

for the Non-CAS area for Non-CAS zone of KMDA area to the petitioner's cable network for the year 2010-2011. It is not in dispute that the petitioner is a Multi Service Operator serving in both CAS and Non-CAS are in and around the town of Kolkata.

2. The petitioner approached the respondent on 13.9.2010 alongwith all the required documents for supply of decoder boxes to it for Non-CAS zone of KDMA area and for entering into subscription agreement for the year 2010-2011, but till date has not received any positive response.

3. Petitioner used to take signals from the respondent in the year 2007 and the petitioner had also signed an agreement with the respondent on the basis of 7500 subscribers. After taking the signals from the respondent, the petitioner claims that it could not succeed in getting signals from other broadcasters and, therefore, it kept on losing its subscriber base which reduced to 3720 subscribers in August, 2007. The petitioner claims that since the subscriber base substantially reduced, it was difficult for him to pay to the respondent on the basis of 7500 subscribers, and the petitioner, therefore, approached the respondent on 8.8.2007 alongwith the copy of the SLR of 3720 for the month of July, 2007. Since the business never took off with the reduction of subscribers to the level of 3720, the petitioner approached the respondent vide its letter dated 19.5.2008 with the intention to discontinue the signals of the respondent and wanted its accounts to be settled with the respondent finally. Petitioner also agreed to pay the total amount of

outstanding Rs.8,60,000/- as full and final settlement in three installments vide three cheques, viz, Cheque No. 714273 dated 25.5.2008 total amounting to Rs.2,60,000/-; Cheque No.714274 dated 25.6.2008 total amounting to Rs.3,00,000/- and Cheque No. 714275 dated 25.7.2008 total amounting to Rs. 3,00,000/-.

4. Now since, thereafter the petitioner has been transmitting-retransmitting signals of various other broadcasters and with a view to transmit/retransmit the signals of the respondent approached the respondent for obtaining the signals. After meeting the respondent, the petitioner was apprised that it has still got an old outstanding of Rs.1,00,000/-. In view of that the petitioner again paid the amount of Rs.1,00,000/- vide Cheque No. 752511 dated 08.10.2010.

5. The respondent had written a letter to the petitioner on 14.10.2010 asking for some more details and the petitioner vide its letter dated 21.10.2010 immediately supplied all the relevant information/documents to the respondent which has been duly acknowledged by the petitioner. The main grievance of the petitioner is that respondent has still not come forward to provide its decoders and, therefore, the petitioner is suffering huge business loss.

6. The respondent on the other hand would claim that the present petition is an abuse of the process of law as petitioner has not disclosed the true and

correct facts about the case. It has concealed the vital material information before approaching this Court. The main contention of the respondent is that the petitioner is supposed to approach it by furnishing all the information/documents and now after the expiry of 60 days time no cause of action can be attributed in favour of the petitioner to approach this Hon'ble Tribunal. The present petition is, therefore, premature.

7. The contention of the respondent is that the petitioner has supplied information in bits and pieces. Some information is received vide letter dated 29.10.2010 before the expiry of 60 days time from 21.10.2010 till 15.11.2010. The present petition has been filed which is not sustainable as per Clause 3.5 of TRAI Interconnect Regulations. The information which has been furnished on 21.10.2010 is incorrect and unsubstantiated and, therefore, the request cannot be contemplated as per Clause 3.2 of the TRAI's Interconnect Regulations. It was also the duty of the petitioner to furnish details of its direct subscribers as well as details of LCOs attached to its network alongwith their respective subscriber base. In this case the petitioner has deliberately declared only 2075 subscribers, being catered through 6 LCOs whereas as per the respondent's market information , the petitioner is catering to approximately 26,000 subscribers. It is, therefore, contended by the respondent that this Hon'ble Tribunal in its judgment dated 20.5.2010 in the matter of M/s Silver Line Broadband Services Ltd. Vs. Zee Turner Pvt. Ltd., MSM Discovery and M/s ESPN Software India Pvt. Ltd. had recorded petitioner's admission that it

had 25,000 subscribers. Since the petitioner had not furnished the complete details in regard to the subscriber base, the question of commencement of the period of 60 days time period as contemplated in Clause 3.5 of the TRAI's Interconnect Regulations, does not arise.

8. It is also contended that the petitioner is a habitual defaulter and it has been paying its dues only on the stage of the final settlement, i.e, at the time of disconnecting signals of the respondent. The respondent has no other option than to settle the accounts with the petitioner at a lesser amount on an earlier occasion than what was actually due to the petitioner from the respondent.

9. The petitioner has also made a representation on 13.9.2009 to the respondent to provide/activate the signals of the channels and also to provide decoders of Star Jalsha and Star Ananda channels. The letter of reactivation was not considered by the respondent because the signals were deactivated on 13.11.2007 and there was no valid and subsisting subscription agreement between the parties from that day onwards. There has been a lapse of more than three years and, therefore, it was out of question to re-activate the signals of the petitioner and the request is to be treated as fresh request for seeking signals. The learned counsel of the petitioner would submit that the sine qua non to avail signals is that the seeker of signals must furnish correct and complete information and documents as contemplated in Clauses 3 and 9 of the TRAI's Interconnect Regulations. Further it must also furnish all such documents which can facilitate in ascertaining subscriber base, area of

operation and financial soundness of the seeker of the signals. In this case the petitioner has deliberately and with malafide intentions suppressed the relevant information and, therefore, the petitioner is not entitled for any relief whatsoever.

10. The learned counsel for the petitioner would contend that within a period of 60 days time, the respondents are either supposed to raise objections to the requests for seeking signals or otherwise they should provide signals within the stipulated period of time. In case the request is turned down, the same should also be communicated within 60 days time from the day of request and, therefore, the sanctity of 60 days time for providing signals as per Clause 3.5 of the Telecommunications (Broadcasting & Cable Services) Interconnect Regulations, 2004 is significant. The learned counsel for the petitioner would further contend that in the instant case, the petitioner did not get any response from the respondent either in the form of acceptance of the request or in the form of refusal of the request within the stipulated period of 60 days. There is no response to the first request sent on 13.9.2010 and, therefore, the present petition which has been filed on 15.11.2010, i.e., expiry of 60 days time is perfectly as per the requirement of the regulations. It is also contended that the petitioner has never refused to give any relevant information as required by the respondent and the declaration of the subscriber base of 2075 being catered through six LCOs is true and genuine list which is based on the number of subscribers as declared by the six LCOs by the petitioner. The

claim of the respondent that the petitioner has got 26,000 subscribers and 90 LCOs is completely baseless and is vehemently denied.

11. The learned counsel for the petitioner would further submit that the claim of the respondent that the petitioner is habitual defaulter is baseless and is just to prejudice the mind of the Hon'ble Tribunal without any supporting proof. The learned counsel for the petitioner would further contend that it is a fact that in the year 2007, the petitioner had signed the subscription agreement on the basis of 7500 subscribers. However, at that point in time, the petitioner could only transmit the signals of the respondent and did not have the signals of any other broadcasters and had applied for signals of the other broadcasters. However, since the petitioner could not succeed in getting the signals of any other broadcasters, it kept on losing the subscriber base and eventually the subscriber base of 15000 in the year 2006 was reduced to 7500 in the year 2007 and further reduced to 3072 at the time of filing of this petition. The learned counsel for the petitioner would further submit that petitioner has approached respondent vide letter dated 08.8.2007 with SLR of 3072 for the month of July to raise the monthly invoice accordingly and this letter has been duly received by the respondent. In the year 2008 when it became very difficult for the petitioner to transmit pay channels because of the continued decrease in the subscriber base, the petitioner had approached the respondent vide its letter 19.5.2008 to close down its business and to settled the final accounts with the respondent. The petitioner also agreed to pay total

outstanding of Rs.8,60,000/- as full and final settlement of its dues. The petitioner also paid another amount of Rs.1.00lakh which was claimed by the respondent as outstanding, vide its Cheque No. 752511 dated 8.10.2010 drawn of Bank of Maharashtra and the respondent is not giving the signals because it is acting hand in glove with other broadcasters to throw the petitioner out of the Cable TV Business.

12. The respondent is also having all the relevant documents as on date from the petitioner and, therefore, the respondent should be directed to furnish its signals to the petitioner on a non-discriminatory basis with reasonable terms and conditions.

13. We have placed on record and we can take judicial notice of the fact that several cable operators of the petitioner purported to be aggrieved by unilateral increase in their subscriber base said to be proportionate to with the subscriber base fixed by this Tribunal vis-à-vis their own, have filed petitions before us which were marked as Petition Nos. 429 (C) of 2010, 430 (C) of 2010, 431(C) of 2010, 432 (C) of 2010 & 433 (C) of 2010. In those cases, according to the petitioner, herein, a unilateral increase became necessary as it had only six operators operating in the area in question and thus in the event, the petitioner is forced to realize the subscription fees in terms of the negotiated subscriber base only and not as fixed by this Tribunal, it had been suffering a huge financial loss. This Tribunal has allowed the said petitions on the premise that

the petitioner, herein, in law could not have increased the subscriber base of its local cable operators unilaterally.

14. It has been pointed out before us that the broadcasters in that case had not cooperated with the petitioner, herein as regards the joint survey so far as holding on a joint survey is concerned as was directed by this Tribunal in Petition Nos. 156 (C) of 2008, 157 (C) of 2008 and 158 (C) of 2008. We may also place on record that for a direction upon M/s Zee Turner Ltd. to hold a joint survey, the petitioner has filed another petition which was marked as Petition No.294 (C) of 2011 wherein notice has been issued.

15. In the aforementioned Petition Nos. 156 (C) of 2008, 157 (C) of 2008 and 158 (C) of 2008, we have directed that a joint survey be held for the purpose of determination of the subscriber base. Such a direction was issued as there existed a huge difference in estimation of the subscriber base as contended by the petitioner, vis-a-vis the broadcasters who were parties therein.

16. We may mention that in one of the aforementioned cases filed by the LCOs of the petitioner, the survey was carried out through an Advocate Commissioner appointed by the learned District Judge of North 24 Pargana District and wherein it was found that the subscriber base was even lesser than the one on the basis whereof the LCOs concerned were paying its subscription fees.

17. Keeping in view the aforementioned fact, we are of the opinion that interest of justice would be sub-served if a direction is issued for carrying out a joint survey for the purpose of arriving at a subscriber base so as to enable the parties to negotiate on the basis thereof and execute an agreement for supply of signals to the network of the petitioner. In the meantime the signals of the channels by the respondent may be supplied to the network of the petitioner, herein on a tentative subscriber base of 5000 purely as an interim measure. However, this figure is purely ad-hoc in nature and the same shall be subject to the determination of subscriber base by the parties herein upon completion of the joint survey.

18. The petition is disposed of with the above directions with no costs.

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(S.B. Sinha)
Chairperson

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(G.D. Gaiha)
Member

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(P.K. Rastogi)
Member

HKC/

