

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

DATED 7th MAY, 2010

Petition No. 231(C) of 2009

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Wire & Wireless (India) Ltd. Petitioner
Vs.
D.K. Cable Network World System Respondent

BEFORE :

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

For Petitioner : Mr. Tejveer Singh, Advocate

ORDER

G.D. Gaiha, Member

1. The present petition has been filed by M/S. Wire and Wireless(India) Ltd., which is a public limited company and successor in interest of M/s. Siti Cable Network, for recovery of the amounts due to the petitioner on account of the consistent default made by the respondent in clearing its outstanding subscription charges/dues even after availing continuous signals of various broadcasters channels from the petitioner and collecting all the monthly subscription

charges from all subscribers/households. The petitioner is a multi system operator carrying on the business of supplying signals of various broadcasters, comprising of both free to air TV channels and pay channels, to the subscribers through its various distribution companies and to its affiliate cable operators throughout the country.

- 2.** Respondent is a cable operator having its business, its operational area being in the city of Kolkata in the conditional access system notified area.
- 3.** As despite service of notice, nobody appeared on behalf of the respondent, the petition has been heard ex-parte.
- 4.** The petitioner has submitted a letter dated 23rd of October 2008 issued by the Ministry of Information and Broadcasting which authorizes substitution of the name of Siti Cable Network with Wire and Wireless(India) Private Ltd. as Multi System Operator operating in the notified conditional access system areas.
- 5.** The first grievance of the petitioner is that the respondent owes dues to the petitioner for the set top boxes and viewing cards installed at each household premises as well as set-top boxes and viewing cards lying with the respondent which were used for availing continuous signals of various broadcasters, channels from the petitioner.
- 6.** The second grievance of the petitioner is that the respondent has migrated to another multisystem operator without giving a statutory notice required under clause 4.2 and 4 .3 of The Telecommunication (Broadcasting and Cable

Services) Interconnection Regulation 2004 (13 of 2004) dated 10th December, 2004, amended on 4.09.2006, without making payment of outstanding dues to the petitioner.

- 7.** It is an indisputable fact that the parties have entered into a subscription agreement on 25th of October 2006, when it was agreed that the petitioner will supply signals to the respondent for the conditional access system notified area in Kolkata and the respondent will pay monthly subscription charges besides the rental charges for set-top boxes and viewing cards installed in household/customer services.
- 8.** The net outstanding which has resulted on account of irregular payments made by the respondent is to the tune of Rs. 8,41,659.
- 9.** The learned counsel for the petitioner would submit that despite availing the signals and receiving the invoices, the respondent has failed to deposit/pay monthly subscription charges and taxes. The payment of subscription charges which is short of the billed amount and, that too on an erratic basis, has resulted in an outstanding of Rs. 841659.54 . A copy of the statement of account has been annexed with the petition. The learned counsel for the petitioner brought to our notice that the respondent has been paying in an irregular manner, and in short of the billed amount, resulting in accumulation of the outstanding of Rs. 554619.54 towards subscription charges for the period from July, 2007 to August, 2009 along with the amount of Rs. 287040.00 for an outright sale/rental for set-top boxes. The total outstanding, therefore, due from the respondent is Rs. 841659.54.

10. The learned counsel for the petitioner would further bring to our notice that petitioner had taken up the case of payment of outstanding dues with the respondent vide letter dated 15th October 2008, which has been sent by registered post through India post Department. The learned counsel for petitioner would further show to us that petitioner has taken up the case with the respondent for payment of outstanding dues again on 10th June 2009, and 14th July 2009.

11. In its letter dated 14 July 2009 the petitioner has brought out that the respondent must clear all the outstanding dues of the petitioner because it is replacing the set-top boxes and the viewing cards of the petitioner by the set-top boxes and viewing cards of some other multi system operator without following the regulations that is without giving notice to the petitioner under clause 4.2 and 4.3. Clause 4.2 and 4.3 of the regulations are as follows.

Clause 4.2-- no distributor of TV channels shall disconnect the retransmission of any TV channel without giving three week's notice to the broadcaster or multisystem operator clearly giving the reasons for the proposed action....."

4.3 A broadcaster/multisystem operator/ shall inform the consumers about such dispute to enable them to protect their interests. Accordingly, the notice to disconnect signals shall also be given in two local newspapers out of which at least one notice shall be given in local language in a newspaper which is published in the local language, in case the distributor of TV channels is operating in one district and in two national newspapers in case the distributor of TV channels is providing services in more than one district. The period of three weeks mentioned in sub clause 4.1 and 4.2 of the regulation shall start from the date of publication of notice in the newspapers or the service of the notice on the service provider which ever is later'.

The provisions in the TRAI' Regulations issued on 4th September 2006 vide "regulation 3.2 in its explanation that the applicant distributor of TV channels intending to get signal from any multisystem operator other than presently affiliated multi-system operator, or from any agent/any other intermediary of the broadcaster/multi-system operator or directly from broadcasters shall produce along with their request for services, a copy of the latest monthly invoice showing the dues, if any, from the presently affiliated multi-system operator, or from any agent/any other intermediary of the broadcaster/multi-system operator who collects the payment for providing TV channel signals. Sometimes local cable operators switch from their multi-system operator when they are either unable or unwilling to pay the outstanding dues to the affiliated multisystem operators. This results in bad debts for the affiliated multi-system operator leading to the latter's inability to pay broadcasters or the local cable operator's portion of the dues.

- 12.** The petitioner has put up an affidavit evidence affirmed by one Mr. Suresh Kumar. The witness has confirmed that the respondent has consistently defaulted payments and clearing its outstanding subscription charges/dues, rental charges of set top boxes and viewing cards installed at each household premise and set top box and viewing cards lying with the respondent even after availing continuous signals from the petitioner and also collecting all monthly subscription charges from all the subscribers/households as per invoices raised from time to time by the petitioner.

The witness has further stated that the respondent has migrated to another MSO without giving statutory notice required under Clause 4.2 and 4.3 of the The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 (13 of 2004) dated 10th December, 2004, amended on 4.09.2006 and also without making payments of outstanding dues to the petitioner.

It is further stated by the witness that the petitioner is consistently and continuously raising bill summary as per the Regulations on the respondent and sending the same to the respondent. The respondent has been making part payments towards bill summaries supplied by the petitioner to the respondent. A copy of the bill summary for the cable signals being supplied to the respondent by the petitioner have been verified to be true and correct as placed in the petition from paged 54 to 312 in volume-II of the paperbook.

The records which have been produced and placed in the petition are for the respondent and specifically mentions the name of the subscribers in the CAS area alongwith statutory taxes, hardware charges, rental charges etc. The details of payments which have been made by the respondent has also been mentioned in the financial yearwise statement from January, 2007 till August, 2009. The amount collected monthwise is also indicated in the statement of accounts placed at page 36 of the petition. The net outstanding as mentioned in this statement of account is Rs. 8,41,659.54.

- 13.** We are satisfied that the petitioner has made out a case for passing a decree for a sum of Rs. 8,41,659.54 along with interest of 18% till 31st of August 2009 along with pendentelite interest @ 12% on this amount till the date of actual payment by the respondent. We order accordingly and also declare that the action on the part of the respondent of disconnecting signals of the petitioner without giving appropriate notice as per regulation is illegal.

The petition is disposed of accordingly.

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(S.B. Sinha)
Chairperson

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(G.D. Gaiha)
Member