

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

DATED 17th April 2009

Petition No. 321(C) of 2006,

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R.G. Rupta & Sons
C/o Choice of Century
A-1, Kadma Market,
East Singhbhum
Kadma, Jharkhand.
Through its proprietor
Shri B.M. Gupta

.....

Petitioner

Versus

M/s. Sunny Cable TV Network
Shastri Nagar, Main Road,
Kadma, Jamshedpur,
Purbi Singhbhum – 831005.

.....

Respondent

Petition No. 322(C) of 2006

R.G. Rupta & Sons
C/o Choice of Century
A-1, Kadma Market,
East Singhbhum
Kadma, Jharkhand.
Through its proprietor
Shri B.M. Gupta

.....

Petitioner

Versus

M/s. Manjoj Cable Network
Q.No. 59, RD No.-3,
New Rani Kudar,
Jamshedpur
Purbi Singhbhum – 831005
Jharkhand.

Through its sole proprietor Mr. U.N. Thakur

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Respondent

Petition No. 323(C) of 2006

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R.G. Rupta & Sons
C/o Choice of Century
A-1, Kadma Market,
East Singhbhum

Kadma, Jharkhand.
Through its proprietor
Shri B.M. Gupta

..... Petitioner

Versus

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M/s. Jay Shree Interprises,
E.C.C. Flat, F. No. 323(A)
Uliyan, Kadma,
Jamshedpur
Purbi Singhbhum – 831005.
Through its sole proprietor Ms. Jarina Devi

..... Respondent

BEFORE :

HON'BLE MR. JUSTICE ARUN KUMAR, CHAIRPERSON
HON'BLE DR. J.S. SARMA, MEMBER
HON'BLE MR. G.D. GAIHA, MEMBER

For Petitioner : Mr. Navin Chawla, Advocate

For Respondents in all cases : Mr. Arun Kathpalia,
Mr. Vibhav Srivastava,
Mr. Virender Singh Thakur, Advocates

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ORDER

These are three petitions which have been filed by the petitioner for recovery of alleged dues of feed charges to M/s. Sunny Cable TV Networks, M/s. Manoj Cable Network and M/s. Jayshree Enterprises. R.G.Gupta & Sons, the petitioner claims to be a Multi System Operator (MSO) re-transmitting various free to air and pay channels to its direct subscribers as well as through other cable operators in Jamshedpur. In all these cases it is an admitted fact that no written agreement exists between the petitioner and the respondents. While seeking recovery of the dues allegedly owed to the petitioner by the respondents, the petitioner has also prayed for an order to restrain the respondents from obtaining signals from some other MSO or directly from a broadcaster without first clearing the dues outstanding to it, in terms of the Explanation to clause 3.2 of the Interconnect Regulations. The petitioner has claimed to have supplied signals of various pay and free to air channels to respondents from June 2003 upto the year 2006 and part of the year 2007 and for this purpose had raised regular monthly invoices on the respondents. The petitioner has claimed that the respondents were erratic in making payments and as an evidence it has produced receipts showing the amount paid alongwith the date of payment. The petitioner has claimed that inspite of various requests, the respondents did not pay the arrears and, therefore, petitioner was left with no choice but to issue a demand notice dated 27.09.2006 including a statement of account for a sum of Rs.

2,16,738.08 to M/s. Sunny Cables. Similarly for M/s. Manoj Cable Network the petitioner has issued a demand notice dated 3.12.2006 for Rs. 1,52,299/- and to M/s. Jay Shree Enterprises on the same date for an amount of Rs. 2,09,351.38 in the form of statement of account. The petitioner has claimed that since there was no response, it had to serve the notice of disconnection on M/s. Sunny Cable on 19.10.2006, and on M/s. Manoj Cable Network and M/s. Jay Shree Enterprises on 8.12.2006. The petitioner has also claimed to have written to various broadcasters bringing to their notice that respondents are defaulters and that, therefore, they should not deal with the respondents until a no dues certificate is produced by the respondent as mentioned in explanation to clause 3.2 of the Interconnect Regulations. In response, Star India Pvt. Ltd. assured the petitioner that they would abide by the above provision, while One Alliance/Set Discovery Pvt. Ltd. forwarded letter/notice of the petitioner to the respondents for seeking their comments.

2. The petitioner has pleaded that as per the Regulations, the applicant distributor/Local Cable Operator (LCO) of TV channel intending to get the signal feed from any Multi System Operator (MSO) other than the present affiliated MSO, or from any agent/any other intermediary of the broadcaster/MSO, or directly from broadcasters, shall produce alongwith their request for service, a copy of the last monthly invoice showing the dues, if any, from the presently affiliated MSO or from their agent/any other intermediary of the broadcaster/MSO, who collects the payment for providing TV channel signals. The petitioner has submitted that since the respondents are owing the outstanding amounts as mentioned above, the respondents may be restrained from obtaining signals from any other MSO, LCO and broadcasters as per the terms of clause 3.2 of the Interconnect Regulations. The respondents have referred to the claims made by the petitioner as above and have pleaded their case. The pleadings of the respondents alongwith our findings in each of the three cases is as follows:

A. Petition No. 321(C) of 2006

1. In this case the petitioner has filed several invoices and according to it these invoices have not been paid. The petitioner has also filed several receipt memo which he issued to the respondent against the payment made. According to the petitioner it had given a 21 days notice of disconnection vide notice dated 19th October, 2006 to the respondent and had also sent copies of this notice to various service providers.

2. The respondent has completely refuted the claim of the petitioner and has contended that the petitioner in order to exploit the monopolistic situation would threaten disconnection time and again and levy unreasonable subscription charges to disconnect the signals of the respondent. Respondent has further claimed that the petitioner did not raise any bill or invoice till date and all the

invoices annexed to the petition are false and fabricated. Respondent has further contended that the payment of Rs. 20000/- has been made to the petitioner vide receipt no. 1022 dated 25.8.2006 while this amount has not been accounted for by the petitioner in its statement of account. The respondent has also claimed that it was paying the agreed subscription fee of Rs. 10000/- per month from June, 2003 to March, 2005 and since April, 2005 Rs. 15000/-, which was unilaterally increased by the petitioner. The respondent has claimed that the petitioner has made a bogus claim of Rs. 216738/- on the basis of forged invoices which have not been served on him. No proof of service has been submitted by the petitioner in spite of notice under Order XII Rule 8 of CPC which was served by the learned counsel of respondent. Even during cross examination, petitioner has omitted to produce the proof of service which has not been produced on record. A perusal of the invoices annexed in the petition also clearly indicates that vide invoice no. FH-SR-1 dated 1st July, 2006 the current period subscription charges along with the previous outstanding charges have been shown while the regulation requiring the invoices on this basis came into force subsequently i.e. on 4th September, 2006. During the cross examination the proprietor of the petitioner has admitted that he was not issuing invoices to the respondent before the Regulation requiring invoices to be served came into force and it has only started issuing invoices only after the requirement of issuing invoices was mandated vide Regulation dated 4th September, 2006. This shows the fallacy in issuing the invoice as mandated by the subsequent regulation much before the regulation came into force.

3. In the statement of account it has been contended by the respondent that the petitioner has applied the principle of double accounting. The respondent contends that the service tax of 10.2% was introduced in June, 2005 but respondent did not pay the service tax till December, 2005 and requested the petitioner to adjust the service tax within the subscription charges i.e. Rs. 15000/-. The respondent in his reply has expressed that he was shocked and surprised to know from the statement of account annexed with the petition that the petitioner falsely, unilaterally and arbitrarily increased the monthly charges w.e.f. January, 2005. The statement of account shows that the respondent continued to pay Rs. 10000/- per month upto June, 2005 and then Rs. 16000/- in July, 2005. In August, 2006 the receipt submitted by the respondent shows that it had made a payment of Rs. 20000/- for July, 2006. This fact is verified from the receipt annexed by the petitioner. The respondent has claimed that he was paying the agreed subscription fee of Rs. 10000/- from June, 2003 to March, 2005 and since April, 2005 Rs. 15000/-, which was unilaterally increased by the petitioner. In this context the learned counsel for the respondent has brought to our notice the decision of the Apex Court in Chandradhar Vs Gauhati Bank (J. Wanchoo) AIR 1967 SC 1058. It was held in this case that

“No person can be charged with liabilities merely on the basis of entries in the books of account, even where such books of account are kept in the regular course of business. In order, that a person may be charged with liabilities thereunder, except where the person to be charged accepts the correctness of the books of account and does not challenge them.”

In this case, the statement of account submitted by the petitioner has been challenged by respondent to be incorrect and false.

4. We find that there is no proof of service of the invoices which are annexed with the petition. We also find that some of the invoices show the outstanding amount alongwith the current billing prior to the Regulation of 4th September, 2006 coming into force. The cross examination also confirms the above fact.

5. From the perusal of record the monthly charges of Rs. 10000/- per month is not denied. This is the amount shown by the petitioner as monthly billing till Dec, 04. The billed amount shown in statement of account in Jan, 05 and Feb, 05 is Rs. 16000/- and a sum of Rs. 19000/- for March,05, April,05 and May,05. Rs. 19972.80 billed amount has been shown for June, 05 and then Rs. 20945/- for July,05 to Feb,06. From March, 06 to June, 06 an amount of Rs. 21325/- per month has been billed. This is again shown to have been increased as Rs. 21399/- for one month, Rs, 21999/- for few months and Rs. 22599/- for one month. The respondent has claimed all these as arbitrary except the one in the month of Jan,05 for Rs. 15000/- during cross examination and in its reply admitting an increase in total billing from Rs. 10000/- to Rs.15000/- in 2005. However, the respondent has claimed this to be on account of payment, which is reflected only in the receipt for the month of October,06 and as part payment for Sept,06 receipts and not in any other receipt. Subsequent increases have been categorically denied. No invoices have also been received by respondent as per the records and the same has also been denied by it. The respondent's claim, during the course of cross examination that this was on account of miscellaneous expense etc. is also not supported by any other evidence.

6. After going through the pleadings of the petitioner and the respondent, it is evident that the petitioner's nett claim is not sustainable on the basis of the statement of account, absence of any evidence of service of the invoices, cross examination of the witnesses, payment pattern and adherence of the Regulation of 4th September, 2006 prior to its issuance as reflected in the invoices of July, 2006 and August, 2006. The petitioner's claim is not borne on facts and even the admission during the cross examination has established that the account statement and the invoices are fabricated, false and misleading to show outstanding demand as alleged by petitioner against the respondent to an extent of Rs. 216738.08. However, on the basis of the admission during cross examination, reply of the respondent and payment pattern in the statement of account, the respondent is due to pay to the petitioner @ Rs. 10000/- per month from June,2003 to Dec, 2005 and @ Rs. 15000/- per month from Jan, 2006 till 24.1.2007 inclusive of service tax. The net outstanding allegedly claimed by petitioner as Rs. 216738.08 is false and misleading. We direct the payment of the amount

calculated for the complete period as per above finding to the petitioner after deducting Rs. 428500/- which has already been admittedly paid by the respondent.

7. We hold that respondent has to pay at the rate of Rs.10000/- p.m. inclusive of all taxes from June, 2003 to Dec, 2005 and Rs. 15000/- p.m. inclusive of all taxes from Jan, 2006 till 24.1.2007. The already paid amount of Rs. 428500/- has to be deducted for arriving at the nett payment due to respondent. The claim of Rs. 216738.08 as raised by the petitioner is false and misleading.

8. The petition is disposed of accordingly.

B. Petition No. 322(C) of 2006

1. Respondent has contended that no amount is pending as claimed by the petitioner except the subscription amount of Rs. 16000/- for the month of September, 2006. He has further contended that the petitioner, in order to exploit the monopoly, would threaten the disconnection time and again. The respondent has further pleaded that the petitioner, to achieve its illegal design and motive and to realize unreasonable subscription charges, used to disconnect the signals. The respondent further contends that the petitioner did not raise any bill or invoice till date and all the invoices annexed to the petition are false and fabricated. There is no proof of service of invoices to the respondent. In response to the notice under order XII Rule 8 of CPC which was served by the counsel of respondent to petitioner, the petitioner has failed to submit the proof of service of invoices. The respondent has denied the claim of the petitioner on the ground that he was paying the agreed subscription fee of Rs. 9775/- per month from April, 2003 to November, 2003 and since December, 2003 Rs. 11,220/- p.m., which was unilaterally increased by the petitioner. The respondent has claimed that the petitioner has further enhanced the subscription charges to Rs. 16000/- per month in April, 2005 unilaterally and forced the respondent to accept the same.

2. The respondent has claimed that the invoices are forged. The petitioner in its cross examination said that it has issued written notice in respect of increase in feed charges to the respondent. It is admitted by the petitioner during cross examination that the same are not on record but can be produced. From the cross examination it has come to our notice that the petitioner has admitted the requirement of issuance of invoices in June/July, 2006, however, requirement of submission of invoices has come into force from 4th September, 2006. It is quite evident from the cross examination that the petitioner's claim of the proof of delivery of invoices to the respondent is not supported by any documentary evidence.

3. The receipts have also been earlier issued in the name of Central Cable Television Network, which is claimed to be the petitioner's proprietary concern. It has also been admitted by the petitioner that after imposition of service tax, all the receipts have been issued in the name of R.G. Gupta & Sons.

4. The cross examination of Mr. U.N. Thakur, proprietor of the respondent reveals that the respondent started the cable business in the year 2000 and started taking signals from the petitioner in the year 2001. It is also admitted by the respondent that the petitioner has always issued receipt for the payments given to him and signals have been received by the respondent from the petitioner upto 30.09.2006. The respondent has claimed to join another MSO by the name of Badhani Cable Network after 30.09.2006.

5. The respondent has further contended that as per the admitted position of the petitioner in the alleged statement of account dated 3rd Dec, 2006, the petitioner has overcharged the respondent. The statement of account shows outstanding amount of Rs. 9775/- for the period 1.4.03 to 30.4.03. The receipt which has been produced by the respondent shows that the amount of Rs. 9775/- has been received by the petitioner on 20.5.03 for April, 2003. The respondent appears to have been depositing the fixed monthly feed charges on time with the petitioner as per its own statement dated 1st Feb, 2007. The respondent claims that the petitioner unilaterally and arbitrarily enhanced the feed charges randomly and without any enhancement in services. The contention of the respondent is that the last monthly feed charges of the respondent was Rs. 11525/- inclusive of taxes and respondent was shocked and surprised to know from the statement of account that the petitioner has falsely, unilaterally and arbitrarily increased the monthly feed charges for March, 2005 to May, 2005 to Rs. 17480/- and then to Rs. 19264/- for June, 2005 to March, 2006. From April, 2006 to Jan, 2007 the subscription amount as per the statement of account has been shown as Rs. 22500/- per month. The respondent claims that it had stopped taking the feed from 30th September, 2006 and, therefore, all the claims alleged to have been shown in the statement of account from September, 2006 onwards are false and fabricated. The respondent has contended that all the receipts for the amount paid for the feed charges were fabricated by the petitioner. The respondent has come to know for the first time about a statement of account after the receipt of the petition, which is clearly an afterthought and manipulation by the petitioner. Another fact which has been brought to our notice by the respondent is that the invoices annexed in the petition show that the invoice No. FH-UN-1 is dated 1.7.2006 shows outstanding amount alongwith current billing. However, the regulation requiring the invoices showing outstanding amount came into force on a subsequent date i.e. 4.9.2006. It has been contended that the invoices with the claim have been prepared on a single day and signed by the same person on each and every invoice as against the receipts filed by the respondent has been signed by different persons. Bare perusal of the alleged statement of account clearly shows that the same is fabricated

on account of the fact that after applying the principle of reverse accounting, the figures for the monthly subscription have been arrived at. The claim of the petitioner for Rs. 19264/- actually consist of Rs. 16000/- + (10.2% of 16000) + (10.2% of 16000) = Rs. 16000 + 1632+ 1632 = Rs. 19264/-. This fact is possible to be verified from the receipts annexed by the petitioner which shows subscription fee of Rs. 16000/- + service tax in the month of March, 2006 and the respondent paid the amount vide receipt no. 113 dated 24.4.2006 (Rs. 16000 + Rs.1632 = Rs. 17632), whereas the petitioner annexed the fabricated statement of account to press his claim which states that the subscription fee for the month of March, 2006 is Rs. 19264/-. This clearly indicates the fallacy of statement of account of the petitioner as a receipt filed by the petitioner shows that the complete amount received which includes service tax in the month of March, 2006 and is not a part payment. The petitioner has further asked to pay for the arrears of the service tax which has not been paid previously and the respondent has accordingly made the payment of Rs. 22500/- . Thus the respondent paid the arrears of service tax as previously the respondent had made the payment without service tax from June, 2005 to December, 2005 and w.e.f. Jan, 2006 the respondent started clearing the service tax dues of the earlier period.

6. Another point which has been raised by the respondent is that the petitioner has no valid license and hence cannot invoke jurisdiction of this Tribunal. It is a fact that till date the petitioner has not filed any document on record that it holds valid license to operate cable TV network. The respondent has quoted the case, Petition No. 162(C) of 2008 bearing title M/s. Goel TV Network Vs Ambala Cable TV Network.

It has been contended by the respondent that the petition is not maintainable as the petitioner is not a service provider on the date of filing of the petition since it did not have a valid cable TV registration certificate. It is, however, a fact that the respondent has received signals from the petitioner for distribution to its subscribers and, therefore, this contention of the respondent does not have any bearing on the case.

7. The respondent has strongly resented the action taken by the petitioner to approach Star India Pvt. Ltd., Kolkata not to provide signal to the respondent because of alleged non-payment of dues. The respondent has further contended that the petitioner has approached the broadcasters, even though the dispute is pending before this Tribunal and it has made false statement that the respondent is a defaulter. The respondent has also claimed that because of the disconnection of signals by the petitioner, there were various instances of violence and chaos in the city. The paper clippings supporting the above claim have been submitted in the reply of the respondent. The petitioner has also charged the respondent for the disconnected period and this fact has been admitted by the petitioner in his cross examination.

8. After going through the pleadings of the petitioner and the respondent, it is evident that the petitioner's claim is not sustainable on the basis of the statement of account, absence of any evidence of service of the invoices, cross examination of the witnesses and adherence of the Regulation of 4th September, 2006 prior to its issuance as reflected in the invoices of July, 2006 and August, 2006. It is evident that the petitioner's claim is not borne on facts and even the admission during the cross examination has established that the account statement and the invoices are fabricated, false and misleading to show the alleged outstanding demand of Rs. 152299/- against the respondent. However, as per the admitted amount owed by the respondent, we allow Rs. 16000/- to be paid to the petitioner as against its alleged claim of Rs. 152299/- which is found to be false and misleading.

9. The petition is disposed of accordingly.

C. Petition . No. 323(C) of 2006

1. The petitioner claims to have filed several invoices, which according to the petitioner have not been paid. The petitioner also claims to have filed several receipts memos which he used to issue to the respondent against the payment made. According to petitioner it had also given a 21 days notice dated 8th December, 2006 to the respondent and had also sent copies of the said notice to various service providers.

2. The respondent contended that petitioner in order to exploit the monopolistic situation would threaten the disconnection, time and again and at times, to achieve its illegal design and motives and unreasonable subscription charges would disconnect the signals creating a vulnerable law and order situation.

3. The respondent has contended that the petitioner did not raise any bill or invoice till date and all the invoices annexed to the petition are false and fabricated. The respondent further contended that even the payment for March, 03, May, 03, January, 05, February, 05 and August, 06 were made to the petitioner vide receipt no. 361 for Rs. 8000/- (for Mar, 03), receipt no. 369 for Rs. 8000/- (for May, 03), receipt no. 1565 for Rs. 8000/- (for Jan, 05), receipt no. 1593 for Rs. 8000/- (for Feb, 05) and receipt no. nil for Rs. 16000/- (for Aug, 06). The respondent claims that it was paying the agreed subscription of Rs. 8000/- per month and since March, 05 Rs. 14000/- per month. (This increase is pleaded to be an unilateral increase by the petitioner.)

4. The petitioner has not filed any proof of service of invoices inspite of notice under Order XII Rule 8, which was served by the learned counsel for respondent on the petitioner. During cross examination the petitioner promised to produce the same but did not produce the same. The respondent has also contended that the bare perusal of the invoices annexed with the petition have been prepared on a single day and signed by the same person on each and every invoice as against the receipts filed by the petitioner which have been signed by different persons. The respondent has also contended that the receipt No. FH-JD-1 for the period from 1.7.06 to 31.7.06 shows not only the current bill but also the previous period arrears. The raising of invoice showing the previous period outstanding has been made mandatory after the issuance of Regulation dated 4th September, 2006. Petitioner during his cross examination, however, admitted that he was not issuing invoices to the respondent before the Regulation requiring invoices came into force and started issuing invoices only after the requirement of issuing invoices came into force. The statement, therefore, contradicts the invoice which has been issued for July, 2006 as mentioned above. In regard to service tax, the respondent claims that the petitioner has adopted the principle of reverse accounting. It has tried to adjust the service tax within the subscription charges i.e. Rs. 14000/- . Whereas the petitioner annexed the manufactured statement of account to press his claim which states that the subscription fee for the month of November, 2005 is Rs. 16549.83. This clearly indicates the fallacy of statement of account of the petitioner as the receipt filed by the petitioner shows that the complete amount was received for the month of November, 2005 and not a part payment.

5. The petitioner asked the respondent to pay for the arrears of the service tax not paid previously and the respondent accordingly made the payment of Rs. 15000/-, Rs. 20000/- etc. just to clear the outstanding of service tax. This fact can be sustained on the basis that the receipt no.1146 issued for October, 2006 for Rs. 15000/- is on account payment and the receipt no. 1101 showing the payment of Rs. 20000/- does not show the month for which it pertains as the amount was deposited towards the part arrears of the service tax.

6. The respondent also contends that the petitioner has illegally requested some broadcasters not to give signals to the respondent by declaring the respondent as defaulter. The respondent also contends that the petitioner has never claimed any outstanding amount due to the respondent and no demand has ever been raised by the petitioner of the same. Receipts filed by the petitioner for the period for which signals have been availed by the respondent shows the full payment and not any on account payment.

7. After going through the pleadings of the petitioner and the respondent, we conclude that the petitioner's claim is not sustainable on the basis of the statement of account, absence of any evidence of service of the invoices, cross examination of the witnesses and adherence of the Regulation of 4th September, 2006 prior to its issuance as reflected in the invoices of July, 2006 and August, 2006. It is evident that the petitioner's claim is not borne on facts and even the admission during the cross

examination has established that the account statement and the invoices are fabricated, false and misleading to show an outstanding demand against the respondent.

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8. We hold that as per admitted position during cross examination the respondent wanted to make payment @ Rs. 16000/- p.m. for the period from Nov, 2006 till 29.1.2007, however the petitioner refused to accept this payment. We direct respondent to make this payment to the petitioner. The payment as per receipt nos. 1101 and 1148 has been admitted as on a/c payment in the month of Oct, 2006 and Nov, 2006 for arrears of service tax. For these months also the balance subscription amount @ Rs. 16000/- per month after deducting the service tax arrears shall be paid by the respondent to the petitioner. The inflated nett claim of Rs. 209351.38 is false and fabricated.

10. The petition is disposed of accordingly.

.....J
(Arun Kumar)
Chairperson

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(J.S. Sarma)
Member

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(G.D. Gaiha)
Member