndusInd Media & Communications Ltd. ...Petitioner

Vs.

M/s RS Cable & Ors. ... Respondents

**Broadcasting Petition No.445 (c) of 2015
(M.A. No. 458 of 2015)**

IndusInd Media & Communications Ltd. ...Petitioner

Vs.

M/s OM Cable TV & Ors. ... Respondents

**Broadcasting Petition No.555 (c) of 2015
(M.A. No. 459 of 2015)**

IndusInd Media & Communications Ltd. ...Petitioner

Vs.

Mr. Vipin Sehrawat & Anr. ... Respondent

BEFORE:

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

For Petitioner : Ms. Vandana D. Jaisingh, Advocate
Ms. Kanupriya Gupta, Advocate for
Mr. Devender Singh Thakur, AR

For Respondents - R.S : Mr. Vineet Bhagat, Advocate
Cable, Om Cable, Mr. Vipin Mr.Shubham Jain, Advocate
Sehrawat & Anr.(Bunny
Cable) and
Applicants in the MAs.

For Respondent –Siti Cable : Mr. Upender Thakur, Advocate
Mr. V. S. Dhillon, Advocate
Mr. Kunal Vats, Advocate

For Respondent – Den : Mr.Gaurav Kaushik, Advocate
Network

ORDER

These applications have been filed seeking a direction to the petitioner to refund to applicants/ respondents no. 1 an amount of Rs. 1100/- per Set Top Box (STB) (Rs. 500/- for each STB allegedly being the amount towards security deposit paid by respondents number 1 and another sum of Rs. 600/- per STB allegedly charged from the respondents no. 1/its customers as activation fee).

The petitioner is a Multi System Operator having a pan India presence. Respondents No. 1 are Local Cable Operators (LCOs). The petitioner has come to

the Tribunal challenging the migration of applicants/respondents to the network of respondent no. 3. In its interim prayer, it has, inter-alia, asked for a direction/order to the respondents to jointly and severally return the STBs provided by it to respondents no. 1 through respondent no.2.

The tribunal vide its order dated 5th November, 2015, directed the three respondents to return all the STBs to the petitioner. However, the question whether the petitioner might be liable to make any payment for the returned STBs to the respondents or to deposit an equal amount before the Tribunal, was left expressly open. The return of the STBs was to be overseen by an Advocate Commissioner that was appointed for the purpose.

As per the report submitted by the advocate commissioner, the respondents have returned 2290 STBs.

It is the case of the applicant/respondents that they have paid a sum of Rs. 1100/- per STB (security deposit Rs. 500/- and Activation Charge Rs. 600/-) and for the STBs that have been returned by them, these charges must be refunded by the petitioner.

As per the reply to the application filed by the petitioner, it had only received installation charges of Rs. 500/- per STB from the LCOs on which it has even paid the service tax and the same is not refundable. In support of its pleadings, the petitioner has annexed a statement titled “STB installation charge account” with its reply.

The applicant/respondents have not provided any material to substantiate their claim except for a receipt of Rs. 100,000/- for 200 STBs in case of M/s Bunny Cable (respondent no. 1 in petition no. 555(C) of 2015). As per the petitioner, the receipt of Rs. 100,000/- in regard of Bunny Cable is also towards installation charges and already accounted for in the statement annexed by it.

Mr. Bhagat argued that the agreement provides for a security deposit of Rs. 500/-per STB and the petitioner would not have supplied the STBs without taking this. As per clause 3.4 of the agreement between the petitioner and respondents No. 1 in all these petitions, respondent no.1 was to collect rent, installment and security deposit in respect of the Hardware/STBs from the subscribers and handover the same to the petitioner. Further in terms of the “Schedule A II. Standard Terms and Conditions”, the respondents were required to deposit at the discretion of the petitioner, an interest free and refundable security deposit of Rs. 500/- per STB. These clauses are as under:

“3.4 The Affiliate will also collect rent, installment and security deposit for the Hardware/STB or any other amount as may be specified by the multi system operator (MSO) from the subscribers concerned from time to time and hand over the same to the multi system operator (MSO) without any deduction along with the CRF form duly filled.”

“Schedule A

II. STANDARD TERMS AND CONDITIONS:

1. SECURITY DEPOSIT;

As per the discretion of the MSO, the Affiliate shall deposit with the multi system operator (MSO) a sum of Rs.500/- (Rupees Five Hundred only) (per Set Top Box) interest free and refundable security deposit. This security deposit will only cover the cost of the set top boxes provided to him. At the time of expiration or termination of this Agreement, Affiliate shall be entitled to refund amount of the security deposit, subject to the adjustment of arrears of bills, and any other payments due from the Affiliate to the multi system operator (MSO)(emphasis supplied).

This shall be settled within 30 days of the expiry / termination of the agreement.”

We may note from the clause of the agreement relating to security deposit on which Mr. Bhagat relies, that the security deposit was at the discretion of the petitioner. Though the security deposit is refundable, as regards installation/activation charges, there is no clause for the refund of same. The only

receipt produced by the applicant/respondents just mentions a payment of Rs. 100,000/- for 200 STBs. There is nothing to indicate that this payment was for security deposit. On the other hand the statement annexed by the petitioner in its reply to the applications indicates this to be otherwise. In view of the contrary stands taken by the parties on facts, we feel that evidences will be required in this regard. At this stage, in the absence of sufficient material to support the claim of the applicants/respondents, we do not find that a sufficient case is made for direction to refund any amount. We, however, leave this question open for determination at the time of the trial.

The applications are accordingly disposed of.

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(Aftab Alam)
Chairperson

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(Kuldip Singh)
Member

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(B.B. Srivastava)
Member