

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 17 March, 2016

M.A. No. 437 of 2015 in
Broadcasting Petition No. 144 of 2014

Sun Distribution Services Pvt. Ltd., Chennai ... Petitioner
Versus
Digicable Network (India) Pvt. Ltd., A.P. ...Respondent

BEFORE:

HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON
HON'BLE DR. KULDIP SINGH, MEMBER
HON'BLE MR. BIPIN BIHARI SRIVASTAVA, MEMBER

For Petitioner : Mr. Abhishek Malhotra, Advocate
For Respondent : Mr. Diggaj Pathak, Advocate
For BECIL : Ms. K. Radhalakshmi, Advocate for
Mr. Rajeev Sharma, Advocate

ORDER

This miscellaneous application is for, inter-alia, impleading Broadcast Engineering Consultants India Limited (BECIL) as a respondent in the present petition.

The petitioner has filed the present petition seeking recovery of certain amounts from the respondent claimed by it as outstanding towards monthly subscription charges for the DAS areas of Hyderabad.

Prior to 01.04.2014, the parties had a fixed fee deal for a monthly subscription fee of Rs. 18.00 Lakhs per month for the period 1.10.2013 to 31.03.2014. With effect from 01.04.2014, the monthly fee is payable on the RIO rates for which the petitioner is required to raise invoices on the basis of the SMS reports submitted by the respondent to it. As the petitioner wanted to verify the correctness of the SMS reports, it was permitted to conduct a technical audit of the respondent's system vide the order of the Tribunal dated 3 March 2015.

The audit, however, could not be conducted due to a lapse on part of both the parties and in the meanwhile, the respondent started the process of replacement of its technical system. The respondent filed a miscellaneous application being M.A. No. 164 of 2015 requesting for a direction to the petitioner to hold its audit for 60 days. Considering the plea of the respondent that an audit at that stage may lead to a crash of the entire system, the Tribunal accepted the request of the respondent to delay the audit by two months. It was, however, made clear that in case any dispute arises in regard to the SMS reports submitted earlier to the petitioner, all the benefits of doubt will go in favor of the petitioner. The order passed by the Tribunal on 26 May 2015 in this regard is as under:

“We are unable to appreciate the conduct of both the sides. The direction to the petitioner was clearly to notify the audit schedule by 5.3.2015. It did not do so and sent the intimation two months later. In the meanwhile, as noted above, the

respondent started the process of replacement of its technical system. It is curious and strange that neither party deemed fit to get further directions from the Tribunal. We find the conduct of the respondent especially deprecable in starting the process of replacement of its system without intimating the Tribunal and getting a suitable direction in this regard.

According to the respondent, the hazard is so great that we cannot but accept its request to delay the audit of its system by two months. **However, we make it clear in case any dispute arises in regard to the SMS reports earlier submitted to the petitioner, all the benefits of doubt will go in favour of the petitioner.” (emphasis supplied).**

Later on in another case being Petition No. 248(c)/2015(M/s Digicable Network (India) Pvt. Ltd.& Anr Vs. M/s India Cast UTV Media Distribution Pvt. Ltd.), having regard to the allegations made by IndiaCast that the petitioner’s system was not regulation complaint, the Tribunal passed an order on 29.5.2015 directing BECIL to make an audit of the petitioner’s system. The petitioner filed an application being M.A. No. 179 of 2015 requesting for a direction that the audit by BECIL may also address the apprehensions and suspicions of the petitioner. The request was allowed.

When the matter again came up before the Tribunal on 17 December 2015, Mr. Abhishek Malhotra, counsel for the petitioner submitted that the BECIL report does not throw any light on some of the directions given by the Tribunal. On 22 January 2016, the Tribunal passed the following order:

“Put up under the same head on 12.2.2016.

In the meanwhile, BECIL will take out the archival data of the respondent’s subscribers for the period April 2014 to June 2015 (just before the conduct of the

audit by BECIL). Mr.Pathak will also on the next date produce before us the figures which according to the respondent truly reflect its subscriber base for the aforesaid period.

It is stated by Mr.Pathak that a package ID for a particular area will not work for any other area. BECIL may examine and confirm this aspect also.

The BECIL has now submitted a supplementary report on 26 February 2016.

Heard the counsel for the parties at some length. From the BECIL report, we find that the archival data for the period April 2014 to June 2015 is not maintained properly by the respondent for both CAS as well as SMS. Only month end data is available from the CAS that too from December 2014 onwards. This month end CAS data is also not able to provide the true subscriber base of the respondent channels for Hyderabad region due to non-availability of unique package ID in Latens CAS for Hyderabad during the period. From the report it is also evident that the unique ID nomenclature used by the respondent for segregating subscribers of different regions is not a fool proof method and technically any STB activated for a particular region will also work in another region that belongs to the same network of the respondent.

Though the amount that is required to be paid by the respondent to the petitioner shall be determined at the time of hearing of the main petition, in view of the observations of the BECIL, as brought out above, and the

observations of the Tribunal in its order dated 26 May 2015 (as highlighted above), the SMS reports for the period cannot be relied upon and cannot form the basis for the invoices.

The M.A. is disposed of with these observations.



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(Aftab Alam)
Chairperson

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(Kuldip Singh)
Member

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(B.B. Srivastava)
Member