

2. The Petitioner, by way of interim prayer, has requested for following reliefs:-

a. Pass an order of injunction restraining the Respondent their servants and/or agents and/or assigns from in any manner deactivating or disturbing the supply/quality of signals of the Respondent's bouquet of channels to the Petitioner in the North, Central and West regions of India;

b. pass an order directing the Respondent not to charge the Petitioner subscription fee for locations where it has not commenced operations and/or those locations where it has shut its operations in the North, Central and West regions of India.

3. The Petitioner has filed this petition relating to the territory of North, Central and Western India only, although the notices under 4.1 and 4.3 of the regulation relates to all the territories of North, Central, East and Western India.

4. The Petitioner has submitted that the Petitioner being a new entrant in the cable transmission had agreed to the subscription fees on the basis of roll-out plan which could not be made and it was not able to roll out its network in certain territories of Goa, Gujarat, Uttrakhand and Haryana due to financial constraints and market compulsion. Further it was also constrained to shut its operation in the cities of Delhi, Jodhpur, Varanasi, Mathura, Ghaziabad, Faizabad, Jaunpur, Etah, Latur, Nanded, Jalna and Ambergarh due to financial unviability.

The Petitioner has continued to pay the Respondent its subscriber fees up to 12th July, 2012. The Petitioner wrote to Respondent for down gradation due to the reason mentioned above. The Parties came to a mutual settlement and executed the settlement agreement on 16th May, 2012.

5. According to the Petitioner although the settlement agreement pertain to disputes regarding placement of channels, it was in reality a settlement agreement between the Petitioner, Respondent and its affiliate namely Viacom 18. The Respondent expressed its inability to reduce the subscription payouts in the middle of the year-2. Viacom

18 increased the placement fee and dropped its placement to Sonic channel to compensate the Petitioner for high subscription pay out. The Petitioner signed the Settlement Agreement on a gentlemen understanding. However, for the third year, the Petitioner was supposed to make a written request for down gradation that was to be duly considered by the Respondent. Accordingly the Petitioner wrote a letter to the Respondent predecessor in interest on July 3, 2012 for renegotiation the subscription charges.

6. On the other hand, the Respondent has stated that the Petitioner has executed the agreement for the North, Central, West and East Regions of India for N18 & V18 channels. Four separate MoUs were executed for the three years commencing from 13.07.2010 for V18 channels and from 13.08.2010 for TV 18 channels till 12.07.2013 for the Regions for a fixed fee of Rs. 10.61 crores.

Mr. Aman Lekhi, learned senior counsel appearing on behalf of the Respondent has brought to my notice clause 5.2 and clause 6 of the commercial terms of the agreement between the parties.

We may read the same:-

5.2 : The Subscription Fee agreed herein is a negotiated fixed subscription fee for the whole Term and shall not be subject to change during the Term unless the MSO takes over the operation or control of any other network or winds up operation of any present Network. In such event, either Party shall have the right to issue a notice to the other party to renegotiate the License Fee payable by the MSO. In the event both Parties are unable to reach a negotiated settlement within 30 days there from, either party shall have the right to terminate this agreement forthwith. The Network wise breakup of the Subscription Fee above shall be provided by the western region head of the MSO within 30 days of the signing of this MOU and shall be mutually discussed and agreed between the parties as per format provided in Annexure-A. Such Network wise details so agreed shall be a part of this MOU.

6. Payment Terms: MSO shall pay the Subscription Fee mentioned in 5.1 above for each month within 60 days from expiry of the concerned month. For the purpose of this MOU, a month shall mean starting from 13th of a calendar month and ending on 12th of subsequent calendar month from the starting of the year-1.

8. According to the Respondent the subscription fee as agreed in the term sheet was divided in three years. First year and the second year being lower than the average and the third year being the higher. There was a settlement agreement between the Petitioner and the sister concern of the Respondent i.e. Viacom 18 Media Limited on 16.05.2012. The Petitioner once again agreed that it will honour all the terms of the MoUs and the subscription agreement between the Petitioner and the Respondent. Actually the down gradation was nonexistent.

The Petitioner raised the issue of down gradation for the first time on 03.07.2012 only on the ground of that the Petitioner was unable to roll out operation in certain territories. In response to the Petitioner's letter, the Respondent vide its letter dated 17.07.2012

informed the Petitioner that the subscription agreement between the parties was for fixed subscription fees of Rs. 40.15 crores for a fixed term of three years.

9. The contentious issues between the parties seems to be :
 - a. Petitioner has requested for down gradation of the subscription amount on the ground that the Petitioner is not able to roll out its operation in certain areas and shut down its operation in some other areas.
 - b. The present Petition has been filed for the area of North, Central and West regions only and seeking relief only for those regions no relief is sought for the East region.

10. The perusal of the term sheet showing commercial terms of interconnection indicates that the subscription fee as agreed between the parties is negotiated for fixed subscription fee for the whole terms and is not subject to change during the terms. The exception being only when MSO takes over the operation of any other network or

winds up operation in any present network. If Petitioner wanted to down grade the subscription fee it was for him to issue a notice to the Respondent and get a settlement within 30 days. In case of failure, both the parties had right to terminate the agreement.

In this particular case I find that no settlement has been arrived at between the parties. The only option available to the Petitioner as per the terms of the contract was to terminate this agreement. But as long as the agreement is not terminated, the Petitioner was bound to abide by the terms therein.

11. It is noticed that the Petitioner has been following the terms of the agreement for first two years when the subscription agreement has been lower. The roll-out plans were not completed in 1st two years also but the Petitioner paid the subscription amount in terms of the agreement. Now it cannot suddenly ask for the reduction of the subscription amount for third year against the terms of the contract.

12. The Respondent has issued a notice under regulation 4.1 on 17.04.2012 for disconnection of signals of the Petitioner for all the four regions. The Petitioner has approached this Tribunal only for

three regions. According to the Respondent, the Petitioner will continue to be treated as defaulter if he does not pay the amount relating to all the four regions.

It is seen that the term sheet containing the commercial terms are executed territory wise and not for all the four regions. Therefore, the contracts have to be enforced territory wise only and not on all the regions put together. As the Petition pertains to three regions, the Petitioner is bound to clear all the dues relating to three regions. Regarding East region, it is for the Respondent to take any further actions as deemed fit.

13. In view of the aforementioned reasons, it is directed that the Petitioner will pay the entire outstanding amount to the Respondent for three regions based on the fixed subscription fee agreement already executed between the parties. While calculating the outstanding amount clause 6 of the term sheet will also be taken into consideration.

If the Petitioner pay the amount as directed above within one week, the Respondent will not give effect to the notice under regulation 4.1 and 4.3.

14. This order is subject to any other or further order.

15. The Respondent may file its Reply within four weeks. The Petitioner may file Rejoinder, if any, within two week thereafter.

Put up on 01.03.2013 for framing of issues.

January 2, 2013

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(P.K.Rastogi)
Member