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

Dated 26th May 2017

Broadcasting Petition No.704 of 2016

Chouksey Entertainment Ltd.

...Petitioner

Vs.

ACN Digital Pvt. Ltd.

...Respondent

BEFORE:

HON'BLE MR. B.B. SRIVASTAVA, MEMBER

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

For Petitioner

: Mr. Diggaj Pathak, Advocate

For Respondent

: Mr. Vineet Bhagat, Advocate

ORDER

The petitioner is an MSO and is engaged in the business of providing cable TV in the city of Jabalpur, Madhya Pradesh. This petition has been filed under section 14 read with section 14A of the TRAI Act, 1997 read with regulation 3 & 5(3) of the Telecommunication (Broadcasting and Cable services) interconnection (digital addressable cable television systems) regulation, 2012, seeking the following relief;

"pass an order declaring the agreement dated 20-2-2016 as well as the Shareholders Agreement, Business Transfer Agreement and Share Pledge Agreement to be legal, null and void"

Petitioner has also prayed for the following interim relief;

“(a) pass an order directing the respondent to immediately unblock the SMS ID’s of the petitioner’s network in the city of Jabalpur and not block the same in future till the time the CAS and SMS server is handed over back to the petitioner;

(b) direct the respondent to transfer/handover the CAS and SMS server of the petitioner to it immediately”

It is the contention of the petitioner that after the discussion between the two parties, they have entered into an agreement dated 20.2.2016 to form a joint venture company under the name “ACN-CEL Private Limited” to operate cable TV, Internet / Broadband and Value Added Services (VAS) with joint shareholding between the petitioner and the respondent. It was also agreed that CAS and SMS server of the petitioner would be physically transferred to the respondent’s premises. Further, on 8th April 2016/12th April 2016, both parties entered into a Shareholder’s Agreement, Business Transfer Agreement and Share Pledge Agreement, and agreed that business can be conducted jointly in the name of another company called “ACN Digital Broadband Cable TV Network Limited”. The petitioner contends that from May 2016 onwards he has been having various types of operational difficulty with the respondent and in November 2016, his access to the SMS was blocked. Thereafter, he has approached the Tribunal, seeking reliefs as mentioned above.

For now, we wish to deal with only the interim reliefs sought by the petitioner.

Mr. Vineet Bhagat, Learned Counsel for the respondent raised the preliminary objection that the present petition is not maintainable as the Tribunal does not have any jurisdiction to adjudicate upon the disputes arising between the parties who are shareholders in the same entity. Mr. Diggaj Pathak, Learned Counsel for the petitioner disputes this stating that the petitioner is an MSO holding a license to operate in his area and having valid agreements with its LCOs. He further points out that the agreement between them itself says that both parties are service providers.

Both sides have alleged various violations of the agreement(s) by the other side, all of which we need not go through at this stage. It is only relevant to note here that the petitioner has transferred the CAS and SMS to the respondent for a consideration, in April 2016. Since then, signals are being transmitted from Respondent's head-end in Delhi to the petitioner's equipment in Jabalpur and from there to its LCOs and subscribers. This is a business and operational arrangement worked out through various agreements. Needless to say that any such arrangement should be in compliance with the various regulations. In this regard, the immediate issue of concern is safeguarding the interest of the subscribers and accordingly, the Tribunal in its order dated 7-12-2016 observed that *"Although the issue of maintainability of the petition is an important one in the interest of subscribers, it seems essential to know that:*

- 1. Whether blocking of CAS and SMS as submitted by Mr. Pathak today on the basis of certain documents in his rejoinder, is affecting the subscribers adversely by way of going without signals; and*
- 2. What is the mechanism whereby the subscribers' grievances are redressed in the eventuality of their going without signals?*

The respondent is directed to file an affidavit clarification on the above two issues within two days from today. It is also directed that in the event of any subscriber going without signals on account of blocking of CAS and SMS, the respondent will take immediate steps to rectify the complaint and ensure that the signals are provided. The respondent will also clarify in the affidavit whether it is complying with provisions regarding maintenance of SMS & CAS as stipulated in the regulations.” Subsequently, Mr. Vineet Bhagat informed the tribunal that the SMS ID was unblocked and it was confirmed by the counsel for the petitioner Mr Diggaj Pathak as well.

Be that as it may, we hold that since the signals are being re-transmitted through the equipment of the petitioner at Jabalpur and he has presence on the ground through various agreements, it is essential for him to have access to the SMS appropriately, so as to discharge the functions related to subscriber management as prescribed in the regulation. We accordingly, allow the interim prayer of the petitioner and direct the respondent to unblock the SMS ID of the petitioner's network in the city of Jabalpur till further orders.

Petitioner has also made interim prayer for return of the CAS and SMS on the ground of non-fulfillment of agreement(s). We note that the CAS and SMS were transferred by the petitioner to the respondent of its own will and for a consideration under some agreement. Subsequently, both sides have alleged violation of the agreement(s) by the other party. Any direct or indirect

disputes arising out of such agreement(s) thus need to be adjudicated. We therefore see no reason to make any interim order in this regard.

Put up the matter on 21-11 for further directions.

(B.B. Srivastava)
Member

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(A.K. Bhargava)
Member