

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**NEW DELHI****DATED 18TH DECEMBER, 2009****Petition No. 202(C) of 2008****Friends Cable Network**

Phase 7, Mohali,

Punjab

...Petitioner

Vs.

Hathway Data Communications Pvt Ltd

AB-6, Safdarjung Enclave

New Delhi

Hathway Prime Cable Data Communications Pvt Ltd

SCO. 16-17, Sector-34-A,

Chandigarh (U.T.)

Fast Track Cable Network

Through Its Proprietor Mr. Anil Mehta

R/o 1403, Sector 44-B,

Chandigarh(U.T.)

...Respondents

BEFORE:**HON'BLE MR. JUSTICE S.B.SINHA, CHAIRPERSON**

For Petitioner : Mr. Chirag Jamwal, Advocate

For Respondents 1 & 2 : Mr. Jayant K. Mehta, Advocate

Mr. Nasir Husain, Advocate

ORDER**S.B. Sinha**

The petitioner is a cable operator. Respondent No. 1 is an MSO.

A subscription agreement was entered into by and between them in February, 2006.

Admittedly, the petitioner had 330 connections in Phase-VI, Mohali in the State of Haryana. By

reason of the said agreement, the petitioner was to pay a sum of Rs. 34,000/- per month.

Allegedly 115 connections were removed from the area of the operation of the petitioner, as a result whereof, allegedly he was required to pay proportionate reduced charges to the respondents. Since March, 2007, the respondents allegedly had not been accepting payments towards the monthly subscription fees from him.

2. The signal was said to have been disconnected by the respondent with effect from 28.3.2007 without issuing any notice in terms of Regulation 4.1 of the Interconnect Regulations. Further contention of the petitioner is that all equipments were removed from his area of operation, the list whereof is contained in Annexure 'C' to the petition. A representation thereagainst was sought to be made to the respondents on or about 18.6.2007. However, the said letter which is contained in Annexure 'E' to the petition, not only appears to be undated but it is also not clear as to who is the author thereof.

3. This petition was filed by the petitioner before this Tribunal on or about 16.9.2008 inter alia praying for the following reliefs :

- (i) That the erring respondents may be directed to restore the cable signals to the petitioner.
- (ii) That all the connections illegally taken by the respondents, may kindly be restored to the petitioner.

4. The respondents, on the other hand, contended that the petitioner itself has disconnected the signal as a demand of a sum of Rs. 3,30,000/- was outstanding.

5. The parties have not adduced any oral evidence. The only issue which arises for consideration before this Tribunal is as to whether the respondents illegally disconnected the

supply of the petitioner in violation of the Regulations or the petitioner himself did so and to what relief, if any, it is entitled to.

6. Mr. Chirag Jamwal, the learned counsel appearing on behalf of the petitioner urged that despite the fact that regular payments were being made by the petitioner to the respondents, not only it was deprived of the benefit of supplying signal to 330 subscribers but also without service of any notice, and/or issuance of a public notice as is required under Regulations 4.1 and 4.3 of the Regulations, the supply of the signals had been disrupted.

7. Mr. Mehta, the learned counsel appearing on behalf of the respondents, on the other hand, pointed out that the petitioner had never made full payments of the subscription fees and thus a sum of Rs. 3,30,000/- fell due from it and when the said amount was demanded, the petitioner itself has disconnected the supply.

8. The fact that an agreement had been entered into by and between the parties is not in dispute. The petitioner has filed a large number of receipts showing payments in part to the respondents, the details whereof are as under:

February, 2006 (part payment) :	Rs. 10,000
February, 2006 (Part payment) :	Rs. 21,000
(on 23.2.06)	
March, 2006 (Part payment) :	Rs. 7,700
March, 2006 (Part payment) :	Rs. 25,000
(On 29.3.06)	
April, 2006 :	Rs. 9,000
June, 2006 (30.6.06) :	Rs. 12,000
June 2006 (30.6.2006) :	Rs. 10,000
May & June 2006	

(25.1.07) (Part payment) : Rs. 25,000

July 2006 (19.2.07) : Rs. 25,000

9. The respondent, with its reply, has filed a statement of account which shows that the petitioner had never made any full payment of Rs. 34,904/- towards the monthly subscription fee. It, however, appears that due credit had been given to the petitioner whenever any payment has been made. A sum of Rs. 3,30,189/- is said to be owing and due from him. It is, however, accepted that in the first column of the said statement of account as reflected in the ledger, 23.2.22006 has wrongly been mentioned as 23.2.2007.

10. The petitioner has not produced any books of accounts apart from the aforementioned receipts. He has not filed any proof in support of full payment of subscription fee. It even did not examine any witness in support of its case.

11. It is of some significance to notice that although supply of signal was stopped on and from 28.3.2007, the petitioner has filed this petition only on 16.9.2009. On a query made in this behalf, the learned counsel would contend that the petitioner had filed a representation to the respondent and he has been expecting restoration of signal by the respondent. As noticed hereinbefore, the said representation was unsigned. No proof has been filed to show service of the said purported representation. In any event, filing of a representation by itself in a case of this nature is not sufficient. No case has been made out that the petitioner had been expecting restoration of signal. If the petitioner was serious about restoration of signal, it would have at least sent reminders to the respondent. The petitioner should have proved issuance and/or service of such representation, as the respondent in categorical stand in its reply contended that no such representation was received in its office.

12. The petitioner should have also filed its statement of accounts. It failed and/or neglected to do so. In a short affidavit filed on 13.11.2009, the petitioner has pointed out that he has claimed a sum of Rs. 3,30,000/- by way of damages for disconnection of the signal, the basis of which has not been disclosed. The reason appears to be that it intended to match the figure of outstanding dues stated in the reply by the respondent. In the said affidavit, furthermore, the petitioner also does not point out as to which of the three respondents caused him damage and/or was responsible for alleged theft of the equipments.

13. We, therefore, do not find any merit in the claim of the petitioner. The petition is dismissed accordingly, with costs.

..... **J**
(S.B.Sinha)
Chairperson