

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

DATED 6th OCTOBER, 2010

Petition No. 101 (C) of 2010

Hathway VCN Cablenet Pvt. Ltd. ... Petitioner

Vs.

Jayalakshmi Cable Network ... Respondent

BEFORE :

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

For Petitioner : Mr. Jayant K. Mehta, Advocate

For Respondent : None

ORDER

G.D. Gaiha, Member

This Petition has been filed on 19th April 2010. The petitioner is a Private Limited Company incorporated under the provisions of the Companies Act and is a Cable TV service provider duly registered under the provisions of the Section 3 of the Cable Television Act (Regulation) 1995. The petitioner primarily acts as a Multi System Operator and is engaged in the business of reception and distribution of satellite television, broadcast signals and other electronic signals primarily to the various distributors, franchisees, local cable operators and some link operators and also directly to individual subscribers.

The respondent is a Local Cable Operator, which is the sole proprietorship concern and is taking signals of various channels including Zee, Star, etc from the petitioner.

This petition has been filed for recovery of Rs.9,19,511/- as an outstanding amount towards the Cable TV feed signal charges up to January, 2010 (with interest).

On 6th July, 2010 despite service, nobody appeared on behalf of the respondent and the matter was ordered for ex-parte hearing on 20th July 2010. At this stage also we requested to learned counsel for the petitioner to serve a notice upon the respondent intimating the aforementioned date. The proof of service has been filed on 20th July 2010. Petitioner was asked to file the evidence of witnesses, so that the matter may be taken up for ex parte hearing on 6th August 2010. Nobody appeared from the side of the respondent and, therefore, the matter was finally heard ex parte on 11th August 2010.

The respondent on mutually accepted terms and conditions viz. mutually negotiated prices of individual channels/bouquets of channels and subscriber base, sometime in the year 2001 entered into an oral agreement with the petitioner for supplies of signals; the terms of this oral agreements were revised from time to time by mutual consent. As per the last deed, the respondent had agreed to pay a sum of Rs. 14,867/- per month along with Service Tax totaling to approximately to Rs.17,383/- per month. The learned counsel for the petitioner would contend that though there is no written agreement between the parties, but the parties have continuously acted upon the said oral agreement since a number of years and have been receiving the signals from the petitioner.

The petitioner has continuously raised the invoices every month on the respondent and the respondent has been making part payments from time to time, until as late as 31st March 2010 against invoices. The details of these payments and the invoices are reflected in the ledger account maintained by the petitioner. The learned counsel for the petitioner brought to our notice that the invoices raised on the respondent and placed in the Petition from 1st April, 2008 till 31st January, 2010. The last invoice issued on 30th January 2010 shows an outstanding of Rs.9,19,511/-.

The petitioner has filed the evidence by way of affidavit of Mr. Ram Prakash, who has been authorised by the officials of the company to file a petition on their behalf, by a resolution passed at the meeting of the Board of Directors of the petitioner's company on 1st April 2010. The deponent in this affidavit has categorically affirmed their statements made in the Petition in regard to raising of invoices, payment of part sums by the respondent against these invoices, total outstanding and Rs.9,19,511/- and about a notice sent by the petitioner's advocate to the respondent on 26th February 2010 by Registered Acknowledgement Due as well as under Certificate of Posting. The proof of the dispatch of this notice by India Post through a registered letter is placed with the affidavit by way of evidence.

The ledger account with effect from 01.01.2007 till 31.01.2010 showing a total debit of Rs.12,58,209.99 and a credit of Rs.3,38,698.67, bringing out a net outstanding of Rs.9,19,511.32 has been verified to be true to the personal knowledge of the Department. The respondent appears to have paid, as per the statement of account, a sum of Rs.16,380.00 on 31st August 2007 and it has been issued receipt No. 630520

and then he has paid in an erratic manner on different occasions different sums of rupees which are less than the amount of the invoice raised against it.

We are satisfied that the relationship between the petitioner and the respondent exists since April 2001 and because of the erratic manner of payment, an outstanding amount against the invoices raised by the petitioner has mounted. A net outstanding of Rs.2,94,138.94 exists and, therefore, we pass a decree of an amount of Rs.[(919511.32-625372.38) =Rs.2,94,138.94]towards the cable TV feed signal charges with interest at the rate of 12% on the respondent after deducting the amount on account of the limitation, prior to 19.4.2007 and up to January 2010 . Any amount payable to the petitioner prior to 19.4.2007 becomes time-barred as per the Limitation Act and, therefore, the amount of Rs.6,25,372.38, as mentioned above, has been arrived at by adding Rs.6,371.62, an outstanding for a period of 11 days of April 2007 on pro-rata basis, to the total outstanding up to 01.4.2007 i.e. Rs.6,19,800.76. The pendentelite and future interest shall be @ 6%.

The matter is disposed of accordingly.

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

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

PK/rkc