

**intermedia Cable Communications Pvt. Ltd Versus M/S Zee Turner Ltd. and Others**

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**Court :** Telecom Disputes Settlement and Appellate Tribunal TDSAT

**Decided On :** Dec-16-2009

**Judge :** S.B.SINHA, CHAIRPERSON & HONOURABLE MR.G. D. GAIHA, MEMBER

**Appeal No. :** PETITION NO.40(C) OF 2009 & M.A. NO.94 OF 2009

**Advocate for Pet/Ap. :** FOR THE PETITIONERS: NAVIN CHAWLA, SHARATH SAMPATH, ADVOCATE. FOR THE RESPONDENT: MANINDER SINGH, SENIOR ADVOCATE, WITH PRATHIBA M. SINGH, SAURABH MISHRA, ARJUN NATARAJAN, NITYA THAKUR, ADVOCATE.

**Judgement :**

The petitioner is an MSO based in Pune. It had entered into two subscription agreements dated 01.01.2005 with the respondent for transmission of its signals to subscribers. Inter alia on the premise that the respondent had issued a notice in terms of clause 4.5 of the regulation as also published a public notice dated 07.03.2009, the instant petition has been filed claiming inter alia, the following reliefs :

“(a) restrain the respondents from in any manner deactivating or disturbing the supply of their TV channel signals to the petitioner.

(b) set aside the impugned public notice dated 07.03.2009 issued by respondent no. 1

(c) direct the respondent no. 1 to enter into the subscription agreement in terms of the minutes of the meeting dated 11.4.2008 upon complying with the conditions set out therein and as set out above.

(d) direct the respondent no. 1 to forthwith supply their TV channel signals to the petitioner on digital mode through the SMS system installed by the petitioner and charge on the basis of CAS rates for the same.”

2. By reason of an order dated 24.03.2009, this Tribunal recorded the request of the parties expressing their intention to resolve their disputes and differences amicably. It did not materialize.

A formal notice was however issued on 29.07.2009. This Tribunal opined that all issues between the parties should be settled through negotiations. Various meetings were held between the parties. Pursuant thereto inspections were also held in the premise of the petitioner.

3. Parties exchanged their pleadings.

From the order sheet dated 20.10.2009, however, it appears that the following contentions were raised by the respondent:

1. The subscription amount should be determined at Rs. 52 lakhs p.m approx, and

2. There is outstanding dues of Rs. 3.15 crores

4. This Tribunal directed:

1. As an interim measure, the petitioner is to pay to the respondent subscription fee @ Rs. 40 lakhs plus statutory taxes p.m. w.e.f. 24.03.2009 till final disposal of the petition.

2. A sum of Rs. 2 crores out of Rs. 3.15 crores as lumpsum amount be paid to the respondent.

5. The petitioner filed a writ petition against the said order before the High Court of Delhi. The said Writ Petition marked as WP(C) 12670 / 2009. By an order dated 27.10.2009, the aforementioned interim order was set aside by the High Court, inter alia, stating:

"1. Learned senior counsel for the petitioner states that the petitioner without prejudice to rights and contentions and subject to the final outcome of the appeal will deposit Rs.2 crores on or before 7th November, 2009. The statement is taken on record and accepted.

2. The next question relates to direction to the petitioner to pay Rs.40

lacs plus statutory taxes per month with effect from 24th March, 2009 till the petition is finally decided. The directions given by the learned Telecom Disputes Settlement and Appellate Tribunal are without reasons. Learned counsel for the petitioner in this regard has drawn my attention to the averments made in the writ petition and has also pointed out that the petitioner was earlier paying monthly subscription fee of Rs.30,05,660/-. Learned counsel appearing for the respondent No. 1, on the other hand, submits that the direction for payment of Rs.40 lacs plus statutory taxes was a consent order having regard to the fact that the respondent No.1 has raised a claim of Rs.52 lacs per month. Learned counsel for the petitioner disputes and denies the said contention. Learned counsel further states that as the petitioner company had agreed to pay Rs.2 crores, they are liable to pay monthly subscription charges only with effect from 21st November, 2009 and not from 24th March, 2009. Learned counsel for the respondent No. 1 disputes the said contention on the ground that it is entitled to monthly subscription @ Rs.52 lacs from 24th March, 2009.

3. Admittedly, the order dated 20th October, 2009 passed by Telecom

Disputes Settlement and Appellate Tribunal is non-speaking order. It does not deal with the contention of the parties or state the reason why interim direction to pay Rs. 40 lacs per month is being passed. Accordingly, the matter is remanded back to the tribunal for fresh adjudication on the interim application. The learned tribunal will give reasons for deciding the application and will not be influenced by its earlier order dated 20th October, 2009. It is clarified that this Court has not expressed any opinion on the merits of the order dated 20th October, 2009 in favour of the petitioner or the respondent. The matter is already listed before the learned tribunal on 4th December, 2009. However, it will be open to the parties to move an application for early hearing and fixation of the earlier date. The writ petition and all pending applications are disposed of."

In view of the aforementioned directions of the Hon'ble High Court, this matter was heard by us afresh.

Mr. Navin Chawla, learned counsel appearing on behalf of the petitioner has contended :

(a) The petitioner is ready and willing to pay the subscription amount @ Rs. 30 lakhs which was payable in terms of the agreement.

(b) Detailed negotiations having been held by and between the parties not only with regard to the amount of subscription fees for renewal of the agreement but also towards carriage charges, as also in view of the fact that in the meeting dated 3.8.2009, the respondent offered a subscription fees of Rs. 40 lakhs inclusive of taxes, it is inconceivable that the petitioner could be put in a worse position by reason of an interim order or otherwise.

(c) The petitioner has been asking the respondent for fixation of amount of subscription on a-la-carte basis and not on the basis of an offer of bouquet and if the said offer is accepted, the amount of subscription fee would come to less than Rs. 30 lakhs per month.

(d) As the petitioner had established Subscriber Management System(SMS), the respondent should be directed to supply signals as in the CAS area.

(e) The number of subscribers or the SLR could not have formed the basis of agreement.

(f) The Telecom Regulatory Authority of India in its regulation dated 17.03.2009 clearly directed that attempts should be made to move towards digitalization wherefor RIO plus Voluntary CAS had also been recommended.

(g) The contention of the respondent that the petitioner had been paying subscription fees of Rs. 52 lakhs could not have formed the basis of its demand as Star had also offered the carriage charges to it as a result whereof it is the respondent who is pay some amount to the petitioner.

Mr. Maninder Singh, learned senior counsel appearing on behalf of the respondent, on the other hand, urged:

(i) Pune having not been declared a CAS area, no relief cannot be granted by this Tribunal as prayed for in prayer (d) or otherwise.

(ii) As the question of charges payable for CAS services is being considered by TRAI, this Tribunal cannot issue any direction in this behalf.

(iii) In any event, TRAI had contemplated voluntary CAS and not an involuntary one, no relief can be granted to the petitioner on that basis.

(iv) In terms of the provisio appended to Regulation 3.2 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 (13 of 2004), as amended on 17.03.2009 carriage charges in law being not permitted the same cannot be mixed up with subscription fees, and thus, the prayer of the petitioner cannot be acceded to particularly in view of the fact that the legality of the said provision is not in question.

(v) No relief having been sought for against Respondent No 2, the contention of the petitioner raised with regard to adjustment of carriage fees from this amount of subscription fee cannot be acceded to.

(vi) In any event the agreement by and between the petitioner and the respondent no. 1 having expired and furthermore, the agreement for payment of carriage charges by and between the petitioner and respondent nos. 2 and 3 having also expired, the amount payable under different agreements cannot be adjusted.

6. Before advertng to the rival contentions raised on behalf of the parties, we may notice that indisputably, in a meeting dated 28.03.2008 the parties hereto discussed various issues. The respondent No.1 company was represented by four representatives led by one Shri Arup Gopikrishna whereas the petitioner was represented by its Chairman. Para 5 and 6 of the resolution adopted in the said meeting read as under:

"5. Mr. Arup Gopikrishna expresses the willingness on behalf of the Zee Turner Ltd. to enter into a fresh agreement with ICC with effect from April 2008 based on the subscriber base as per the existing invoices raised on ICC. However, ICC had expressed their concern that post the "Tariff Order" dated 04.10.2007 of TRAI subscribing to channels on Bouquet bases is unaffordable to ICC under the circumstance already explained in point no. 2 above. Mr. Arup Gopikrishna expressed the willingness on behalf of Zee Turner Ltd. to discuss and finalise fresh agreement to the mutual benefits of both the companies at the same sub-base.

6. Post finalization of fresh agreement Mr. Arup Gopikrishna has also assured ICC that Zee Turner Ltd., would be giving signal for its Zee Sports channel for a nominal subscription fee. Further he has asked ICC to consider subscribing to Zee Next and Zee Talkies channels, the subscription fee for which would also be nominal. ICC has assured to take a decision in this matter based on the negotiations for channel placement fees for 2008-09 which is likely to be concluded in the near future."

8. Another meeting took place on or about 11.04.2008. In the minutes of the meeting recorded at paras 4.1, 4.2, 4.3 and 4.5, Shri Arup Gopikrishna appears to have acknowledged that the petitioner had been suffering losses towards non receipt of revenue from hotels and commercial establishments operating in its network area, whereas revenues were being collected directly by Zee Turner Ltd. through their authorized distributors. It was given out that the senior management of the company agreed to compensate IMCL in this behalf.

It is, however, contended that according to the respondent Shri Gopikrishna in absence of any other officers, representing the management in the earlier meeting, had no independent authority to give any assurance to the petitioner.

9. Indisputably, the subscription fee payable by the petitioner was Rs.30,05,660/- p.m. without taxes. According to the petitioner, respondent no. 2 and respondent no. 3 were to pay a sum of Rs. 24 lakhs p.m. towards carriage charges.

10. It however, appears that another meeting took place on 03.08.2009 wherein order of the Hon'ble Supreme Court of India dated 12.02.2009 staying the operation of this Tribunal's order dated 15.01.2009 in regard to Tariff Order for CAS area was noticed. Prayer (d) in the said petition is premised thereupon.

Another meeting took place on 20.10.2009.

11. It is also relevant to notice that an invoice dated 08.01.2009 was issued by Star Den Media Services Pvt. Ltd. whereby and whereunder the petitioner was asked to pay a sum of Rs.45,47,357.52 which is stated to be based on the subscriber base of 48492 and the same subscriber base for the respondent's channels is equal to a sum of Rs. 52 lakhs approximately as subscription fees. It is also of some significance to notice that the agreement between the parties expired in March 2009. The terms and conditions of the agreement including the renewal thereof is governed by Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004, which was amended in the year 2006 by a regulation known as The Telecommunication (Broadcasting and Cable Services) Interconnection (Third Amendment) Regulation, 2006" (10 of 2006). Clause 8 of the said regulation reads as under:

"8. Time Period for Renewal of existing agreements

8.1 Parties to an interconnection agreement for supply of TV channel signals shall begin the process of negotiations for renewal of existing agreement at least two months before the due date of expiry of the existing agreement.

Provided that if the negotiations for renewal of the interconnection agreement continue beyond the due date of expiry of the existing agreement then the terms and conditions of the existing agreement shall continue to apply till a new agreement is reached or for the next three months from the date of expiry of the original agreement, whichever is earlier. However, once the parties reach an agreement, the new commercial terms shall become applicable from the date of expiry of the original agreement.

Provided further that if the parties are not able to arrive at a mutually acceptable new agreement, then any party may disconnect the retransmission of TV channel signals at any time after the expiry of the original agreement after giving a three weeks notice in the manner specified in clause 4.3. The commercial terms of the original agreement shall apply till the date of disconnection of signals."

12. As three months' period contemplated in terms of the said Regulation has since expired, the petitioner therefore, as of right cannot put forward a claim that the respondent is obligated to accept only charges of Rs. 30,05,660/- towards subscription fees from it. An agreement between the parties must be a consensual one; it cannot be unilateral.

This Tribunal although exercises some jurisdiction in respect thereof, but the same is ordinarily limited to fairness and / or reasonableness thereof.

13. Some issues by and between the parties might have been discussed in various meetings. The petitioner strongly relied upon minutes of the meeting dated 3.8.2008 in terms whereof an offer was made by the respondent for payment of subscription fees of a sum of Rs. 40 lakhs inclusive of statutory taxes. The petitioner however, did not accept the said offer. According to it, the same was a burdensome one, keeping in view the various problems faced by it.

It will bear repetition to state that the petitioner before us, however, agreed to pay an amount of Rs. 30,05,660/- by way of monthly subscription fees as an interim measure.

14. The question which arises for our consideration is as to what should be the amount of subscription fees directed to be paid by the petitioner as an interim measure.

15. Before, however, we advert to the said question we may place on record a controversy which is a matter of serious concern to us, that is whereas according to Mr.Maninder Singh, the said order was passed with consent but the said words were inadvertently left out; Mr.Navin Chawla denies and disputes the same. The order of the Hon'ble High Court shows that before the High Court the petitioner accepted to pay a sum of Rs. 2 crores to the respondent. Mr. Chawla very fairly states that concession made before the High Court was based on consensus of the parties in relation thereto. Such a fair stand, however, was taken before the High Court only on the basis that at least a part of the order of this Tribunal was based on consent by the parties.

16. It, therefore, stands accepted that the parties have arrived at some agreement. The petitioner, however, appears to have contended before the High Court in response to the submissions of Mr.Maninder Singh that the said interim order was not passed on consent. It is difficult to conceive in the facts and circumstances of the case that only a part of the order was passed on consent and not the entire one. We would however, proceed on the assumption that there was some confusion in the matter although one of us recalls that the said order was passed by consent but indisputably the said fact has not been mentioned in the order-sheet.

17. Be that as it may, for the purpose of passing an interim order, the court has to arrive at certain figures so that despite expiry of the tenure of the agreement, MSO can be conferred the benefit of transmitting the signals of the channels of the broadcaster.

18. The petitioner for one reason or the other did not pay any amount whatsoever towards the subscription fees. The parties had entered into an agreement. For one reason or the other, however, they could not arrive at a consensus on the terms and conditions of the agreement for renewal thereof.

19. This petition was filed on 23.03.2009 i.e. even prior to the expiry of the said agreement.

The public notice was issued on 07.03.2009 for non-payment of outstanding dues and non-renewal of subscription agreement. The invoice dated 25.02.2009 shows a total outstanding due was Rs. 1,23,05,229.68.

On the basis of 48492 subscriber base for Bouquet-I, Bouquet-II and Ten sports channel, according to the respondent, the outstanding amounts shall be as under:

Cumulative outstanding

1,75,81,165.00 liabilities upto 23.03.2009 @ a monthly subscription of 300566 lakhs without taxes for 31828 subscribers

2,28,19,287.62 liabilities beyond 24.03.2009 @ monthly subscription of 52.38 lakhs

2,80,57,410.24

3,32,95,532.86

3,85,33,655.48

4,37,71,778.10

4,90,09,900.72

5,42,48,023.34

5,94,86,145.96

6,47,24,268.58

4,47,24,268.58

20. The matter of renewal of agreement cannot be put on hold for all time to come. The petitioner prima facie cannot rely on one part of the offer while refuting the other. It appears from the minutes of the meeting dated 08.04.2009 that it was inter alia agreed:

“(V) on the issue of applicability of CAS area rates and applicability of tariff ceiling as fixed by TRAI as per its Notification dated 4th October 2007 both the parties have agreed that in the absence of the notification of the Ministry of Information and Broadcasting (MIB) for Pune and due the pendency of the Appeal before Hon’ble Supreme Court of India relating to the Tariff Order of 4th October 2007, it would not be appropriate to press on these issues.

(VI) due to some unavoidable circumstances the authorized representatives of ZEEL (“Zee Entertainment Enterprises Ltd.”) and ZNL (Zee News Ltd.) could not attend today’s meeting and hence no decision on the pending carriage issue for the period 01.04.2008 to 31.03.2009 could be discussed. Now both the parties have agreed to meet on 17.04.2009 at 11.00 AM at Zee Turner’s Noida office to further discuss the remaining pending issues.”

21. A meeting was also held on 03.08.2009. Para 2 of the minutes of the meeting read as under:

“during the course of the discussion the representatives of ZEEL and ZNL have clarified that they have nothing to do with the issue of subscription agreement ICC has to execute with Zee Turner for the period 01.04.2009 to 31.03.2010, Further it has also been clarified to ICC representative that in the last carriage agreement executed with ICC for the period 01.04.2008 to 31.03.2009 it was specifically mentioned that carriage charges shall not be adjusted/set off against subscription charges payable by ICC to Zee Turner. Moreover, the representatives of ZEEL/ZNL have offered to pay to ICC for the period 01.04.2009 to 31.03.2010 a lump sum amount of Rs. 2.10 crores (Rupees Two crores Ten lakhs only) per annum towards carrying their following channels on ICC network:

However, ZNL/ZEEL had stated that in case ICC does not execute a fresh subscription agreement with Zee Turner then ZNL/ZEEL’s aforesaid offer shall stand cancelled.”

22. The petitioner however, for reasons best known to it, did not sign the minutes of the said meeting. From the said letter, it appears that petitioner’s authorized representative also did not sign the minutes of the meeting on 08.04.2009.

23. According to the respondent the said agreements dated 01.02.2005 were executed on the basis of subscriber base of 31828. It has furthermore been contended that distribution of signals of Ten Sports channel moved from Sony to the respondent only on 01.04.2008 but still then the petitioner had not paid any amount for signals of the said channel.

24. It has furthermore been contended that despite requests made by the respondent it did not furnish all relevant documents including fresh SLR for entering into fresh agreement for the period 01.04.2008 to 31.03.2009.

25. It is in the aforementioned situation in our opinion, prima facie, the respondent was entitled to put forward its claim with regard the subscription fees. This Tribunal was entitled to direct the petitioner to pay the monthly subscription fees of a particular sum as an interim measure. There cannot be any doubt or dispute that such a direction cannot be premised on whims and caprice on the part of the Tribunal. It must have a rational basis although it may not been possible to arrive at a mathematical exactitude.

26. So far as the arrears are concerned, the petitioner was bound to pay the aforementioned agreed sum of Rs. 1.75 crores at one go, if it wanted to obtain a stay on the operation of the public notice. But it did not do so. Even from March 2009 till the date of passing of the interim order, it did not offer any other or further sum to the respondent. It could not have forced the respondent to accept all its contentions. While negotiating it could not have accepted part which is favourable to it and reject which is not. Minutes of the meeting must be given effect to in its entirety. The petitioner was at liberty to either accept the same or reject it.

27. So far as the contention of the petitioner that it was entitled to carriage charges from respondent no. 2 and respondent no. 3 are concerned, the same cannot be accepted for more than one reason:

1. No prayer has been made as against the respondent no. 2 and respondent no. 3. Having impleaded them as parties in this petition it does not lie in the mouth of the petitioner to contend that no such relief has been claimed, as the respondent no.1 is the alter ego of respondent no. 2 and respondent no. 3 particularly when even no such plea has been raised in the petition

2. The TRAI in its regulation framed on 17.03.2009 has inserted a proviso. We may notice the same

“3. In regulation 3 of the principal regulations, -----

After the second proviso to sub-regulation 3.2, the following proviso shall be inserted, namely :-

Provided also that the provisions of this sub-regulation shall not apply in the case of a distributor of TV channels, who seeks signals of a particular TV channel from a broadcaster, while at the same time demanding carriage fee for carrying that channel on its distribution platform.”

The Explanatory Memorandum attached to the said clause reads as under :

“This has been done to ensure that the broadcasters are not forced to supply their channel in terms of regulation 3.2 and at the same time forced to pay carriage fee for the same channel. This amendment has been made to prevent a distributor of TV channels from misusing the regulation 3.2.”

28. The question as to whether the petitioner would ultimately found to be entitled to an agreement with the respondent at the rates prescribed for CAS in terms of the recommendations made by TRAI or not cannot be determined at this stage.

29. Prima facie, however, such an agreement must be arrived on a consensual basis. We would assume that the contentions of the respondent that its Vice President was not authorized to make promises on behalf of the senior management in absence of three other representatives is not correct.

Such assurance however having regard to the legal position cannot be given effect to; in view of the fact that an agreement by and between the petitioner and the respondent No.1 as also between the respondent no. 2 and the respondent no. 3 have also expired. Mr.Chawla furthermore was very fair in stating that the petitioner had not been putting the respondent on the preferential basis in its system on and from 01.11.2009. We have hereto before, noticed the change in the legal position.

30. The parties were required to enter into an agreement in writing. Despite several meetings, they did not arrive at any consensus. If the petitioner does not agree to some of the terms, it could have signed the agreement subject to its objection in regard to the particular clauses.

We may place on record that this Tribunal in Petition no. 44(c) of 2004 on 17.01.2006 (Star India Pvt. Ltd. v Indusind Media and Communications Ltd.) held as under:

“This raises another question as to who has to approach this forum for the redressal of its grievance.

Shri Salve contends that it is the signal seeker who should approach this forum while Shri Kathpalia contends that it is the broadcaster who should approach the Tribunal if the receiver of signals disagrees with the terms of the agreement.

We do not find much difficulty in deciding this issue. The broadcaster is the owner of the signals. If any of the other service providers seeks his signals, normally it should be on agreed terms. The right to propose the terms is with the seller but this right is regulated by the Interconnect Regulations which mandates the owner of the signals to supply signals on a “must provide” basis and on reasonable terms. At the same time, the Regulations governing the subscription agreement require a written agreement being signed before the supply of signals. On a perusal of these regulations we are of the opinion that seeker of the signal must negotiate with the supplier of signals and if such negotiations fail he should approach this Tribunal for redressal of his grievances. In such cases if the seeker of signals wants immediate signals or his current signals not to be disrupted, it can always pray for an interim arrangement being made by this Tribunal and the Tribunal may in a given case protect the interest of both the parties by making suitable interim orders.

In the above view, we hold in the instant case, IMCL being the seeker of the signals, if the terms proposed are not acceptable on grounds of unreasonableness it may challenge the same and in a petition so challenging it, may seek such interim order as it may think necessary.

If this procedure is not followed it is likely that many a service provider who is receiving signals, would by virtue of an interim order made by this Tribunal or other forums, in one or other earlier case, may refuse the terms of fresh agreements as and when due and can continue to receive signals under those interim orders.

We will now advert to the last argument of the learned counsel for the respondent whereby it is contended that now that the matter is before this Tribunal and the draft agreements proposed by Star is on file as also the grounds of attack by IMCL to some of the terms of the said agreement, this Tribunal should embark upon an enquiry as to the validity of the terms of the agreement in this petition itself.

We cannot accede to the above request. If a party is aggrieved by any one of the actions of the other party, the aggrieved party should approach this Tribunal based on that cause of action. May be in some exceptional case and on certain set of facts, to avoid multiplicity of proceedings this Tribunal if it thinks fit and convenient and in the interest of justice, may embark upon such an exercise. But in the present case, we are not satisfied that such an extraordinary procedure should be adopted by this Tribunal by holding an enquiry in a petition where the petitioner has not challenged the terms of the agreement, thereby converting this petition as that of IMCL’s petition to grant it relief in a petition filed by Star. We think on the facts of this case adopting a procedure suggested by IMCL would only send wrong signals to the litigants. Therefore, if IMCL still remains aggrieved by the terms proposed by Star, it shall if so advised, challenge the unacceptable terms on whatever ground it think it should be challenged.”

31. We may place on record that Mr. Chawla has placed before us a communication by copy of a letter dated 3.11.2009 issued by the petitioner to the respondent to contend that even after the order of the Delhi High Court, the respondent had been approaching the petitioner for negotiation. This may or may not be so it but the same by itself should not come on the way of this Tribunal to pass an order on the interim matter in terms of the directions of the Delhi High Court.

32. Several other issues have been raised. We as at present advised do not intend to enter into any larger controversy. The petitioner has made out a prima facie case for grant of the injunction, but, therefor, it must be put to some terms.

33. It is a fact that the petitioner has signed a subscription agreement for a subscriber base of 31827 on 1.1.2005. The said agreement has expired on 31.12.2005. The petitioner is admittedly enjoying signals since 2006 till date. The signals for Ten Sports have also been enjoyed by the petitioner since 1.4.2008 till it was disconnected on 19.06.2009 by respondent after obtaining orders from the High Court of Delhi as contended by the petitioner. When the petitioner threatened the respondent for alleged willful disobedience of the orders of the Tribunal, the respondent has taken the plea of the requirement of the change of decoders. Ten Sports has again been disconnected since 1.07.2009, while West-Indies Bangladesh series was on, as contended by the petitioner.

It is an indisputable fact that no fresh SLR has been given by the petitioner to respondent and since 2005 till date the subscriber base of 31827 is only being paid at the rates prescribed for different Bouquets/channels of the respondent. On the other hand, the petitioner is paying for 48492 subscribers at a monthly charge of Rs. 45.57 lakhs with taxes. The subscriber base of Star Den is a negotiated subscriber base of a contemporary and similarly placed channel and therefore, 40 lakhs + taxes appears to be a reasonable figure for the petitioner to pay to the respondent.

34. This Tribunal, has to, fix the quantum of subscription fees payable by the petitioner. We, keeping in view of the rival contentions of the parties i.e. whether the subscription fee is 30 lakhs or 52 lakhs, are of the opinion that this Tribunal's order dated 20.10.2009 does not require any modification, as the amount of Rs.40 lakhs plus taxes appears to be reasonable. It must be emphasized that the petitioner has not been asked to pay the entire outstanding at a time. It has also not been asked to pay any interest thereupon.

35. We for the reasons stated hereinbefore reiterate our interim order dated 20.10.2009.

36. The petitioner must pay the dues within 30 days from date failing which the interim order shall stand vacated without any further reference to the Bench.

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