

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 13TH March 2018

Broadcasting Petition No. 466 of 2013

(M.A.No.259 of 2015)

Home Cable Network (P) Ltd.

... Petitioner

Vs.

Media Pro Enterprise India Pvt. Ltd. & ors.

... Respondents

BEFORE:

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON

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

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

For Petitioner

: None

For Respondent No.3 – Star

: Mr.Rajshekhar Rao, Advocate
Mr.Saurabh Srivastava, Advocate
Ms. Shilpa Gupta, Advocate
Mr.Ranjeet Singh Sidhu, Advocate
Mr. Vaarish Sawlani, Advocate
Ms. Kritika, Advocate

ORDER

A K BHARGAVA - Petition No. 466 of 2013 was filed on 19/12/2013 with the following prayers



- (a) Set aside and quash the impugned public notice dated 9.12.2013 issued by the respondent purportedly under clause 6.1 of DAS Regulations 2012
- (b) Set aside and quash the impugned public notice dated 12.12.2013 issued by the respondent purportedly in Business Standard Daily newspaper.
- (c) Restrain the respondent from in any manner disconnecting or disrupting the supply of signals of its TV channels to the petitioner.
- (d) Direct the respondent to enter into an interconnect agreement with the petitioner for providing cable TV services in the DAS notified area occurring against phase – I, phase – II, phase – III and phase IV on such terms and rates as determined by this Hon'ble Tribunal keeping in mind the rates provided by the respondent to its other allied MSO or on such terms and conditions as may be found reasonable and nondiscriminatory basis by this Hon'ble Tribunal.

This Tribunal vide order dated 20/12/2013 directed the respondent not to give effect to the disconnection notice provided the petitioner files an undertaking that he will confine his operation strictly within the DAS notified areas of NCT of Delhi as defined in the notification of the Ministry of information and broadcasting dated 11/11/2011 and shall do the transmission or retransmission in digital encrypted mode. The petitioner filed the undertaking and continued to enjoy the signals from the respondent. Subsequently, the respondent filed an MA No. 52 of 2015 under section 20 of the TRAI Act stating that the petitioner by its own willful conduct breached the undertaking in respect of this Tribunal's order dated 20/12/2013. The Tribunal ordered an audit by BECIL. Pursuant to this, the Tribunal passed an order on 01/05/2015 recalling its order dated 20-12-2013 and gave

liberty to the respondent to disconnect the signals in accordance with law, besides imposing a penalty on the petitioner under section 20 Of TRAI Act for violating the undertaking given before the Tribunal. Thereafter, the respondent disconnected the signals of the petitioner's network on 04/05/2015.

Subsequently, the respondent has filed a restitution application (MA No. 259 of 2015) on 24-08-2015 seeking the following relief

- (a) Direct the petitioner to pay Rs. 2,69,61,182 (as detailed in paragraph 8) to the respondent no. 2.*
- (b) Direct the petitioner to pay interest on the amount payable @ 24% p.a.*
- (c) Direct the Ministry of Broadcasting (MIB) to cancel the license of the petitioner to redistribute TV channels of the respondent – applicant.*
- (d) Direct TRAI to take appropriate action against the petitioner.*

On 8-04-2016, the restitution proceedings were allowed to proceed *ex-parte*.

The restraint orders were issued on 20-12-2013 and the disconnection was effected on 4-05-2015. During this period, signals were supplied by the respondent but the petitioner has not made any payments. Petitioner cannot take advantage of court's order to enrich himself and the respondent is entitled to suitable restitution for this period. Accordingly, we now examine the claim that the respondent² (R2) has submitted for this period, which is as under

8. *"It is submitted that the Respondent No.1 is entitled for restitution since the Petitioner has taken undue advantage of and benefitted from the order of this Hon'ble Tribunal and continued in indulging unauthorised distribution (piracy) of Respondent No.2's TV channels. By such unauthorised distribution the Petitioner has been commercially benefitted by collecting subscription fees from the subscriber/viewers. It is submitted that from the date of the order dated 20th December, 2013 till the disconnection of signals i.e. 4th May, 2015 the Respondent No.1 and Respondent No.2 were supplying signals of their TV channels. Therefore the Respondent No.2 is entitled to the following compensation/damages:*

- a. *Rs. 36,37,411/- for the period 01.04.2014 to 09.11.2014 for the General Entertainment Channels of the Respondents based on the SMS reports given by the Petitioner.*
- b. *Rs. 31,98,634/- on the basis of Rs. 40/- CPS and adjusting the amounts mentioned in 8(a) above (40/- CPS is a rate which this Hon'ble Tribunal allowed for the period covering the expiry of an old agreement and till the signing of a new agreement between the Respondent No.2 and a MSO) from 1st April 2014 to 4th May 2015 for the General Entertainment and Sports Channels in the DAS notified area of National Capital Territory of Delhi. It is submitted that the Petitioner is entitled to Rs.40/- CPS, which include GECs and Sports Channels since there is a finding in the BECIL Report that the Petitioner was indulging in unauthorised distribution of Sports Channels in the DAS notified area of National Capital Territory of Delhi. Thus, Sports Channels of the Respondent would have been available to all subscribers of the Petitioner and the Petitioner is liable to pay for all the subscribers connected to its network. Since, the Petitioner was indulging in unauthorised distribution of Applicant's channels therefore, the exact number of subscribers is not known. Therefore, the amount has been calculated on the basis of the subscriber reports supplied and are subject to change on the basis of findings of audit as and when conducted.*

- c. *Rs. 1,25,137/- to the Applicant (for SSIPL) for the period till 21.02.2014 (i.e. the date of disconnection of Sports channels).*
- d. *Rs. 2,00,00,000/- (Rupees Two Crores) for unauthorizedly distributing (i) Respondent No.2's GECs beyond the DAS notified area of National Capital Territory of Delhi and (ii) Respondent No.2's Sports Channels within and beyond the DAS notified area of National Capital Territory of Delhi.*
- e. *Interest at the rate of 24% per annum."*

From the examination of above claims, it is seen that they pertain to R2's General Entertainment Channels (GEC) as well as Sports Channels. We further notice that the petitioner had an interconnection agreement with the respondent1 (R1) Media Pro which expired on 31-10-2013. This agreement included only the General Entertainment Channels of R2. Subsequently, Media Pro stopped distributing signals and Star India started distributing its own channels with effect from 1-04-2014. Star India was impleaded as respondent no. 2 vide order dated 4-08-2014. It is clear that when restraint order for disconnection was passed by this Tribunal on 20-12-2013, Media Pro was supplying the signals which included only GEC. Thus, in this restitution application we shall consider the claims of R2 pertaining only to General Entertainment Channels of R2. We do not comment on the claims of R2 pertaining to supply of its Sports Channels to the petitioner during this period and R2 has liberty to seek appropriate relief in respect of sports

channel outside this petition in accordance with law.

We further note that as per the last agreement between MediaPro and the petitioner, CPS rate was Rs 40 plus service tax/VAT/Entertainment tax. Star India had a 53% share in Media Pro and same proportionate rates were generally given to Star India post 1-04-2014. Accordingly, we are inclined to consider a CPS of Rs. 20.16 only. Subscriber reports were submitted till Feb 2015 by the petitioner and the respondent has further furnished them for the calculation purpose. For the period March 2015 to May 2015, a subscriber number of 11625 as derived by BECIL in its report (clause (v) at page 11 of the report) is taken. Based on these figures, we work out an amount of Rs. 35,86,134 as under;

| S. No. | Time Period | Revised Subscriber No. | CPS Rate | Amount |
|--------|-----------------------|------------------------|----------|-----------|
| | | A | (B) | (A) x (B) |
| 1 | 01.04.2014-30.04.2014 | 12,966 | 20.16 | 2,93,703 |
| 2 | 01.05.2014-31.05.2014 | 13,933 | 20.16 | 3,15,607 |
| 3 | 01.06.2014-30.06.2014 | 13,572 | 20.16 | 3,07,430 |
| 4 | 01.07.2014-31.07.2014 | 13,207 | 20.16 | 2,99,162 |

| | | | | |
|--------------|---------------------------|--------|-------|-----------|
| 5 | 01.08.2014- 31.08.2014 | 12,520 | 20.16 | 2,83,600 |
| 6 | 01.09.2014- 30.09.2014 | 12,734 | 20.16 | 2,88,448 |
| 7 | 01.10.2014- 31.10.2014 | 12,835 | 20.16 | 2,90,736 |
| 8 | 01.11.2014- 09.11.2014 | 12,417 | 20.16 | 84,380 |
| 9 | 10.11.2014- 30.11.2014 | 12,417 | 20.16 | 1,99,761 |
| 10 | 01.12.2014- 31.12.2014 | 10,911 | 20.16 | 2,50,761 |
| 11 | 01.01.2015- 31.01.2015 | 9,176 | 20.16 | 2,10,887 |
| 12 | 01.02.2015- 28.02.2015 | 8,766 | 20.16 | 2,01,464 |
| 13 | 01.03.2015- 31.03.2015 | 11,625 | 20.16 | 2,67,170 |
| 14 | 01.04.2015- 30.04.2015 | 11,625 | 20.16 | 2,67,170 |
| 15 | 01.05.2015- 03.05.2015 | 11,625 | 20.16 | 25,855 |
| TOTAL | | | | 35,86,134 |
| | | | | |

Since the above calculations are based on reasonable CPS rate as per last MoU and reasonable subscriber numbers as explained above, we consider the amount of Rs 35,86,134 as reasonable restitution amount for the period under consideration for the DAS notified area of NCT of Delhi.

This leaves the question of piracy of General entertainment Channels beyond DAS notified area of NCT Delhi. Penal action on account of violation of Tribunal's orders has already been taken and we confine ourselves to the issue of restitution on this account. Respondent has claimed an amount of Rs. 200,00,000 towards piracy of Sports Channels within and outside NCT Delhi and piracy of GEC outside Delhi. We find this claim as arbitrary since it is not supported by any reasoning, facts or calculations. To be fair, learned counsel for the respondent also did not persist with this figure. We do recognize that estimation in case of piracy is difficult. For this purpose, we need subscriber numbers to whom the petitioner would have unauthorizedly supplied the signals. This is hard to come by and no basis or figures have been provided either by the petitioner or by BECIL to enable anyone to even make an intelligent guess. We therefore do not comment on the restitution amount on account of alleged piracy and give liberty to the petitioner to seek appropriate relief on this account in accordance with law.

Accordingly, we direct petitioner to pay respondent no. 2 an amount of Rs. 35,86,134 (thirty five lakhs eighty six thousand one hundred and thirty four). Respondent has also claimed an interest @ 24% per annum. The petitioner has not paid any amount at all during the period under consideration while enjoying the signals and has also indulged in piracy. Considering these circumstances, in our

view. It would be reasonable and in the interest of justice to allow the claim of interest @ 12% per annum on the sum allowed till the date of realization.

BP 466 of 2013 along with all MAs is disposed of in above terms.

...
(S.K. Singh, J)
Chairperson

...
(B.B. Srivastava)
Member

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(A.K. Bhargava)
Member