

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

Dated 15th September,2015

**Petition No. 453(C) of 2015
(M.A. Nos. 267, 289 of 2015)**

Maharaja Telesystem Pvt. Ltd.

...Petitioner

Vs.

Den Network Pvt. Ltd.

...Respondent

BEFORE:

HON'BLE MR. JUSTICE AFTAB ALAM, CHAIPERSON

HON'BLE MR. KULDIP SINGH, MEMBER

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

For Petitioner

: Mr.Tushar Singh, Advocate

For Respondents

: Mr.Harsh Kaushik,Advocate
Mr.Gaurav Kaushik,Advocate

ORDER

Heard Mr. Tushar Singh at some length.

This petition is filed purportedly on behalf of a Private Limited company incorporated under the Indian Companies Act by one Naresh Kumar Kaushik claiming to be one of the Directors, competent to file this petition on behalf of the company.

This petition was filed with the grievance that the respondent was taking steps to terminate the Memo of Understanding (MoU) between the two sides before the expiry of its term. It is alleged that during the pendency of the petition the respondent has also discontinued the supply of its signals to the petitioner.

A reply is filed on behalf of the respondent in which it is stated that the petitioner was given a notice on 18.8.2015 in regard to the termination of the Memo of Understanding. It is further pleaded that the petitioner was merely an agent of the

respondent. It was not a service provider within the meaning of the interconnect regulations and hence, it cannot maintain this petition under section 14 of the TRAI Act.

Before we enter into the merits of the aforesaid dispute, there is another insurmountable obstruction in the way of this petition and that relates to the competence of the aforesaid Naresh Kumar Kaushik to maintain this petition on behalf of the petitioner company.

In the petition, it is stated that originally there were three share holders in the company, namely, Alok Singh who held shares to the extent of 52.5%, Shehla Rizvi holding shares to the extent of 22.5% and Kaushal Agrawal holding shares to the extent of 25%. Mr. Naresh Kumar Kaushik claims to have purchased the shares of the latter named two persons and thus, he and Alok Singh became the two Directors in the company. Reliance is then placed on the minutes of the meeting said to have been held on 20.7.2015 in which a resolution was passed authorizing Naresh Kumar Kaushik to appear and to represent the company before appropriate authorities (TDSAT) in all matters related to broadcasting or in such matter.

It is significant to note that though the Board resolution is said to have been passed on 20.7.2015 in the Urgency Application filed along with this petition on 27.8.2015 it was stated as under:

“Also that due to urgency, the Board resolution authorizing Mr. Naresh Kumar Kaushik to file the present petition could also not be filed”.

Later in the course of this proceeding, a copy of the aforesaid resolution dated 20.7.2015 was filed on 8.9.2015.

On behalf of Mr. Alok Singh it is stated that he never signed the purported Board resolution on 20.7.2015 and there is no authorization for the petitioner to represent the company and to file this petition on its behalf. According to Alok Singh, the so called Board resolution is a forgery.

Today Mr. Tushar Singh filed before us a spiral notebook which bears the title "Minutes of meetings Register, Maharaja Telesystem Private Ltd". In this notebook, which does not, in any way, appear to be the statutory minute book of a company, there are indeed records of meetings written in hand. There are also minutes of a meeting dated 20.7.2015. The minute is shown to have been attended by two persons, namely, Alok Singh and Naresh Kumar Kaushik, and Naresh Kumar Kaushik is shown to have been elected full term Chairman of the meeting and the minutes are signed only by Naresh Kumar Kaushik and by no one else. It is significant to note that neither the minutes of this meeting nor any other meeting recorded in the minute book bears the official seal of the company.

From the materials produced before us, we are satisfied that there is prima-facie a dispute as regards the petitioner's competence to file any petition on behalf of the petitioner company and this dispute clearly cannot be resolved by this Tribunal.

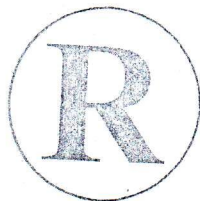
Mr. Tushar Singh submitted that since this Tribunal alone has the jurisdiction to grant the petitioner the main relief claimed in this petition, it follows that this Tribunal must also decide whether the person filing the petition has the necessary competence to file this petition. He insisted that this dispute may also be examined by the Tribunal by framing an issue in this regard and in support of this submission, he relied upon two Supreme Court decisions in *Anil Rishi Vs. Gurbaksh Singh*: (2006) 5 SCC 558 and in

Dalpat Kumar & Anr. Vs. Prabhlad Singh & Ors: (1992) 1 SCC 719 and a decision of the Delhi High Court in another in Shashi Malhotra Vs. Lakshman Kumar Aggarwal: 1996(38) DRJ 363.

We do not have the slightest doubt that the decisions relied upon by Mr. Singh have any relevance to the present issue.

We are satisfied that the person who has filed this petition has not been able to establish his competence to maintain this petition. The petition is accordingly dismissed as not maintainable before the Tribunal.

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(Aftab Alam)
Chairperson



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(Kuldip Singh)
Member

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(B.B. Srivastava)
Member

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