

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**NEW DELHI****DATED 22nd MAY, 2007****Petition No.133(C) of 2006**

Hathway Media Vision Pvt. Ltd.
 formerly known as
 “United Cable Network Pvt. Ltd.”
 having its registered office at:
 ‘Rahejas’, 4th Floor Corner of
 Main Avenue & V.P. Road
 Santacruz (W)
 Mumbai – 400 054

...Petitioner

Versus

M/s Silver Star Cable Network
 through Mr.Shakeel Shaikh
 Sole Proprietor
 Room No.17 # 10,
 Worli Police Camp
 Mumbai – 400 018

...Respondent

BEFORE:

HON’BLE MR.JUSTICE ARUN KUMAR, CHAIRPERSON
LT.GEN.(Retd) D.P. SEHGAL, MEMBER

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 For Petitioner : Ms.Darakshan Tarannum for
 Mr.Vibhav Srivastava, Advocate

ORDER

By this petition filed under Sections 14 and 14A of the Telecom Regulatory Authority of India Act (for short ‘TRAI Act) the petitioner has sought recovery of amount due to it from the respondent on account of supply of cable feed. The petitioner company was previously known as United Cable Network Company Pvt. Ltd. and its name has been changed to M/s. Hathway Media Vision (P) Ltd. vide Certificate of Incorporation dated 26.12.2003 issued by the Registrar of Companies, Maharashtra in this behalf. The petitioner is a multi system operator (MSO) and

is engaged in the business of distribution of satellite television signals to various distributors, franchisees, local cable operators (LCOs) etc. The respondent is a sole proprietorship concern of one Mr. Shakeel Shaikh who is working as a local cable operator operating in the area of Worli, Mumbai. The cable feed which the petitioner receives for distribution amongst its various clients including the respondent is to be paid for by the LCOs like the respondent. The petitioner raises monthly invoices for the payments which fall due to it and the respondent is supposed to pay the same regularly as a condition for continued supply of signals. The petition was filed in April, 2006 and the petitioner claimed a sum of Rs.10,65,579/- which includes interest @ 18% per annum. The break up is that a sum of Rs.8,45,356/- was claimed as the principal amount on account of supply of cable feed while Rs.2,16,223/- was claimed as the interest on the said amount @ 18% per annum.

The case of the petitioner is that the petitioner had been supplying to the respondent signals of various television channels which it used to get from the broadcasters. In turn the respondent acting as the local cable operator used to supply the signals to the consumers. The respondent was supposed to pay on monthly basis for supply of signals at a pre determined rate based on number of subscribers. It is alleged that there has been persistent default on the part of the respondent in making these payments. The petitioner has pleaded that first it served a legal notice to the respondent on 20th December, 2003 claiming the amount then due from the respondent to the petitioner along with interest. The notice was duly received by the respondent but there was no reply to it by respondent. This was followed by notices dated 15th March, 2004, 1st April, 2004 and 1st March, 2006. These notices were dispatched at the address of the respondent from where he is operating but were returned undelivered with the reports of 'refusal' which means that the respondent is deliberately not receiving mail addressed to it by the petitioner. Thus respondent is not only avoiding to make payment but is also avoiding to receive any correspondence from the petitioner.

Notice of this petition was served on the respondent. The respondent filed a reply under his own signatures stating that he cannot afford the expenses of litigation and the expenses of coming to Delhi and engaging lawyers. Therefore, his reply may be considered as his defence. We have perused the reply filed by the respondent. It is a totally evasive reply containing bald

denials. The respondent has disputed the number of subscribers on the basis whereof the petitioner has sent invoices to the respondent. However, the respondent does not come out with a figure of his own subscribers base. If the respondent was to make a valid defence it should have at least stated that according to it the subscribers were so many and not the number on the basis of which the petitioner had billed it. The respondent does not come out with any facts and figures. The respondent has not replied to the notice which was as per evidence on record admittedly received by it. It has refused to receive letters addressed to it by the Petitioner. In these circumstances we are unable to find any defence that could be said to have been raised to the petition. A bald denial cannot be taken as a defence at all. The party denying the averments of the opposite party must disclose its version of facts. The petitioner has stated in one of the paras of the petition that the respondent should be called upon to disclose the number of subscribers. In spite of this specific stand of the petitioner the respondent has chosen not to say anything in reply to this. Respondent does not state what is the number of subscribers according to it. Therefore, we have to go by the averments contained in the petition.

According to the petitioner, respondent made certain part-payments towards discharge of its liabilities. Last such payment was, according to the petitioner, received by it in December, 2003. No payment is said to have been received by the petitioner thereafter. The petitioner submits that it has been sending the invoices regularly to the respondent and the last invoice was sent by the petitioner to the respondent in April, 2006.

To satisfy ourselves about the claim of the petitioner we have gone through the record, we find that the petitioner has placed on record copies of the various invoices raised by it on the respondent. It has also filed a complete statement of account of the respondent as per its books of accounts. It is a running account of the respondent which the petitioner had in its books of accounts. Entries of debit and credit are posted therein in regular course of business. The petitioner has filed an affidavit by way of evidence in support of its stand in the petition. An affidavit has also been filed by the respondent. However, in this affidavit the respondent only expressed his difficulty in not being present before this Tribunal and requested that he may be exempted from remaining personally present. It also says that settlement talks are going on between the parties. In this affidavit the respondent does not disclose any factual position, nor it

contradicts the stand of petitioner in its affidavit. Neither in the reply filed by the respondent to the main petition, nor in the affidavit filed by it, there is any mention of respondent having ever objected to the Bills/Invoices raised by petitioner on respondent for payments due to petitioner from respondent.

Accordingly we find that the petitioner has made out a case for recovery of its dues from the respondent on account of supply of signals to the respondent. We direct respondent to pay a sum of Rs.10,65,579/- being the amount due to petitioner from respondent on the date of filing of this petition. The respondent will also be liable to pay interest on this amount @ 12% per annum from the date of filing of this petitioner till realization of the said amount.

.....**J**
(Arun Kumar)
Chairperson

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(D.P. Sehgal)
Member