

Bhaskar Cable Network, Through Vs. Zee Turner Limited

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Court : SEBI Securities and Exchange Board of India or Securities Appellate Tribunal SAT

Decided On : May-15-2007

Judge : D Sehgal

Appellant : Bhaskar Cable Network, Through

Respondent : Zee Turner Limited

Advocate for Def. : Mr. Maninder Singh

Advocate for Pet/Ap. : Mr. Meet Malhotra

Judgement :

1. The petitioner is a multi systems operator serving the areas within Jabalpur city in Madhya Pradesh. The respondent, M/s Zee Turner Pvt Ltd., is a broadcaster and distributor of satellite television channels of "Zee".

2. The petitioner was getting signals from the respondent based on an agreement entered into between the parties dated 1.6.2006. According to the petitioner, the respondent began pressurizing it to increase the number of subscribers from the negotiated base of 4221 subscribers as per the agreement and when this was not accepted by the petitioner, its signals were disconnected from 13th to 27th September, 2006 illegally without notice. On 27.10.2006 the respondent published a public notice to disconnect the signals of the petitioner for non-payment of dues resulting in the petitioner filing this petition praying for the following relief: i) restrain

the respondent from disconnecting the signals provided/supplied to the petitioner on observance of terms and conditions of agreement signed in June, 2006 by the petitioner; ii) grant compensation to the petitioner for damage suffered to its business reputation on account of the illegal disconnection of signals by the respondent, during the period from September to October 2006.

iii) pass any other such appropriate orders/directions as this Hon'ble Tribunal may deem fit and proper.

3. On 17.11.2006, we directed the respondent to continue the supply of signals to the petitioner subject to the petitioner making payment of the admitted amount as per the agreement. The petitioner continued enjoying the signals based on our order till the matter was finally heard on 4.5.2007.

4. The petitioner contended that it entered into an agreement with the respondent for a negotiated subscriber base of 4221 subscribers for getting two bouquets of the respondent's channels at the rate of Rs. 58.85 and Rs. 25/- respectively per subscriber per month. While there is no dispute on the number of channels and the rate, the dispute is only on the subscriber base.

5. Petitioner states that soon after the agreement, the respondent started pressurizing it orally to increase the negotiated base and pay more. Counsel for the petitioner said that during the cricket matches its signals were illegally switched off from 13th September to 27th September, 2006. When the petitioner refused to pay for this disconnected period, the respondent published a notice in the newspaper on 27.10.2006 for disconnection after 21 days. He further said that respondent took plea of disconnection for non-payment of Rs. 4,45,087/- which was false since all the dues as per the agreement had been paid.

The petitioner filed a suit in civil court in Jabalpur seeking injunction against the respondent. The learned Counsel for the respondent, Mr. Maninder Singh, states that as per the agreement the petitioner was supposed to give to the respondent the number of affiliate cable operators and the subscribers thereof. He made me peruse the relevant Clause 3.11 of the agreement which is reproduced as under: Details of subscription Base 3.11.1 The subscriber shall provide a complete and

true list of the name and addresses of all the customers and commercial customers and their customers along with the exact number of cable homes where services are provided by the subscriber and/or commercial customers/sub-subscribers operating under it, at the time of execution of this Agreement and from time to time as per the terms of this agreement. It is agreed between the parties that in case of any change in the number of households or ultimate consumers/customers serviced by the subscriber (directly or through commercial customers), he shall promptly inform the same to the Company.

3.11.2 The subscriber shall also provide a list of such locations within the area to which he or his sub-subscriber is providing the Channel service including each dwelling at the time of execution of the agreement and any change therein at the end of every quarter.

3.11.3 The subscriber shall honestly and truthfully declare the number of its subscribers and any under-declaration or mis-declaration of the number of subscribers would result in termination of the services/agreement without any notice.

6. Mr. Maninder Singh stated that the respondent had submitted this fact to the civil court and also submitted to the civil court that it was barred from admitting Telecom Disputes as per TRAI Act. He further said that it was surprising that an established MSO like the petitioner, who is in cable business for a long time, took recourse to civil court knowing fully well that it had to come to TDSAT.7. Arguing his case he further stated that the respondent came to know of large subscriber base of the petitioner and therefore had written to the petitioner a letter dated 19.7.2006 and further again on 9.9.2006 and by letter dated 4.10.2006 repeating its stand that as per the terms of the subscription agreement it was incumbent upon the petitioner to submit the detailed list comprising of names and addresses of customers as well as its franchisees. He said that the petitioner did not respond at all. The letters written by the respondent to the petitioner were to be treated as notices to deactivate the channels as per the applicable statute. Since the petitioner ignored all these letters, the respondent therefore published notice in the newspaper on 27.10.2006. The notice makes a mention of the 4.10.2006 letter to

the petitioner wherein an outstanding amount of Rs. 4,45,087/- is mentioned as dues to be paid by the petitioner.

8. The respondent's case is that the petitioner has a large number of subscribers. It in its reply affidavit has produced invoices of Star India Pvt Ltd raised on the petitioner showing a subscriber base of 41869 for the period 1.9.2006 to 30.9.2006. The respondent contends therefore that the petitioner cannot have a subscriber base of only 4221 with the respondent whereas to Star the petitioner is paying for 41869 subscribers. The petitioner, however, states that it is negotiated figure which varies from broadcaster to broadcaster.

9. To support his case, the petitioner has depended very heavily on the rejoinder rather than the petition itself. The petitioner accepts that with Star it has a subscriber base of 41,869. Mr. Meet Malhotra, learned Counsel for the petitioner, however, justifies this subscriber base stating that at that time in Jabalpur city there was a huge demand of Star channels and virtually no demand of Zee. Mr. Malhotra further states that there were large number of cable operators who were getting signals from Star. He states that some dispute arose, inter se, the said operators and M/s Star decided to service all these operators through the petitioner. Thus, according to the petitioner it became the sole distributor of Star signals for the whole city of Jabalpur.

According to Mr. Malhotra, the said subscriber base, i.e., 41,869 is sum total of all subscribers of all MSOs and other operators taking feed from the petitioner. The aspect of huge demand for Star channels was strongly refuted by Mr. Maninder Singh, learned Counsel for the respondent. He further said that the petitioner is transmitting Star signals and Zee signals and signals of other broadcasters through a cable feed to all the operators. There is no distinction between the signals of one broadcaster from the other broadcaster since same cable is carrying all the signals. I agree with the contention of the respondent that when there are no separate head-ends and an MSO is carrying the signals through cable feed, signals of all broadcasters are carried together to all the subscribers. He, therefore, states that all the consumers have access to Star as well as Zee signals.

Therefore, the subscriber base for both Star and the respondent has to be same. The contention of the petitioner that all operators were merged under the petitioner as MSO does not prove anything but for the fact that 41,869 is the subscriber base for all the signals being carried by the petitioner.

10. During the argument issue of agreement was also raised by both the parties, where as per the petition, the petitioner was not given the copy of the agreement, the respondent said that the petitioner has taken contradictory stands in the civil suit filed by it at the Court at Jabalpur (MP) and before this Tribunal. In the present petition, the petitioner has alleged that it was not supplied the copy of the subscription agreement which he had signed on 01.06.2006. The petitioner has further alleged that it was only after the petitioner filed the suit at the civil court at Jabalpur that it obtained the subscription agreement, when the answering respondent filed the subscription agreement in the court. The aforesaid contention of the petitioner is incorrect and also contrary to the record before the Jabalpur Court and also before this Tribunal. Mr. Maninder Singh said that the petitioner in the suit filed before the Jabalpur Court [Pg. 43 of the paper book] had alleged that the answering respondent had orally agreed to supply the signals of the answering respondent. The petitioner in the said suit had further alleged that it had signed some papers which he did not read but a contract was set up orally between the parties. In the present petition however, the petitioner has stated that it has signed subscription agreements for Bouquet-I and Bouquet-II on 01.06.2006 with the answering respondent. It is pertinent to mention that the subscription agreement annexed by the petitioner at page 19 to 28 have the signatures of the petitioner only and not the signatures of the representatives of the respondent. Copies of the subscription agreements filed by the respondent before the Civil Court Jabalpur are annexed as Annexure R-1 which had signatures of both parties. Mr.

Maninder Singh said that this clearly demonstrates that when the petitioner filed the present petition placing on record copies of the subscription agreement, other than the copies which the petitioner herein had received alongwith the reply filed by the respondent before the Id. Court at Jabalpur, the statement made in the present petition that the petitioner never had copies of the subscription agreements is absolutely false and has been made deliberately to mislead this

Tribunal.

11. Relying again on the rejoinder, Mr. Malhotra said that Zee in mid-2006 had virtually no demand in Jabalpur. According to him, Zee fixed the price of their bouquets at more than two times that of the Star bouquet. He stated that when the subscriber bases are negotiated factors like popularity, viewership, TRP ratings and price etc. are taken into consideration. According to him it was on respondent's request that petitioner obliged the respondent to carry its channels for a base of approximately 4000 and odd. Mr. Maninder Singh however said that at the time of signing of the agreement, the petitioner declared a subscriber base of 4221 which the respondent accepted as honest declaration and went in to sign the agreement with the rider that petitioner will come forward with the number of cable operators and correct subscriber base which it never did. It was only in September, 2006 that the respondent came to know of petitioner having cheated on the respondent. Whereas it was paying to Star for more than 41,000 subscribers, the respondent was being paid only for 4221 subscribers. On the issue of popularity and viewership he vehemently disagreed with the petitioner and said that Zee's channels are equally popular. He further said that by and large the negotiated figure of Zee Channels is approximately 70 to 80% of that of Star Channels because of higher price of Zee bouquets. He said that otherwise the popularity in the similarly placed areas is same for Star and Zee.

12. Having gone through the pleadings and the documents produced by both the parties and having heard the arguments, I find that the initial petition does not have enough substance whereas the petitioner has tried to make his case strong through the rejoinder. The petitioner was under obligation to submit the details of the cable operators and the subscribers to the respondent which was not done and it was enjoying the signals of the respondent by paying for a very small subscriber base as compared to that of Star. The respondent had written to the petitioner for producing details to arrive at the correct subscriber base. However, the respondent came to know of much higher subscriber base of Star while as per the agreement the petitioner was under obligation to submit the data to arrive at the correct subscriber base. The petitioner had not done so despite letters written by the respondent. Therefore, at least from September, 2006 the petitioner is

under obligation to pay for the higher subscriber base. Question is how much? For the period prior to 1.9.2006, i.e., from the date of agreement till 31.8.2006, the petitioner will pay as per the agreement.

13. During the pendency of the petition we had asked the parties to mutually and amicably negotiate and settle this issue but the parties failed to arrive at a settlement. I have to therefore decide the subscriber base based on the pleadings.

14. It is evident from the above arguments and the pleadings that the petitioner is transmitting signals to all the subscribers either directly or through other cable operators by using a cable feed for the complete transmission. Since the transmission is through cable feed, all the subscribers have access to all the signals of all broadcasters being transmitted by the petitioner on this network. The viewership for the respondent's channels is therefore the same as of other broadcasters like Star. Since the petitioner has signed a negotiated subscriber base of 41,869 with Star, the same figure should be applicable for the agreement with the respondent also. However, it is also a fact that negotiated subscriber base is not the same for all the broadcasters. The petitioner having initially entered into an agreement with the respondent for 4221 subscribers was supposed to present its list of cable operators and subscribers to the respondent for a final subscriber base which was not done. Prima facie, this subscriber base for the respondent also should be 41869 but since the respondent itself has stated that generally the negotiated base of Zee channels is 70 to 80% that of Star channels, I have to depend on this figure to arrive at the subscriber base of the petitioner with respondent. I have no means to arrive at the exact figure. However, going by the fact that the respondent was later entry into the cable network of the petitioner, it will be fair to grant the lower slab of the bracket of 70 to 80% of Star figure as admitted by the respondent, i.e., 70% in the instant case, the subscriber base of petitioner with Zee should be about 28,000. I direct that with effect from September, 2006, the petitioner pays to the respondent for a subscriber base of 28,000 at the rate agreed to in the agreement. Subject to the petitioner paying the respondent on the basis of a subscriber base of 28,000 with effect from 1.9.2006 up to date and till a fresh agreement is entered into, the respondent will not discontinue the supply of its signals to the petitioner.

