

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

Dated 10th August, 2011

**Petition No.201(C) of 2010
(With M.A. No. 343 of 2010)**

Neo Sports Broadcasting Pvt. Ltd. ...Petitioner
Versus
Uttar Banga Cable Pariseba Pvt.Ltd. ...Respondent

BEFORE:

**HON'BLE MR.JUSTICE S.B. SINHA, CHAIRPERSON
HON'BLE MR. P.K. RASTOGI, MEMBER**

For Petitioner : Mr. Kunal Tandon, Advocate

JUDGMENT

P.K.Rastogi, Member

The present petition has been filed on behalf of the Petitioner for recovery of the outstanding amount of Rs. 1,91,976.08 being Rs. 1,18,956.15 towards the principal amount alongwith interest.

2. The Petitioner is a private limited company engaged in the business of producing, broadcasting, and distributing satellite based television channels, and has exclusive rights to market and distribute the same in the territory of India.

3. The Respondent Company is a MSO/ Cable Operator incorporated under the Companies Act, 1956 operating in the area of Jalpaiguri, West Bengal and is engaged in distributing the television channels through its cable network to its subscribers.

4. According to the petitioner, on the basis of representations and the subscriber base declared by the Respondent, the Petitioner agreed to execute the Subscription Agreement dated 1.11.2007 for a period of 12 months, expiring on 30.10.2008, whereby the Respondent was authorized to subscribe the signals of the Channels of the Petitioner in order to distribute the same to its (Declared) subscribers in the agreed areas. It was agreed that for the period 1.11.2007 to 30.10.2008, the Respondent would be liable to pay for 836 subscribers at the rate of Rs. 37.25/- per subscriber per month and accordingly pay a sum of Rs. 31,141.00 to the Respondent every month.

5. The petitioner submits that an agreement was signed between the parties. The agreement was valid from 01.11.2007 to 31.10.2008. The signals were continuously supplied during the tenure of the Agreement. The Respondent has continued to default since inception despite receiving the Services/signals continuously and all the invoices

from time to time as per the terms of the Agreement. The Respondent failed to pay any heed to the invoices. The Respondent made some random payments of Rs. 35,000 on 31.5.2008, which has been accounted for. No payment has been made thereafter.

6. According to the petitioner total amount payable by the respondent to the petitioner since the beginning of the agreement was Rs. 1,91,976.08 being Rs. 1,18,956.15 towards the principal amount alongwith interest at the rate of 24% per annum from the date each invoice fell due for payment until 25.5.2010 of Rs. 73,019.93 and pendente lite from 25.5.2010 until payment of the same.

Since the Respondent was not making the payment, the Petitioner was constrained to issue a legal notice dated 15.3.2010 for clearing the outstanding but to no avail. The Respondent neither paid the amount due nor replied to the said legal notice of the Petitioner and as such, continued to default in payment.

7. In view of the circumstances explained above, the petitioner requested for following reliefs:

- "A. Pass an order for recovery of Rs. 1,91,976.08 being Rs. 1,18,956.15 towards the principal amount alongwith interest at the rate of 24% per annum from the date each invoice fell due for payment until 25.5.2010 of Rs. 73,019.93 and pendent elite from 25.5.2010 until date of filing of the present Petition and/or
- B. Pass an order for recovery of interest at the rate of 24% per annum pendent elite and until repayment of the said amount in favour of the Petitioner and against the Respondent and/or;
- C. Direct the Respondent to return the IRD boxes to the Petitioner."
8. A notice was issued to the respondent but nobody appeared on behalf of the respondent, therefore, the case was heard ex-parte.
9. The petitioner has filed following documents :
- a) Copy of the Agreement dated 01.11.2007
 - b) Copies of the invoices raised from 30.11.2007 to 30.04.2008
 - c) A copy of the statement of account detailing the outstanding amounts payable by the respondent alongwith interest upto 25.5.2010
 - d) A Copy of the letter dated 11.3.2008 alongwith Speed Post receipt
 - e) A Copy of the notice dated 15.3.2010 alongwith the Speed Post Receipt
10. The petitioner has filed evidence by way of affidavits of Mr. Ranjan Kumar Sharma, Executive-Legal, Mr. Srinivasan, Asstt. Manager-Affiliate Accounts and Mr. Supriyo Roy, AVP –Affiliate Sales employed with petitioner's company.

11. A copy of the agreement executed between the respondent and the petitioner shows that the agreement was valid from 01.11.2007 to 31.10.2008 and monthly subscription was to be paid at the rate Rs. 35000/- for subscriber base of 836.

12. The petitioner has also supplied log report of the respondent to show that the signals were supplied to the respondent from 01.11.2007 to 2.4.2008.

13. There is no record to show that the invoices have been served on the respondent. However, one of the employees Mr. Supriyo Roy has given affidavit of service of invoices to the respondent.

14. The statement of accounts shows that the respondent has been billed from November 2007 to April 2008 although disconnection took place on 2nd April 2008. The respondent paid an amount of Rs. 35000/- and the same has been credited to its account. According to affidavit of Shri Srinivasan, Asst. Manager-Affiliate Accounts of the petitioner, a discount was given in the billing amount for the period 12th March 2008 to 30th April 2008 for the extent of Rs. 55,894/-.

15. From the record, it is clear that the petitioner has made out a case in its favour. Accordingly, the respondent is liable to pay the principal amount of Rs. 1,18,956.15. However, we do not agree with charging 24% rate of interest being exorbitant and permit a calculation of interest @ 9% from the date the invoice fell due and pendentilite from the date of filing the petition and till the date of payment.

16. However, in view of the facts and circumstances of the case, there shall be no order as to costs.

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

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(P.K. Rastogi)
Member

/NC/