

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 31st August, 2017

Broadcasting Petition No.703 of 2016
(With M.A. No. 50 of 2017)

Hathway Cable & Datacom Ltd.

...Petitioner

Vs.

Odisha Television Ltd.

...Respondent

BEFORE:

HON'BLE MR. B.B. SRIVASTAVA, MEMBER
HON'BLE MR. A.K. BHARGAVA, MEMBER

For Petitioner

: Mr. J.K. Mehta, Advocate
Mr. Nasir Husain, Advocate

For Respondent

: Mr. Ramji Srinivasan, Sr. Advocate
Mr. Kaushik Mishra, Advocate
Mr. Vivek Paul Oriel, Advocate
Mr. tushar Bhardwaj, Advocate

ORDER

Miscellaneous Application No. 50 of 2017 in B.P. No. 703(C) of 2016 has been filed praying interalia as mentioned here under: -

- "(i) Pass ad-interim orders staying the effect and operation of the impugned notices dated 28.01.2017 & public notices dated issued by the Respondent.
- (ii) Direct the Respondent to come forward for negotiations to renew the Agreement on just, fair and nondiscriminatory terms as laid down in the Regulations.

- (iii) Direct the Respondent to share the agreements/arrangement which it is having with other MSOs including its sister concern Ortel Communications Ltd. in the areas of Orissa and west Bengal.”
- (iv) Direct the Respondent to reconcile the statement of account with the petitioner.

It is pertinent to bring on record the prayer of the petitioner in the main petition as well which is as here under: -

“Direct the Respondent to negotiate/execute/renew the Subscription Agreement with the Petitioner on just, equitable and non-discriminatory terms in accordance with the DAS Regulations.

Thus it is clear that the main prayer of the petitioner is in respect of direction to the respondent for negotiations to renew the subscription agreement on just and non-discriminatory terms as laid down in the regulations.

When the petition was filed both the parties were directed to file their respective replies as well as rejoinder. The Tribunal, vide order dated 03.03.2017 directed the respondent to not give effect to the disconnection notice. The impugned disconnection notices have been issued vide letter dated 28.01.2017 and through public notice as well. Hence, the petitioner has enjoyed the signals of the respondent under the protection of the orders of the Tribunal dated 03.03.2017 till date.

The petitioner, Hathway Cable & Datacom Ltd. is a public limited company and a cable television service provider duly registered as an MSO/cable operator. The respondent - Odisha Television Ltd. is a broadcaster and also engaged in the business of distribution of television channels with exclusive right to market and distribute the television channels as mentioned in para 4(B) of the main petition.

It is the case of the petitioner that it entered into an agreement with the respondent on 01.11.2013. The term of the agreement according to Clause 11(i) is three years from the date of signing of the agreement unless terminated earlier in accordance with the agreement. This agreement was in respect of DAS notified areas. The petitioner entered into another agreement dated 01.12.2014 for the supply of signals in analog mode. This agreement was valid for one year w.e.f. 01.12.2014 and was subsequently extended by another year vide addendum dated 01.12.2015 with a validity period from 01.12.2015 to 31.10.2016. Thus both the subscription agreements have completed their term by efflux of time – DAS agreement on 31.03.2016 and non DAS (analog) agreement on 31.10.2016. In view of this it is also clear that on the date of filing of the main petition i.e. on 21.11.2016 none of the agreements mentioned above were subsisting.

It is also the case of the petitioner that the respondent has been deliberately refusing to come to the negotiation table for finalization of the terms and conditions of renewal of agreement. It has also been alleged by the petitioner about existence of an entity "Ortel Communications Ltd.", an MSO; which is being favoured by the respondent.

The contention of the respondent, in its reply, is that the present petition is not maintainable in view of non-rejoinder of a party namely M/s. Primesoft Vanijya Pvt. Ltd. a distributor of the respondent company. The respondent in its reply has also alleged piracy by the petitioner in contravention of the agreement and has extracted the relevant portion from the petition itself as in para 7 of the reply.

The petitioner however, has denied all the averments of the respondent in its reply.

Heard learned counsel for both the parties at length.

Although learned counsel for the petitioner as well as respondent took us through various documents to establish their claims and rights. At the present juncture we are not persuaded to get into the details as various issues raised by them are contentious in nature and would require adjudication. In our view issues for consideration with a view to make ad-interim arrangement, are: -

- (a) The way forward for supply of signals by the respondent to the petitioner's network.
- (b) Reconciliation of Statement of Account for establishing claims of either party as on 02.03.2017.
- (c) The commercial/financial terms on the basis of which the petitioner is liable to pay for receipt of signals of the respondent's channels under protection of the orders of the Tribunal dated 03.03.2017.

It is worth mention at this stage that supply of signals for the further transmission in analog mode is completely prohibited and the whole country is under Digital Addressable System w.e.f. 01.04.2017. In view of this fact as well as after having considered the pleadings in the petition, reply and rejoinder as well as the submissions made by learned counsel of both the parties; we direct as an ad-interim measure as mentioned hereunder: -

- (i) Both the parties are directed to negotiate the commercial terms and conditions and sign the interconnect agreement in accordance with extant regulations. In the event of mutual negotiations remaining inconclusive, both parties shall sign interconnect agreement on RIO basis without prejudice to their rights and contentions. This whole process is to be completed within 30 days. It is made clear that payment of outstanding liability shall not be a precondition of signing of the interconnect agreement in either case.

(ii) As regards outstanding liability till the two agreements completed their term due to efflux of time as well as thereafter till 02.03.2017; and the liability of the petitioner in order dated 03.03.2017 till the date of signing of the fresh interconnect agreement, the matter be listed before the court of Registrar for completion of pleadings and filing of evidences on affidavit in order to make the matter ready for adjudication. In case any party wishes to lead evidences, an appropriate application to that effect shall be filed for consideration of the Tribunal. *The M.A. stands disposed off in above terms.*

Post the matter before the court of Registrar on *19th September 2017*

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(B.B. Srivastava)
Member

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(A.K. Bhargava)
Member

/NS/

