

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

**Dated 12<sup>th</sup> February, 2010**

**Petition No.28(C) of 2007**

Hathway Mysore Cable Network(P) Ltd. ....Petitioner

Versus

Vaibhavi Cable Network, Mysore ....Respondent

**Petition No.37(C) of 2007**

Hathway Mysore Cable Network Pvt.Ltd. ....Petitioner

Versus

New Star Links, Vidyaranyapuram ...Respondent

**Petition No.41(C) of 2007**

Hathway Mysore Cable Network Pvt. Ltd. ....Petitioner

Versus

Teleworld Star TV ...Respondent

**BEFORE:**

**HON'BLE MR.JUSTICE S.B. SINHA, CHAIRPERSON  
HON'BLE MR.G.D. GAIHA, MEMBER**

For Petitioner : Mr.Jayant Mehta, Advocate  
Mr.Nasir Husain, Advocate

For Respondent : Ms.Kanika Agnihotri, Advocate

### **JUDGMENT**

#### **S.B. Sinha**

These petitions involving common questions of fact and law as well as in view of the fact witnesses examined on behalf of the petitioners having been examined in one case, were taken up for hearing together and are being disposed of by this common judgment.

The petitioner is a Multi-Service Operator. The respondents herein were local cable operators operating at Mysore. The parties hereto entered into oral agreements for supply of signals of various broadcasters to their respective customers.

The petitioner in this petition claims the following amounts towards cable TV service charges:

- (i) Against the respondent, M/s Vaibhavi Cable Network (Vaibhavi) – Rs.175,083/- as upto January, 2007.
- (ii) Against the respondent, M/s New Star Link (New Star) – Rs.2,62,843/- upto January, 2007.
- (iii) Against the respondent, M/s Teleworld Star TV (Teleworld) – Rs.2,07,901/- for the period August 2006 and January 2007.

‘Vaibhavi’ and ‘Teleworld’ were to pay the subscription fees of Rs.35,815/-; whereas ‘New Star’ was to pay Rs.53,457/- as cable TV feed charges.

Respondent herein were part of a consortium of LCOs operating under the name and style of Royal City Network (RCN) which have also been taking signals from the petitioner. However, after dissolution of the said consortium the respondents in their individual capacities had started taking signal feed from the petitioner from July, 2005.

The petitioner contends that from August, 2006 the fee charges were enhanced to Rs.45,000/- per month. The petitioner had been raising monthly invoices on the respondent purported to be in terms of the aforementioned oral contracts.

It is beyond any controversy that the respondents filed a suit in the court of Civil Judge (Jr. Division), Mysore which was numbered as OS No.960 of 2006. An ex parte order of injunction was passed therein on 19.10.2006 by the said court whereby and whereunder the petitioner (the defendant in the said suit) was restrained from enhancing the cable subscription charges.

In the said suit the following prayers were made:

“It is prayed that this hon’ble court be pleased to grant Permanent Perpetual Injunction against the Defendant in favour of Plaintiff by restraining the Defendant’s, its agents, representatives and anyone claiming by or through them from enhancing the Cable Subscription, disconnecting Cable TV signal to the Plaintiff, sending poor signals to Plaintiff, dropping signals, cutting cables leading from Defendant’s control to the Plaintiff’s control room apart from granting such other relief as to cost of this suit and other relief as this hon’ble court may deem fit in the interest of justice and equity.”

In the said suit, however, it had not been alleged:

- (i) That the petitioner had not been raising invoices; and
- (ii) There had been any interference in the supply of signals or the quality thereof.

Indisputably, the petitioner herein filed a written statement in the said suit and furthermore filed an application for rejection of the plaint purported to be under Order VII Rule II of the Code of Civil Procedure on the premise that the jurisdiction of the civil court was barred under the provisions of the TRAI Act.

It is furthermore not in controversy that the respondents herein filed a memo dated 29.01.2007 before the civil court seeking its permission to withdraw the said suit. The said memo reads as under:

“The advocate for the plaintiff submits that the suit may be dismissed as not pressed as the defendant has assured the plaintiff that it would not hike the subscription charges with no orders as to cost.

Advocate for  
the Plaintiff.”

On the said memo, the learned judge permitted the respondent to withdraw the said suit, stating.

“Memo filed by the Plaintiff not pressing the above suit. In view of the memo, this suit is dismissed as not pressed.

No cost

Sd/-IV.A.F.C.J.,MYSORE”

It may, however, be placed on record that according to the respondents they have stopped obtaining signals from the petitioner on and from 31.12.2006. On the other hand, the petitioner contends that it had supplied signals upto January, 2007.

Be that as it may, the petitioner has confined its claim of subscription charges only upto December, 2006. The respondents furthermore contend that they have paid all the dues upto the month of October, 2006.

The parties hereto have examined one witness each.

The petitioner has examined one Shri B.K. Kumar; whereas the respondents have examined one Shri L.S. Suresh Kumar.

Mr.Jayant Mehta, the learned counsel appearing on behalf of the petitioner would contend that having regard to the fact that the petitioner had been raising invoices on a regular basis and as from a perusal whereof it would appear that the subscription fee was payable at Rs.35,000/- which was increased to Rs.50,000/- from February, 2006, these petitions should be allowed. He has drawn our attention to the statements made in paragraphs 3, 8, 9 and 10 of O.S. No.960 of 2006 of the plaint to contend that in view of the clear admission contained in the said plaint itself, the petitioner is entitled to a decree against the respondents for the amount claimed.

Ms.Kanika Agnihotri, the learned counsel appearing on behalf of the respondents, on the other hand, would contend:

- (i) The respondents are not bound to pay any dues with respect to RCN.
- (ii) The dispute between the parties arose as the petitioner in September, 2006 asked to double the subscription charges i.e. a sum of Rs.70,000/- per month wherefor neither there was any justification nor was there any provision in the regulations, particularly, having regard to the fact that the increases permitted by TRAI had been availed of by the petitioner.
- (iii) The petitioner having not been supplying good quality signal; the respondent suffered loss of business and goodwill, and, thus, the respondent had no other option but to file the aforementioned suit.

- (iv) The invoices having not been served upon the respondents as is mandatorily required under the Regulation dated 4<sup>th</sup> September, 2006, this petition must fail.
- (v) The invoices produced before this Tribunal being forged and fabricated, no amount can be claimed relying thereon or on the basis thereof.
- (vi) In any event from a bare perusal of the invoices, it would be evident that the respondents have paid the feed charges upto October, 2006.
- (vii) In view of the fact that the petitioner had not responded to the letter dated 20.11.2006 of the respondent, the contents thereof must be held to have been admitted.
- (viii) The petitioner admittedly having knowledge of the suit as also the undertaking given by the police authorities would not only be bound thereby but the same would be relevant for proving that the respondent had been taking supply of signals for the period 17.08.2005 to December, 2006.

It has not been denied or disputed that the respondents have been making payments to the petitioner from time to time against the supply of signal received by it. The payment schedule in the case of Vaibhavi reads thus:

1	17.8.2005 (163)	Rs.35,815/-	July, 2005
2	12.9.2005 (164)	Rs.35,815/-	Aug. 2005
3	29.9.2005(165)	Rs.20,000/-	Sept. 05
4	15.10.2005 (166)	Rs.15,815/-	Sept.05
5	29.10.2005(167)	Rs.20,000/-	Oct.05

6	15.12.2005 (168)	Rs.15,815/-	Oct. 05
7	7.12.2005 (169)	Rs.20,000/-	-
8	29.12.2005 (170)	Rs.20,000/-	-
9	16.1.2005 (171)	Rs.15,815/-	Dec.05
10	31.1.2006(172)	Rs.20,000/-	Dec.05
11	28.2.2006 (173)	Rs.20,000/-	Jan.06
12	13.2.2006(174)	Rs.15,815/-	Jan.06
13	13.3.2006 (175)	Rs.15,815/-	Feb.06
14	29.3.2006 (176)	Rs.20,000/-	Feb.06
15	28.4.2006 (177)	Rs.20,000/-	Mar.06
16	19.4.2006 (178)	Rs.15,815/-	Mar.06
17	22.5.2006 (179)	Rs.15,815/-	Apr.06
18	30.5.2006 (180)	Rs.20,000/-	Apr.06
19	30.6.2009 (181)	Rs.20,000/-	May 06
20	21.6.2006 (182)	Rs.15,815/-	May 06
21	31.8.2006 (183)	Rs.20,000/-	June 06
22	23.8.2006 (184)	Rs.15,815/-	June 06
23	19.10.2006 (185)	Rs.20,000/-	July 06
24	21.9.2006 (186)	Rs.15,815/-	July 06

The respondent, however, in the case of Teleworld has filed the following table:

### HATHWAY MYSORE CABLE Vs TELEWORLD STAR TV

INVOICE FOR THE MONTH OF	OUTSTANDING BALANCE	PAYMENTS MADE ON
SEPTEMBER, 2005 Rs.35,815	Individual balance Rs.35,830/-	Payment made on 06.09.05- Rs.35,800
OCTOBER, 2005 Rs.35,815	Individual balance Rs.35,845	Payment made on 07.10.05- Rs.35,800
NOVEMBER, 2005 Rs.35,815	Individual balance Rs.60	Payment made on 03.11.05- Rs.35,800
DECEMBER, 2005 Rs.35,815	Individual balance Rs.35,875	Payment made on 06.12.05- Rs.35,800
JANUARY, 2006 Rs.35,815	Individual balance Rs.35,890	Payment made on 02.01.06- Rs.35,800
FEBRUARY, 2006 Rs.35,815	Individual balance Rs.90	Payment made on 04.02.06- Rs.35,815
MARCH 2006 Rs.35,815	Individual balance Rs.35,905	Payment made on 04.03.06- Rs.35,815
APRIL 2006	Individual balance	Payment made on 04.04.06- Rs.35,815

Rs.35,815	Rs.90	
MAY 2006 Rs.39,728	Individual balance Rs.377	Payment made on 03.05.06- Rs.35,815
JUNE 2006 Rs.39,728	Individual balance Rs.40,105	Payment made on 08.06.06- Rs.35,815
JULY 2006 Rs.36,478	Individual balance Rs.8203	Payment made on 03.07.06- Rs.35,815
AUGUST 2006 Rs.40,126	Individual balance Rs.5616	Payment made on 02.08.06- Rs.35,815
SEPTEMBER 2006 Rs.40,126	Individual balance Rs.46,803	Payment made on 02.09.06- Rs.35,815

The parties hereto entered into oral agreements. The fact that the respondents had been obtaining supply of signals from the petitioner wherefor the subscription amount of Rs.35,815/- was payable is not in dispute. From the records it furthermore appears that sometimes payments have been made either in one lump sum or in two instalments.

As would appear from the statements noticed hereinbefore, it is evident that the subscription fee of Rs.35,815/- has been paid in two instalments. If the manner in which payments have been made i.e. Rs.20,000/- and Rs.15,815/- in two instalments are to be adjusted against each month's subscription fee payable therefor, it would appear that payments have been made only upto July, 2006. However, for certain months part-payments have also been made as would appear from the receipts granted by

the petitioner. However, it appears from the receipt dated 19.10.2006 that a sum of Rs.20,000/- was adjusted towards the subscription fee of September, 2006 but on 21.10.2006 a sum of Rs.15,815/- was adjusted against August, 2006. The total amount paid by the respondents to the petitioner had been given due credit. It, therefore, matters little whether adjustments of part-payments had been made against one month's subscription fee or that payment have been made for the months in question.

It is furthermore not denied and disputed and as would appear from the statements made in paragraph 9 of the plaint in the said suit filed by the respondent that at least for one month an increased subscription fee of Rs.45,000/- has been paid. Shri B.K. Kumar moreover in his cross-examination stated as under:

“I say that no discussion between the parties had ever been recorded in writing.

I say that in the meeting in August 2006 the respondent said that he would revert after discussion the same with his brother whose name now I recollect is Suraj.

The respondent reverted to me after a month with the proposal that Rs.10-12 thousand extra would be paid on account of hike in ad hoc subscription fees. I however, counter suggested that I need it an amount of Rs.75,000/- p.m. as ad hoc subscription fees.

However, after mutual discussion we agreed on a hike of Rs.10,000/- p.m. on the amount that was payable by the respondent earlier.

I say that the respondent did not agree to my request to increase the subscription fee to Rs.75000/- p.m.”

He furthermore stated that the invoices made are correct.

As against this, Mr.L.S.Suresh Kumar stated as under:

“I have nothing in writing to show that the petitioner had assured the respondent for not hiking the subscription charges except the Order dated 29.1.2007 (Exhibit RW-1/3).”

It is, thus, evident that the respondents' witness had glossed over on an obvious question.

It would furthermore appear that the very fact that and according to the respondents, as discussed in the plaint of the said suit, supply was required to be continued, till the withdrawal of the suit there had been no disconnection of the supply of signals.

The respondents furthermore categorically stated that no amount has been paid for November and December, 2006 as the respondents did not receive proper signal from the petitioner.

In support of the contention that the petitioner had given an undertaking before the police authorities as also in the suit, our attention has been drawn to the following:

**ENDORSEMENT** NCR 261/06, Dtd. 7.11.2006

Mr.L.S.Suraj S/o Late Shesharangaiah, resident of D.No.1530, K.T. Street, Vyshnavi Cable Net Works, Mandi Mohalla, Mysore, given complaint on 7.11.2006 against The Manager, Hathway Cable Network. In this regard the Opposition Party has also given his statement regarding this Complaint that there is no complaint from his company, and they will take suitable action not to repeat the mistake in future, and take necessary preventive measure in the matter through written statement. Hence, we accept the Written Statement from your Opposite Party regarding your complaint and close the Complaint lodged by you as NCR No.261/06.

Sd/-  
Station Incharge  
Mandi Police Station  
Mysore”

The purported written statement given before the police authorities has not been brought on record. Shri B.K. Kumar in his evidence categorically stated in the following words that he had not given any undertaking:

“I deny that any undertaking was given to the police on our behalf that not to repeat the mistakes in future and I deny the document dated 7.11.2006 purported to be signed by the Station in-Charge, Mandi Police Station, Mysore.”

The maker of the endorsement has not been examined. On what basis such an endorsement was recorded has not been disclosed. Why the purported written-statement had not been supplied to the respondent is not known.

It, therefore, cannot be inferred that any such undertaking was given or the same is not a proof of supply of bad quality signals to the respondents by the petitioner.

Ms.Agnihotri would contend that as the suit has been withdrawn on the basis of an undertaking by the petitioner, the same is binding on it.

We are, however, of the opinion that the said submission cannot be accepted for more than one reason.

- (i) Admittedly the petitioner was not present on the date on which the suit was withdrawn.
- (ii) An unilateral statement made by a party for withdrawal of a suit would come within the purview of Order 23 Rule 1 of the Code of Civil Procedure and not Order 23 of Rule 3 thereof.

- (iii) As the suit was dismissed as withdrawn, it is binding only on the plaintiff-respondent and not the defendant-petitioner.
- (iv) The respondent withdrew the said suit at its own risk. Had there been a settlement between the parties, the terms thereof should have been brought on record so as to enable the court to pass a decree on the basis thereof.
- (v) Before the civil court even, no statement was made by the advocates appearing on behalf of the respondent.

The agreement between the parties is not in question. The fact that there had been an increase to the extent of Rs.10,000/- from August, 2006 is also not in doubt.

The admission made by the respondents in the plaint is binding on it proprio vigore. In Vimal Chand Ghevarchand Jain & Ors. Vs. Ramakant Eknath Jadoo – 2009(5) SCC 713, it has clearly been held that an admission made by a party to a suit would be admissible against it proprio vigore.

A specific defence which has been raised by the respondents were required to be pleaded and proved. Even in the plaint as noticed hereinbefore there is no allegation with regard to bad quality of supply of signals although a prayer had been made therein.

Such a prayer was, if at all, could be granted only on the basis of proper pleadings made in the plaint and proof thereof and not otherwise. No document has been brought on record to that effect. Although allegations have been made in the letter dated 20.11.2006 that the petitioner had been dropping signals despite the court order, curiously enough two cheques dated 31.10.2006 and 20.11.2006 amounting to Rs.35,815/- towards the subscription charges were said to have been enclosed therewith.

There is nothing to show that the said cheques have been encashed.

Mr.Suresh Kumar also does not say so. In paragraph 8 of his affidavit, he stated as under:

“8. I state that when my company withdrew the civil case filed before the Hon’ble District Court, Mysore, the petitioner filed this petition before this Hon’ble Tribunal. I state that before filing this petition, the petitioner continued to accept payments of Rs.35,815/- till October, 2006 without even once intimating my company of any outstanding that are now being alleged as being due. I state that the petitioner is guilty of suppressing material facts from this Hon’ble Tribunal.”

It, however, appears that the petitioner had issued notice through its advocate on 02.01.2007. In the said notice the petitioner did not include the liability of RCN. It, as noticed hereinbefore, has also not claimed the subscription fee for the month of January, 2007 although in law it could have done so.

The said notice admittedly has been received by the respondent as would be evident from the postal acknowledgment due.

The respondent did not even reply to the said notice and migrated to another MSO. The respondent specifically stated that it migrated to one M/s Vishwas Enterprises. In support thereof only a bill purported to have been issued by M/s Vishwas Enterprises for the month of January, 2007.

The terms and conditions of supply are governed by The Telecommunication (Broadcasting & Cable Services) (Third Amendment) Regulation, 2006. Clause 3.3 of the said Regulation reads as under:

“3.3 Any broadcaster/multi system operator or any agent/ any other intermediary of the broadcaster/multi system operator, who collects the payment for providing TV channel signals to any distributor of TV channels, shall issue monthly invoices to the distributor of TV channels. The monthly invoice shall clearly specify the arrears and current dues along with the due date for payment of the same.

#### Explanation

*Any claim for arrears should be accompanied by proof of service of invoices for the period to which the arrears pertain.”*

Apart from the fact that the said regulation was brought into force only in September, 2006 it does not state that if no invoice is served or could be served upon a local cable operation or MSO, no demand of the dues can at all be raised.

A demand for payment of subscription fee arises out of a contract between the parties. The regulation at the relevant point of time did not prohibit entering into an oral agreement. The respondents accept that oral agreements have been entered into by and between the parties. In this case, the contract between the parties otherwise stands proved by the conduct of the parties. Payment of subscription fee is admitted, supply of signal is admitted, payment of increased subscription amount in the month of August is admitted. The defence of the respondents as noticed hereinbefore inter alia is that it had made all the payments. If that be so, it was for it to prove the said fact as onus in this behalf was on it.

Furthermore even for disassociating itself from the contract it was obligatory on it to serve a notice upon the petitioner in terms of clause 4.2 of the regulation.

Ms.Agnihotri relies upon a decision of this Tribunal in Hathway Bhawani Cabletel and Datacom Ltd. Vs. Swastik Cable [Petition No.5(C) of 2005 disposed of on 18.12.2009]. The said decision was rendered on a different set of facts. In that case it was found that the respondent was bound to pay the subscription fee only at the rate of Rs.10,000/- per month per 100 points and, thus, the petitioner therein could not have raised a bill for a higher amount. However, in this case not only the original subscription fee but also the increase of the amount stands admitted by the respondent therein. Therein the question arose as to whether the petitioner therein was entitled to raise the number of points for the purpose of raising the subscription fee. On fact it was found that the petitioner had in the matter of raising of invoices towards the monthly subscription fee had taken contradictory and inconsistent stand. It is in that context an observation was made “no basis for raising the invoices has been proved”. In that case it was on the basis of material as brought on record it was held that the petitioner have failed to prove its case under the provision contained in Section 101 of the Evidence Act.

In that case, the employees of the petitioner therein namely, Mr.Sachin Khupse and Mr.Sunil Nandoskar have been accepting the payments on behalf of the company and have been issuing receipts. They had also been accepting the letters and notices issued on behalf of the respondent. On the aforementioned premise it was held:

“28. It is the consistent case of the respondent that Mr.Sunil Khupse had been accepting the cheques on behalf of the respondent. Such a statement had not been denied or disputed.”

It is now a well settled principle of law that a decision is an authority for what it is decided and not what can logically be deduced from the same.

It is also a well settled principle of law that a slight difference in fact or any additional fact may make a huge difference in the ultimate decision of a case.

In this case the petitioner basically relies upon the admissions made by the respondents themselves.

Keeping in view the facts and circumstances and also the materials brought on record and for the forgoing reasons, we are satisfied that the petitioner has been able to prove its case. The petitions are allowed accordingly. The petitioners are entitled to interest @ 12% per annum which we think is reasonable, from January 2007 till the day of payment on the amounts claimed in their respective petitions.

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

.....  
**(G.D. Gaiha)**  
**Member**