

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

DATED 18TH DECEMBER, 2008

Petition No.17(C) of 2008

Venkata Sai Media Pvt. Ltd.

Having its registered office at
B-2-502/1/A/B, Top Floor, Sowbhagya Abode,
Road No. 7, Banjara Hills,
Hyderabad-500034

Site Office at
D.No. 1-118-23, Plot No. 177,
Sector-12, MVP Colony,
Visakhapatnam

...Petitioner

Versus

Channel Plus-AP

(A Unit of Kal Comm Pvt Ltd)
Door No. 367 & 369, Anna Salai,
Teynampet, Chennai-600 018

...Respondent

BEFORE:

**HON'BLE DR. J.S. SARMA, MEMBER
HON'BLE MR. G.D. GAIHA, MEMBER**

For Petitioner : Mr. Maninder Singh,
Mr. Navin Chawla,
Mr. Sharath Sampath, Advocates

For Respondent : Mr. Vivek Sibal,
Mrs. N.K. Sibal,
Ms. Shruti Ranjan,
Ms. Shubha Chauhan,
Mr. Tulsi Raj, Advocates

ORDER

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This is a petition filed by M./s Venkata Sai Media Pvt. Ltd. With a prayer to direct the Respondent – Channel Plus – AP to supply signals of its TV channels to the Petitioner directly through independent decoder boxes and Sim Cards. Although this Tribunal had given time to the parties to settle the matter through mutual discussions, the same could not be achieved. The arguments of both the parties were heard.

2. The Petitioner's case is that it is a multi system operator (MSO), operating in the city of Visakhapatnam, Andhra Pradesh, and its surrounding areas and desirous of retransmitting the signals of the Respondent. On 19.11.2007, Respondent has requested for decoders and also sent demand drafts towards the charges. The Respondent is said to have returned the demand drafts stating that their local distributor would get in touch with the Petitioner but had not disclosed the name of the distributor. On 15.12.2007, the Petitioner is said to have contacted the Respondent requesting for the details of the local distributor and to have further reminded the Respondent on 11.1.2008. According to the Petitioner, there was no response from the Respondent. The case of the Petitioner is that clause 3.5 of the Telecommunications (Broadcasting and Cable Services) Interconnection Regulations 2004 (13 of 2004) dated 10.12.2005 as amended by the Third Amendment (10 of 2006) dated 4.9.2006 provides for a time limit of 60 days within which any broadcaster should either provide the signals on mutually agreed terms to the distributor of TV channels who is seeking the signals or specify the terms and conditions on which they are willing to provide signals. This time limit includes the time taken by the broadcaster to refer to distributor of TV channels, who has made a request for signals, to its agent or intermediary. The Respondent having failed to do so is guilty of violation of the interconnect regulations.

3. The case of the Respondent is that the Petitioner is not an MSO, and that the list of Cable operators submitted by it is incorrect. The Managing Director of the Petitioner firm and the Authorised Signatory to the present petition were Managing Director / Director in three firms which together owed to the Respondent a sum of Rs. 107 lakh. With a view to avoiding the payment of these dues, these two persons floated the Petitioner firm, which is seeking signals. The Respondent's case is that proviso to clause 3.2 of the Telecommunications (Broadcasting and Cable Services) Interconnection Regulations 2004 (13 of 2004) clearly states that the provisions (of providing signals on non-discriminatory terms to all distributors of TV channels) will not apply in case the seeker of signals has defaulted in payment and that this is a case which falls within the orbit of this proviso. The Respondent's case is also that the Petitioner has misrepresented facts and that the cable operators shown to be affiliated to them are actually affiliated to another entity. It is also stated that the cable operators themselves are defaulters to their respective MSOs and that they are currently paying their current dues and also part of the arrears. It is also alleged that the verification of the list of cable operators provided by the Petitioner shows a large number of the said cable operators to be defaulters of an existing MSO and that some more time is required for further verification of the full details of the defaulters. The Respondent also questions the

agreement signed between Digital Outsourcing Private Limited (DOPL) and the Petitioner and also states that DOPL not being registered as a cable operator, is not entitled to have cable operators. The Respondent's contention is that for these reasons, the Petitioner is not entitled to any relief from the Tribunal in respect of its petition.

4. The following issues arise for consideration :

A. Whether the Petitioner is an MSO and does it have Cable operators affiliated to it?

B. Whether the Cable operators are defaulters? And if so, does this affect the validity of the Petitioner's claim to receive signals from the Respondent?

C. Whether the receipt of dual feed by the cable operators affects the Petitioner's claim?

D. Whether the Managing Director of the Petitioner firm as well as the authorised signatory to the petition are defaulters to the Respondent? And whether the Petitioner is covered by the proviso to clause 3.2 of the Interconnect Regulations?

E. Whether the Petitioner has fabricated documents?

5. The first contention of the Respondent is that the Petitioner is not an MSO. As per the Cable TV Networks Rules, 1994, the term "*multi system operator (MSO)*" means a cable operator who receives a programming service from a broadcaster and/or his authorised agencies and re-transmits the same or transmits his own programming service for simultaneous reception either by multiple subscribers directly or through one or more the local cable operators (LCOs), and includes his authorised distribution agencies by whatever name called". The Telecommunications (Broadcasting and Cable Services) Interconnection Regulations 2004 (13 of 2004)(The Regulation) dated 10.12.2004 defines the term "multisystem operator" as meaning "*any person who receives a broadcasting service from a broadcaster and/or their authorised agencies and re-transmits the same*

to consumers and/or re-transmits the same to one or more cable operators and includes his/her authorised distribution agencies”. From both the definitions, it can be seen that retransmission directly to consumers is an admissible activity for an MSO. The Tribunal has held this view in its Judgment dated 21.10.2008 in Petition No. 141(C) of 2008. In this case, it is not the contention of the Petitioner that it has a right to receive the signals even though it is re-transmitting the signals only to the subscribers directly. On the other hand, its contention is that it has a list of cable operators.

6. The next contention of the Respondent is that the list of cable operators submitted by the Petitioner is doubtful. According to the Respondent, all the cable operators claimed to be affiliated to the Petitioner are already affiliated to other MSOs and are currently receiving feed from them. All these cable operators are said to be defaulters of existing MSOs, who in turn are defaulters to the Respondent, a fact which is confirmed by the existing MSOs. The Respondent states that these defaulting cable operators are currently paying their current dues as well as part of the arrears; as such, their continued affiliation to these MSOs is necessary to enable the Respondent to recover the dues through the MSOs. Various cable operators, whose affiliation has been claimed by the Petitioner, have already given affidavits stating that they would not like to migrate from the present MSOs, an indication, according to the Respondent, that the list submitted by the Petitioner is incorrect. The Petitioner contests this point of view and states that the disputes, if any, regarding dues from the cable operators to the MSOs are matters between them and do not involve either the Petitioner or the Respondent, and as such cannot influence the Respondent's decision regarding its request for decoders. It is further contended that the very allegation of the cable operators owing dues to their MSOs appears to be fabricated since none of the MSOs have filed any recovery petition before this Tribunal. It is unrealistic that the cable operators continue to receive the signals and no action has been taken against them from the MSOs either by way of disconnection or notice for disconnection. Besides, the counsel for Petitioner states that the amount of purported dues is disproportionately high when compared with the alleged subscriber base. In certain cases, the dues have also multiplied in a disproportionate fashion raising suspicion about the dues themselves.

7. The central issue for decision in this case is whether the Petitioner has cable operators and if so whether their affiliation is such that the Respondent can rightfully deny its signals to the Petitioner. We do not wish to go into the question whether the amount of dues shown against the cable operators is correct or not. We find substance in the argument of the counsel for Petitioner that since the cable operators continue to receive

signals and also since no case for recovery is filed against any of them, the Respondent cannot now claim that the presence of these cable operators with the Petitioner is such that it can be ground enough for the Respondent to deny signals to the Petitioner. The Respondent has not been able to conclusively prove that the cable operators, whose list is supplied by the Petitioner, are not affiliated to the Petitioner. It is only their number which is repeatedly questioned and whether they are themselves not in default. Even if they are defaulters to other MSOs, it is for the other MSOs and not for the Respondent to call in question their affiliation to the Petitioner. That being the case, irrespective of the number of cable operators, the Petitioner has LCOs affiliated to it. We also hold that action to recover dues if any from the cable operators should be by way of a separate action by the concerned party and that this cannot be a ground for the Respondent to deny signals to the Petitioner.

8. As regards the question of the cable operators receiving signals from other MSOs, it is always possible for a cable operator to receive feed from two MSOs. The counsel for Respondent argues that in case of dual feed, the Local Cable Operator (LCO) would receive signals from various MSOs in its control room and thereafter retransmit the signals of one of the MSOs to its subscribers. The revenue generated in this process is either given to one of MSOs or is divided among the MSOs. The contention of the Respondent is that if another MSO goes into such an area, it would be difficult to recover the arrears from the cable operators. Admittedly therefore, the practice of taking dual feed exists, which is what is contended by the counsel for Petitioner. The concern of the Respondent appears to be not from a technical or legal point of view but more from its own convenience point of view, viz, that of recovering arrears from the cable operators. Once it is admitted that the practice of taking dual feed exists and that it is permissible as per law, this cannot be a ground for refusal of signals to the Petitioner.

9. The main contention of the Respondent appears to be about the genuineness of the Petitioner firm. The allegation is that the Petitioner is, in fact, nothing but the earlier companies in a new *avatar*. The allegation is that the Managing director of the Petitioner firm – Mr. Rajasekhar and the authorised signatory to present petition, Mr. Srinivasa Rao are defaulters to the Respondent to the tune of Rs. 107 lakh. It has been alleged that Mr. Rajasekhar who is the Managing Director of the Petitioner firm is also the Managing Director of M/s Sai Darshan Media Pvt Ltd. (Cable Vision), an MSO operating in Visakhapatnam, which owes to the Respondent a sum of over Rs. 11 lakh. He is also stated to be the Director of another MSO in Visakhapatnam by name M/s

Venkataramana Media Pvt Ltd, which owes to the Respondent a sum of over Rs. 32 lakh. It is also alleged that the authorised signatory to the present petition, Mr. P. Srinivasa Rao, was Director of M/s A.M. Entertainment Network Pvt Ltd, an MSO in Visakhapatnam which owes to the Respondent a sum of Rs. 64 lakh. Thus, in all, the three firms are alleged to owe to the Respondent a sum of Rs. 107 lakh. The Respondent alleges that it is to circumvent this situation, that the Petitioner firm has been floated by the very same persons, and that the Respondent cannot be expected to supply signals to such defaulters. The Respondent's claim is that as per the proviso to clause 3.2 of the Interconnect Regulations, 2004, they are not under obligation to supply signals to the Petitioner firm.

10. The counsel for Petitioner strongly contests this allegation. He states that though Mr. Rajasekhar is the Managing Director of M/s Sai Darshan Media Pvt Ltd (Cablevision), he does not have a shareholding in the company. He points out that the invoices were always raised by the Respondent in the name of Mr. Veeraraghavulu and not in the name of Mr. Rajasekhar. The very fact that the concerned papers were handed over to the Respondent by Mr. Veeraraghavulu shows that Mr. Rajasekhar has nothing to do with the company. Similarly, Mr. Rajasekhar is also only nominally a Director in M/s Venkataramana Media Pvt Ltd where he has only 100 shares out of a total of 80,000 shares of the said company. The Respondent has been raising the invoice in the name of Mr. Satish Kumar and not in the name of Mr. Rajasekhar. Even in this case, M/s Venkataramana Media Pvt Ltd have given the necessary papers to the Respondent. Similarly, the Counsel for Petitioner argues that in the case of Mr. Srinivasa Rao too, he is only nominally the Director of M/s A.M. Entertainment Network Pvt Ltd without any shareholding in the company. The Respondent always raised the invoice in the name of Mr. N. Subramaniam. The argument of the Counsel for Petitioner is that if truly these MSOs were in default to the Respondent, nothing prevented the Respondent from taking legal action against these firms or individuals as per law. The arrears imputed to A.M. Entertainment Network Pvt Ltd would amount to more than 20 months' subscription fee, but strangely the Respondent had not taken any action against this particular firm. The contention of the Petitioner is that having failed to supply signals, the Respondent is now raising this false contention. The Counsel for Petitioner also pointed out to the minutes of the meeting held on 26.2.2007 wherein it was decided to nominate Mr. P. Srinivasa Rao to settle the question of arrears of Rs.21654596/- owed by all MSOs in Visakhapatnam to the Respondent; and on completion of the settlement, M/s Sreedevi Master Media System Pvt Ltd would pay their share of old due amounts. The Counsel for Petitioner also referred to the minutes of another meeting held on 30.4.2008 where a request was made to Mr.

Srinivasa Rao to mediate with the existing MSOs and work out a solution for settlement of dues payable to channel plus. The contention of the Petitioner is that the very fact that Mr. Srinivasa Rao has been requested to mediate in a matter relating to dues by the MSOs of Visakhapatnam to the Respondent is a clear indication that he himself was not a defaulter. If he were a defaulter, the question of his mediating would not have arisen. The Counsel for Respondent argues that these two persons were in charge of the earlier companies namely M/s Sai Darshan Media Pvt Ltd (Cablevision), M/s Venkataramana Media Pvt Ltd and M/s A.M. Entertainment Network Pvt Ltd and that the corporate veil of the Petitioner firm should be lifted so as to expose these two gentlemen. The Counsel for Petitioner on the other hand strongly contests this contention and states that as explained above, the Petitioner firm cannot be held responsible for actions of other MSOs. He contends that while the Respondent has a right to recover the dues, if any, from other MSOs, this cannot be a ground to deny signals to the Petitioner.

11. We have carefully examined the entire matter. We find from the invoices provided by the Respondent themselves that the invoices in respect of M/s Sai Darshan Media Pvt Ltd (Cablevision) were in the name of Mr. Veeraraghavulu; those in respect of M/s A.M. Entertainment Network Pvt Ltd in the name of Mr. N. Subramanian and those in respect of M/s Sai Venkataramana Media Network in the name of Mr. Satish Kumar. Nowhere do the names of either Mr. Rajasekhar or Mr. P. Srinivasa Rao figure in the invoices. The Respondent also has not furnished any documentary evidence to indicate that earlier dues were being sought to be recovered from either of these firms. It is also not denied by the Respondent that Mr. Srinivasa Rao was requested to mediate between various MSOs of Visakhapatnam to clear their dues to M/s Channel Plus. Lastly, it is also not denied that the letter dated 22.11.2007 enclosing certain demand drafts was written to the Respondent by M/s Srinivasa Rao and that vide letter dated 3.12.2007, the Respondent had indicated to the Petitioner that their request for decoders has been forwarded to the local distributor who would get in touch with them after due verification. This shows that they had no problem in dealing with Mr. Srinivasa Rao and the Petitioner firm. Respondents have also not shown any correspondence, till the filing of this petition, to indicate that they had informed the Petitioner firm of their inability to respond to the request on the ground that the authorised signatory or Mr. Rajasekhar were defaulters by virtue of their association with the previous firms. In the light of this, we do not find any evidence to link either Mr. Rajasekhar or Mr. Srinivasa Rao with dues, if any, owed by certain firms to the Respondent. This is further reinforced by the lack of evidence produced by the Respondent to indicate the steps, if any, taken by them to recover their dues either from the said firms or from the two

gentlemen. We therefore hold that the Respondent is not right in refusing the supply of signals to the Petitioner firm on the ground that the Petitioner firm is a defaulter. The benefit of proviso to Clause 3.2 of the Interconnect Regulations cited by the Respondent is not available to the Respondent.

12. The Counsel for Respondent argued that as per Clause 9.2 of the Telecommunication (Broadcasting and Cable Services) Interconnection (Third Amendment) Regulations, 2006 (10 of 2006), it is mandatory on the part of the Petitioner to provide to the Respondent a list of cable operators who would be getting signals from its networks along with its subscriber base. It is the case of the Respondent that it has not received any Annexure along with the request letter dated 19.11.2007 and that the Petitioner had thus not followed the provisions of the Interconnection Regulations and is therefore not entitled to any relief. The Counsel for Petitioner submits that this is not part of the pleadings made by the Respondent. At the same time, the Counsel for Petitioner offered that the Petitioner will deposit three months' subscription fee as security subject to verification of its subscriber base by joint survey and further subject to final directions by this Tribunal.

13. Clause 9.2 of the Telecommunication (Broadcasting and Cable Services) Interconnection (Third Amendment) Regulations, 2006 (10 of 2006) reads as follows :

“In non-addressable systems, while executing an interconnection agreement for the first time between a multisystem operator and broadcaster, the multisystem operator shall furnish a list of the cable operators who will be getting signals from its network along with its subscriber base. The parties to the agreement shall take into account the subscriber base of cable operators connected to the multisystem operators while negotiating the subscriber base of the multisystem operator. For the consumers proposed to be directly served by the multisystem operator, the procedure laid down in sub-clause 9.1 of this regulation shall be followed.”

14. It is clear from a reading of Clause 9.2 extracted above, that the list so furnished shall be taken into account for negotiating the subscriber base. From the record, we find that vide letter dated 19.11.2007, the Petitioner had indicated that they were enclosing the certificates of registration, list of operators and the list of primary points (direct subscribers). In their reply dated 3.12.2007, to the letter of 22.11.2007 from the Petitioner, the Respondent states that “the local distributor will get in touch with you after due verification”. This surely means that there were some details which were capable of verification. In their reply, filed on 4.4.2008, the Respondent had denied the averments made by the Petitioner in the petition, which states that the list of cable operators affiliated to the Petitioner and their respective area of operation was enclosed. In their

Reply affidavit filed before us, the Respondent only states that the list is not reliable and credible and that the Petitioner during the last two months has given contradicting list of cable operators to the distributor which does not tally with the list given in the petition. This indicates that some list was available with the Respondent with which it has some disagreement. Besides, in its reply, the Respondent firm was focusing more on the contradictions in the number of cable operators given in the lists, which they had scrutinised and their averment that most if not all the cable operators are already affiliated to other MSOs. The contention that the Petitioner's request could not be acceded to on account of lack of list of cable operators and their subscription base was not made in the original pleadings. Nor is it supported by evidence. If there was no list, how could the list be verified? In the light of this, we reject this contention of the Respondent.

15. During the course of arguments, the Counsel for Respondent stated that the Petitioner was continuously improving its case by bringing in the case of Digital Outsourcing Pvt Ltd (DOPL) with whom they have claimed a business tie-up and that the list of cable operators submitted by them are link operators related to DOPL and not to the Petitioner. They have also stated that the distributor of the Respondent had vide letters dated 15.2.2008 and 27.2.2008 requested the Petitioner to provide the MOU entered between the Petitioner and DOPL. The Counsel for Respondent stated that DOPL is not a registered cable operator in that area but in the MOU furnished by the Petitioner, DOPL is stated to be engaged in the business of providing cable TV services. The Respondent had also stated that DOPL as an entity has no valid agreements with any cable operator nor does it have a head end / control room in the area of Greater Visakhapatnam. The Counsel for Respondent also referred to Clause 2.1.1. of the MOU between the Petitioner and DOPL and contends that this MOU does not relate to sharing of any cable operators nor does it give an indication to support the petitioner's contention that they have cable operators affiliated to them.

16. The preamble to the memorandum of understanding dated 1.8.2007 between DOPL and the Petitioner, given by the Petitioner along with its Rejoinder affidavit states that "DOPL is engaged in the business of providing cable TV services and owns and maintains an analogue and digital heading, optical fibre cable networks and other related assets required and used for distribution of video and audio signals for providing cable TV services in Visakhapatnam. VSMPL is engaged in content aggregation, maintaining analogue and digital headends and operator relations in Visakhapatnam which is an essential element for cable TV business.

The parties in order to synergise the areas of their respective strengths have mutually agreed to come together and to offer and provide their assets and services on such terms and conditions as more specifically mentioned in this MOU". Clause 2.1.1. of the MOU reads as follows : "subject to the terms and conditions contained herein, DOPL will offer VSMPL the use of its assets consisting of an analogue and digital head end, subscriber management services, set top boxes and other related assets required for carrying out cable TV services in Visakhapatnam and any other city in the State of Andhra Pradesh as may be mutually agreed between DOPL and VSMPL". The obligation of VSMPL given in clause 2.2.1 reads as follows : "subject to the terms and conditions contained herein, VSMPL will be responsible for contracting all content is necessary for running analogue and digital cable TV services inside about in any other city in the State of Andhra Pradesh as may be mutually agreed between DOPL and VSMPL". From a reading of both these clauses, there does not appear to be any mention in the MOU about sharing of cable operators. In the Rejoinder, the Petitioner had stated that they have a running relationship with DOPL and as per the MOU, it is the Petitioner who is to act as an MSO. He goes on to state that the cable operators have an agreement with DOPL and not in the name of the Petitioner but that this fact is irrelevant as, for all purposes, it is the Petitioner who acts as the MSO. As we have already held above, the presence/affiliation of cable operators is not essential to be an MSO. Besides, in this case, the Petitioner has cable operators affiliated to it. The agreement between DOPL and the Petitioner also clearly indicates that the former has the necessary infrastructure to receive and retransmit the signals which are offered to VSMPL. As such, we do not hold that this is a case where the Petitioner is improving its case. It is only an additional factor that he is bringing to light to prove its case that it is and is capable of transmitting as an MSO.

17. The other ground taken by the Respondent is that the Petitioner had actually fabricated documents. To support this argument, the Counsel for Respondent points to the letter dated 14.2.2008 which is stated to be an afterthought on the part of the Petitioner after filing the petition. The Counsel for Respondent also cited the letter dated 17.9.2008 from M/s Digital Outsourcing Pvt Ltd pointing out that the letter could not have been issued in September, 2008. He has also invited our attention to the noting at the bottom of the letter which states that this letter was received on 27.2.2008. The contention of the Counsel for Respondent is that this letter as well as a letter dated 14.2.2008 are fabricated documents. We do not see much merit in this argument of the Respondent. As regards the letter dated 17.9.2008, this was filed by the Respondent along with the Rejoinder in April, 2008. So, obviously, this was a typing mistake wherein the year 2008 was typed for 2007, which is a possibility. As regards the noting at the bottom, it is not clear as to who has received it. It is too bland a noting

to attach any importance. It is also quite possible that since the letter was sent along with the letter dated 14.2.2008, it was shown as having been received on 27.2.2008. The Respondent has also not supported its case that the letter dated 14.2.2008 is fabricated. Mere allegations are not sufficient. We do not find any merit in the contention of the Respondent that the documents are fabricated.

18. In conclusion, we hold that the Petitioner is entitled to receive signals from the Respondent. We accordingly direct the Respondent to provide signals within two weeks from the date of this order and to enter into an agreement with the Petitioner at an early date, not later than six weeks from the date of this order. As indicated in Para 12 above, and offered by the Counsel for Petitioner, the Petitioner will deposit three months' subscription fee as security, subject to the verification of its subscriber base by joint survey. We direct that the joint survey be completed within four weeks from the date of this order.

17. The Petition is accordingly disposed of. No costs.

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(J.S. Sarma)
Member

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(G.D. Gaiha)
Member