

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

Dated 21st May, 2012

Petition No. 319(C) of 2012

Polimer Media Pvt. Ltd.Petitioner
Vs.
Turner General Entertainment Networks India Pvt. Ltd.Respondent

BEFORE:

HON'BLE MR. P.K. RASTOGI, MEMBER

For Petitioner : Mr. J.K. Mehta, Advocate
Mr. Sharath Sampath, Advocate
Mr. Manikya Khanna, Advocate

For Respondent : Mr. Rishi Agarwal, Advocate

ORDER

This petition has been filed by the Petitioner wherein it has challenged the notice dated 20.4.2012 issued by the Respondent terminating the Syndication Agreement entered into between the parties. We may read the said notice

Dt. 20th April, 2012

*Polimer Media Pvt. Ltd.
30, Balaji Nagar, 1st Street Roayapettah,
Chennai- 400014*

Re: Termination of Syndication Agreement

Dear Mr. P.V. Kalyanasundaran

This is with reference to the Syndication Agreement dt. 16th December, 2011, and all its amendments, executed between Turner General Entertainment Networks India Private Limited (TGEN) and

Polimer Media Pvt. Ltd. (Licensee) in relation licensing of the program(s) titled Dwarkadheesh and Mahima Shani Dev Ki (Agreement).

By this Termination Notice, TGEN provides Licensee with notice of termination of the Agreement of 30 days from the date of this letter. The Agreement stands terminated on 19th May, 2012 (Termination Date).

Any rights or remedies under the Agreement, by operation of Law or others, that TGEN may have that could potentially survive the termination of the Agreement, regardless of when such rights or remedies could be deemed to have arisen, actually arose or will or could arise in the future, are irrevocably and unconditionally waived, relinquished, surrendered and/or abandoned as of the Termination Date.

TGEN is in the process of terminating and abandoning all of its business operations; therefore, by this Termination Notice any further business relationship is also terminated and abandoned.

Kindly acknowledge the said termination by signing this letter and returning a copy to us within the next 7 days. In case we do not receive the acknowledged copy, of the Agreement shall be deemed to be validly terminated.

2. The Petitioner submits that the Respondent has terminated the agreement without any reasons or default on the part of the Petitioner. The notice of termination dated 20.4.2012 neither gave any reasons nor any alleged breach by the Petitioner on the same. Further, out of 166 episodes of “Dwarkadheesh” only 80 episodes and in respect of “Mahima Shani Dev Ki” out of 380 episodes only 110 episodes have been telecast. The Petitioner had entered into contract with advertising agency for the commercial time and the abrupt stoppage of the serials would result in huge revenue loss on account of advertisement revenue turning into bad debts. Further, the abrupt stoppage would result in loss of channel’s

credibility. The action of the Respondent would cause grave loss and hardship to the Petitioner and its customers.

3. In view of above mentioned reasons the Petitioner prayed for decree of mandatory injunction restraining the Respondent from terminating the Syndication Agreement entered into by and between the parties.

4. A copy of the Syndication Agreement has been placed on record and the same is signed on 16.12.2011. Some of the relevant paras may be re-produced :

“Programmes(s): 1. Dwarkadheesh 2. Mahima Shani Dev Ki(MSDK)

No. of Episodes: 1 Dwarkadheesh -166 2. Mahima Shani Dev Ki(MSDK)- 380

The Agreement will automatically extend if there are more episodes of both shows and will continue on a monthly payment and delivery schedule.

No. of runs per episodes: 2 runs +2 natural repeats for each run

Language : Tamil only. The Customer shall dub the programme at the Customer’s cost and provide one copy of the Dubbed version of the Programme to Turner.

Licence Fee : INR 14,000 per episode of Dwarkadheesh

INR 15,000 per episode of Mahima Shani Dev Ki

Total Licence Fee: INR 8,024,000 plus applicable taxes

Payment & Delivery Terms: As per Annexure

Term : 2 years from the date of this Agreement or completion of Runs, whichever is earlier

Licence Period : 2 years from the date of this Agreement or completion of Runs, whichever is earlier. The Licence period shall be subject to earlier termination in accordance with this Agreement

5. Termination:

5.1 Any of the parties hereto may immediately terminate or suspend its obligations under this Agreement (including delivery of any or all episodes) if any of the following occurs:

- (i) The other party is in breach of the terms of this Agreement or any other agreement between them and in the case of a breach capable of remedy, the defaulting party has failed to remedy that breach on receiving 14 days notice from the other requiring it to do so; or
- (ii) An event occurs which indicates Customer is unable or may in the future be unable to pay its debts as and when they fall due; or
- (iii) The entry into or performance of this Agreement by Turner or Customer is, in the opinion of Turner, contrary to applicable law or is otherwise prevented due to a reason beyond that party's reasonable control.

5.2 Termination of this Agreement will be without prejudice to any right or remedy of either party arising prior to the date of termination

5.3 Notwithstanding anything contained herein, Turner shall have the right to terminate this Agreement without assigning any reasons thereof by giving 30 days notice to the Customer.

5. The learned counsel for the Petitioner contends that the termination of agreement could have been done only if there was breach on the terms of the agreement by the Petitioner.

6. Respondent has raised the issue of jurisdiction of the Tribunal saying that it has just provided the programmes content to the Petitioner and as such is not a service provider. The Petitioner contended that the Petitioner is a broadcaster and is broadcasting a TV channel namely Polimer T.V. The Respondent is also a broadcaster of channel namely Imagine T.V.,

therefore, both are service providers. Prima facie, I am of the view that both parties being service provider as defined under TRAI Act, this Tribunal has jurisdiction to hear this Petition.

7. The Respondent further stated that clause 5.3 of the Syndication Agreement provides that the Respondent has the right to terminate this agreement without assigning any reasons by giving 30 days notice to the customer. Accordingly, it issued the necessary notice as required under the agreement. The learned counsel for the Respondent further stated that as the Respondent has stopped all its business and operation and it does not have any contents of the “Dwarkadheesh” and “Mahima Shani Dev Ki” for future episodes, it is not possible for him to provide the programme contents to the Petitioner.

8. Perusal of the Syndication Agreement which was executed on 16.12.11 shows that the term of the agreement is for 2 years from the date of the agreement or completion of runs whichever is earlier. The licence period shall be subject to earlier termination in accordance with this agreement. The termination clause are 5.1, 5.2 and 5.3. While clause 5.1 and 5.2 indicate termination or suspension on certain conditions, clause 5.3

gives right to the Respondent to terminate its agreement without assigning any reasons thereof by giving 30 days notice to the Petitioner.

9. Prima facie I am of the view that the Respondent who has right to terminate the agreement has terminated the same in accordance with the agreement after giving 30 days notice in accordance with the agreement. The Petitioner has pointed out that it will have to incur huge loss because of termination of agreement. The Petitioner has the remedy to claim the damages which it has already claimed in this Petition as an alternative.

10. Therefore, I am of the view that the Petitioner is not entitled for issue of mandatory injunction against the Respondent from terminating the agreement between the parties.

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(P.K. Rastogi)
Member

K.D.