

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated- 27th July, 2011

Petition No.361 (C) of 2010

Wire & Wireless (India) Ltd.

...Petitioner

Vs.

Chamunda Cable & Ors

...Respondents

BEFORE:

HON'BLE MR.JUSTICE S.B. SINHA, CHAIRPERSON

HON'BLE MR. G.D. GAIHA, MEMBER

HON'BLE MR. P.K. RASTOGI, MEMBER

For Petitioner : Mr. Tejveer Singh Bhatia, Advocate

For Respondent : None

ORDER

The Petitioner is a Multi service Operator.

The Respondent No.1 is a Cable Operator. The Respondent No.2 is a Distributor of the petitioner. The Respondent No. 3 was impleaded in this

petition on the premise that the respondent no. 1 upon migration was to join its network, it being rival Multi Service Operator.

2. The petitioner as a multi service operator retransmits signals of various channels of the broadcasters. The petitioner and the respondent no. 1 entered into a subscription agreement in terms whereof signals of the channels of various broadcasters were to be transmitted to the network of the later.

3. The respondent nos. 1 and 2 did not appear before this Tribunal.

4. Notices could not be served on them for one reason or the other. Applications were filed by the petitioner for service of notice upon the respondents in terms of the Order V Rule 20 of the Code of Civil Procedure, 1908. The same was allowed.

5. Notices were published in two Newspapers on 04.04.2011 and 10.05.2011 in two Newspapers namely- "Punya Nagri" (Marathi) and "DNA" (English) respectively.

The respondent nos. 1 and 2, despite service of notice, by substituted service in the manner as stated hereinbefore, have not appeared before us.

6. The respondent no. 3 appeared in this case and filed a reply contending that it had nothing to do with the respondent no. 1. On the said statement its name was directed to be expunged from the records.

7. The agreement entered into by the petitioner and the respondent no. 1 was for CAS areas. The subscription fee was payable for whole year. Supply of signals was to be made in a package known as "Premium Package". Pursuant to or in furtherance of the said agreement the respondent was to pay a sum of Rs. 8,30,946/- plus the applicable taxes payable thereupon.

8. For supply of the signals to the network of respondent no. 1, petitioner had supplied the Set top Boxes and Viewing Cards to it.

9. According to the petitioner, on expiry of the terms of the agreement by a letter dated 26.04.2009 it had asked for renewal of the standard technical and commercial agreement.

10. It is furthermore the case of petitioner that respondent no. 1 was served invoices on the basis of the SMS Reports.

The petitioner made a demand for a sum of Rs. 8,30, 946/- towards subscription charges, return of the STBs supplied to it as also damages for a sum of Rs. 5,18,000/-. The said letter of demand was served upon the respondent no.1 through Courier Service.

11. In support of its contention, petitioner has filed a statement of account a copy whereof was also served upon the respondent with its letter of demand together with a statement showing the value of STBs and Viewing Cards whereby a sum of Rs. 6,03,825/- was claimed towards the price of STBs @ Rs. 2248/- plus a sum of Rs. 177/- towards the price of Viewing Cards totaling Rs. 2425/- per piece. The said demand was made upto April 2009. However, for the month of May 2009 only a sum of Rs. 158.99 was claimed.

12. According to the petitioner, respondent migrated to another multi service operator sometimes in the month of May or June, 2009.

13. The petitioner has also filed SMS Reports with the petition.

Inter-alia, on the premise that First Respondent neither paid the subscription charges nor returned the STBs, this petition has been filed claiming inter-alia, the following reliefs:-

a) Order/ decree in favour of the petitioner and against respondents for the amount claimed being the outstanding amount due from the respondent as on January 2007 for the cable services received by it from the petitioner.

b) Order/ decree in favour of petitioner and against respondents for the amount claimed being the value of Set Top Boxes and Viewing Cards supplied by it to Respondent No. 1 for further transmission of the signals to the end subscribers or in alternative;

c) Order/ decree in favour of petitioner and against respondents for the amount claimed being the loss of business suffered by it due to illegal acts of Respondent No. 1 and Respondent No. 3.

A prayer for awarding interest at the rate of 15% per annum on the subscription amount due as also on the value of the STBs and Viewing Cards have also been prayed.

14. The petitioner has filed evidence by way of an affidavit of one Mr. Atul D Jayvant. An additional affidavit has also been filed giving details of the depreciated value of the STBs and Viewing Cards being sums of Rs. 3,55,550.10 and Rs. 27,99.82 respectively .

15. The deponent of the said affidavit has not only proved the subscription agreement but also the distribution agreement. In terms of the later agreement the distributor was liable to maintain the equipments and assets of petitioner both at the Head-ends/ Control Rooms, Nodes as also the distribution lines of the network.

16. Having perused the records including the affidavit and the additional affidavit of the aforementioned witness of petitioner and the documents accompanying the petition we are, satisfied that it has made out a case for grant for a decree of sum of Rs. 8,30,946/- towards the principal amount. The petitioner has also made out a case for a decree towards the depreciated value of the STBs and Viewing Cards as stated in the additional affidavit.

The depreciated value of the Set top Boxes and the Viewing Cards, it is stated, has been calculated on the basis of the books of accounts made and maintained by the petitioner in ordinary course of business.

17. We are, however, of the opinion that keeping in view the alternative relief which is being granted in favor of the petitioner no case has been made out for grant of decree for damages, which is said to have been suffered by it on the premise that had the STBs and Viewing Cards been returned, the same could have been used for raising some revenue; as the witness of the petitioner

has failed to bring on record sufficient material to show that it indeed has suffered a loss of business by reason of non return of the Set top Boxes and Viewing Cards.

For the said purpose merely a bald statement has been made relying on or on the basis whereof, we are, of the opinion, no decree for the damages can be passed.

18. We, having regard to facts and circumstances of the case, are of the opinion that interest of the justice would be sub-served if the rate of interest is determined @ 9% per annum from the date(s) when the subscription amount fell due till realization and also towards the value of the STBs /Viewing Cards from June, 2009 till realization on the depreciated value thereof.

19. This petition is allowed in part and to the extent mentioned hereinbefore. The respondent no. 1 shall pay and bear the costs of the petition.

This petition, however, is dismissed against the respondent no.2.

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(S.B. Sinha)

Chairperson

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(G.D. Gaiha)

Member

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(P.K. Rastogi)

Member