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

Dated ^{7th} 16 December, 2019

Misc Application/219/2019

IN

Broadcasting Petition No.47 of 2019

(Arising out of Broadcasting Petition No.47/2019, decided on 24.4.2019)

Shri Maha Maya Channels

...Petitioner(s)

Versus

...Respondent(s)

Gentle Entertainment Pvt. Ltd.

Misc Application/220/2019

IN

Broadcasting Petition No.49 of 2019

...Petitioner(s)

J.B. Vision

Versus

...Respondent(s)

Gentle Entertainment Pvt. Ltd.

BEFORE:

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON

For Petitioner

: Mr. Tushar Singh, Advocate
Ms. Pankhuri, Advocate

For Respondent

: Mr. Diggaj Pathak, Advocate
Ms. Shweta Sharma, Advocate
Mr. Naved Ahmed, Advocate

ORDER

Learned counsel for both the parties have been heard in detail on the merits of both the M.As for the purpose of final disposal. There are a number of similarities in the material facts of both the cases in which the respondent MSO, Gentle Entertainment Pvt Ltd is common. The nature of issues and relief claimed are also similar and, therefore, both the M.As have been heard together and are being disposed of by this common judgment and order.

2. Altogether seven Broadcasting Petitions bearing nos. 45 to 51 of 2019 were filed by the same counsel representing different petitioners, all LCOs affiliated to the same respondent MSO. On 24.4.2019 when all the seven B.Ps were listed together, learned counsel for the petitioner withdrew B.P.Nos.45, 46 and 48 of 2019. The remaining four petitions including B.P. Nos. 47 & 49 of 2019 were allowed on the common ground that disconnection of supply of signals effected by the respondent was without proper notice of 21 days. Since the disconnection effected on 10.3.2019 was found to be illegal and unlawful, it was ordered that if supply of signals has not been resumed so far, the same shall be resumed forthwith. Liberty was also granted to the respondent that it could take appropriate action after issuing required notice in terms of Regulations. It may be noted that contrary to the present claim, on behalf of respondent no indication was given on 24.4.2019 that it had already resumed supply of signals to the petitioners / applicants on any earlier date.

3. In the disposed of petitions bearing B.P.Nos. 47 & 49 of 2019, the M.As under consideration were filed on 14.8.2019 with identical prayers which are as follows:

- “(a) Hold the respondent guilty of willful disobedience of the orders dated 18.3.2019 and 24.4.2019, passed by this Hon’ble Tribunal in Broadcasting Petition No.47 of 2019 and impose maximum fine upon it in accordance with Section 20 of Telecom Regulatory Authority of India (TRAI) Act, 1997 since the inception of the Petition;
- (b) Pass an order directing the respondent to resume forthwith, the supply of signal to the Applicant and unblock its suspended account;
- (c) Pass an order directing the respondent to cease and desist from allotting the Applicant’s login credentials to any unauthorized third party;
- (d) Pass an order directing the respondent to pay to the Applicant a sum of Rs.6 lakhs as compensation;
- (e) Pass an ex parte order in terms of prayer ‘b’ and ‘c’;
- (f) Pass such further orders as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the present case.”

4. For the sake of convenience, the names and facts are being referred from the records of M.A. No.219 of 2019 unless explicitly stated otherwise.

5. It is the case of the Applicant that in spite of a conditional interim order dated 18.3.2019, the supply of signals was not resumed although reminders were sent through various emails and letters. It is further case of the Applicants that even after final order was passed by this Tribunal on 24.4.2019, the petitioner's network was not activated and complaints made to the respondent and other authorities had no effect. With screen shots to show that Applicants' account as an LCO was still suspended, on 13.5.2019 an email was sent to the respondent and to the District Authorities and Superintendent of Police on 27.5.2019. A screen shot dated 29.5.2019 has also been annexed as annexure. The Applicant was surprised to receive a disconnection notice sent by the respondent on 24.6.2019 for non-payment of subscription fees for the period upto June, 2019, on the basis of alleged subscription agreement dated 11.5.2019. It is the case of the Applicant that there was no resumption of supply of signals since 10.3.2019 nor there was any new agreement signed between the parties thereafter.

6. According to the Applicant, the disconnection notice was only a cover up for not activating the network of the Applicant after 10.3.2019. It is further case of the Applicant that although supply of signals was not made to the Applicants' system, "the respondent was continuously providing signals to the customers through another operator who has no relationship with the Applicant, and the same was in complete derogation of the orders passed by this Hon'ble Tribunal." In other words, the case of

the Applicant is that the respondent not only disobeyed the order of this Tribunal and continued to keep the Applicant's account on the respondent's portal suspended, the Applicant's subscriber base was allowed to be catered by a different cable operator. The name and contact details of the said cable operator was run through scrolls on Applicant's / petitioner's network. The Applicant could not succeed to login to its account in spite of best efforts.

7. The respondent has filed a reply on 25.9.2019. The stand of the respondent is that the present application has been filed after an unexplained delay of about three and half months only to harass and malign the respondent. It is further case of the respondent that one Mr. Shiv Kumar Verma as a representative of the petitioner approached the respondent through a letter dated 5.5.2019. He disclosed that Naveen Sharma, the proprietor of the Applicant was his partner and had been absconding due to filing of a criminal case. He requested for issuance of an alternate Login ID and Password. A copy of letter dated 5.5.2019 is on record. It is claimed that the respondent accepted the request of Shiv Kumar Verma treating the same as a request of the petitioner. According to the respondent similar trick has been played by another LCO, J B Vision (Applicant in M.A.No.220 of 2019). According to the respondent this trick has been played to deny the liability to pay for the dues mentioned in the subsequent disconnection notice. The respondent has prayed to dismiss the application with costs and to direct the petitioner to pay the subscription dues as given in the notice along with interest.

8. On hearing counsel for both the parties in respect of M.As. under consideration, on 18.10.2019 this Tribunal passed an order that prima-facie, one of the parties had indulged in wrong practice which may even amount to fraud. The issues have to be decided on the basis of evidence and hence both the parties were given another opportunity to lead documentary evidence. This was done because in the rejoinder the Applicant / petitioner asserted that it was not a partnership firm and Mr. Naveen Sharma was its Sole Proprietor and, therefore, Shiv Kumar Verma had no legal basis to claim himself as the representative / partner of the petitioner firm and obtain new user ID and Password.

9. Pursuant to the aforesaid opportunity, through a supplementary affidavit, petitioner has brought on record seven documents to support its claim that the petitioner is a proprietary firm whose Sole Proprietor is Mr. Naveen Sharma and the respondent is fully aware of the same. During arguments, this claim has not been denied.

10. The respondent has also brought supplementary evidence through an affidavit in which three documents have been annexed. Annexure 'A' is an Ezybill Report generated on 28.4.2019 to show that petitioner's account in the name of Naveen Sharma was active on that date. Annexure 'B' is claimed to be a certificate by Manager of another MSO to the effect that Naveen Sharma and Shiv Verma Dagnia had for some time in the past worked in partnership for running cable business. Annexure 'C' is an affidavit by one Shiv Kumar Verma who has claimed to be a partner of petitioner firm along with

Naveen Sharma. He has supported the letter of 5.5.2019 through which he approached the respondent and obtained new Password ID for solving alleged problems being faced by the consumers. He has claimed to be running the petitioner's business of LCO in a regular manner.

11. On considering the documents and other materials, it is clear that the Applicant / petitioner is a proprietary firm. For some reasons third persons, strangers to the agreement were handed alternate ID and Passwords resulting into takeover of petitioner's cable business by such third persons who now claim to be running the business smoothly.

12. The respondent's stand that the persons who obtained new Login ID and Passwords are representative or partner of the Applicant firm is found to be incorrect. Large number of documents clearly show that the petitioner is a proprietary firm to the knowledge of the respondent. This is no longer in dispute. There is no letter from the proprietor of the petitioner authorizing any person to obtain new / alternate Login ID and Password. The respondent has admittedly provided new Login ID and Password to a person who had no authority. Such act of the respondent as an MSO is unfair and in breach of trust. This has resulted in causing unjustified loss to the petitioner's proprietary business as LCO and has passed on its control in the hands of another person who has unlawfully benefited from such illegal acts of respondent.

13. The claim of the respondent that it has activated the network of the petitioner even prior to order dated 24.4.2019 has not been proved by any cogent and reliable

evidence. Annexure 'A' to the supplementary evidence affidavit is a document which is suspicious on its face and differs from similar reports of the respondent available on record when compared with the name, style and logo of the respondent appearing in such other documents available on records. The respondent has taken the advantage of proprietor of the petitioner being in jail or having absconded and instead of supplying signals to the network with his original Login ID and Password, supply of signals was made to petitioner's consumers through another person by use of alternative / new Login ID and Password which were totally under the control of the respondent as an MSO. This cannot be taken as a resumption of supply of signals to the Applicant whether done earlier to or after 24.4.2019. This amounts to clandestine and illegal takeover.

14. In view of aforesaid findings, it has to be held that the respondent has failed to restore the supply of signals to the petitioner in the true and proper sense. Thus, it has violated the order of this Tribunal passed on 24.4.2019. The respondent has further used other persons in the trade to take over the petitioner's business as LCO through supply of new / alternative Login ID and Password which were / are totally under its control.

15. Since the proprietor of the Applicant was admittedly in jail or absconding, the so called delay in filing of the M.As is not of much consequence.

16. In view of the above, the M.As are allowed. The respondent is directed to pay a penalty of Rs.20,000/- (Rupees Twenty thousand only) in each of the M.As in terms of section 20 of the TRAI Act for disobedience. This must be deposited with the Registry of

the Tribunal within four weeks failing which the Registry shall make a report for further action. The respondent is directed to revert back to the earlier arrangement, resume supply of signals to the Applicant and unblock its suspended account forthwith and in any case within two days from today. The respondent shall not allot Applicant's account on its portal and Login credentials to any other party without proper authorization. In the facts of the case the respondent is directed to pay to the Applicant a sum of Rs.80,000/- (Rupees Eighty thousand only) by way of compensation for the wrongs done to him. From the date of disconnection in March, 2019 till the wrong is remedied as per this order, the Applicant shall not be liable for any subscription dues. This payment shall be made by the respondent within a period of four weeks from today failing which the Applicant shall be entitled to recover this amount through an Execution Application, along with interest @ 10% per annum from the date of this order till date of realization.

17. Since the facts of both the applications are similar in material aspects, both the applications are allowed in the same terms as indicated above. Each of the Applicants is held entitled to a cost of Rs.20,000/- (Rupees Twenty thousand only) which shall also be payable in same terms as the amount of compensation.

18. The M.As are disposed of accordingly.


(S. K. Singh, J)
Chairperson

/pkb/

