

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL,**

**NEW DELHI**

**Dated- 15th July, 2011**

**Petition No.173 (C) of 2011**

M/s. Indian Cablenet Company Ltd.

...Petitioner

Vs.

M/s. Friends Cable Network

...Respondent

**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 Bhatia, Advocate

**ORDER**

The petitioner has filed this petition for recovery of a sum of Rs.3,31,963/- against the respondent herein towards non-payment of the subscription fee payable in terms of an agreement for the period upto 28.02.2010.

2. The respondent is a Local Cable Operator and operating in the town of Kumardubi in the State of Jharkhand.

3. According to the petitioner, the parties hereto had entered into an agreement on or about 21.08.2009 for a period of three years in terms whereof a sum of Rs. 70,040/- per month became payable by the respondent to the petitioner. Annexure III appended to the said agreement provided for the details of the franchisees of the respondent as also the rates of different channels payable for taking supply of signals of various broadcasters as also the subscriber base of the franchisees.

4. The petitioner would contend that pursuant to or in furtherance of the said agreement, invoices for sum of Rs. 77,684/- per month were regularly being raised and served upon the respondent.

However, an invoice for sum of Rs. 38,843/- only was raised and served upon the respondent for the period 16.09.2009 to 30.09.2009.

5. The petitioner in support of its claim has proved service of a notice of demand dated 13.02.2010 calling upon the respondent to pay a sum of Rs. 2,54,279/- as on 31.01.2010. The said notice was served on the respondent. In support of the said place, the petitioner has filed the registration receipt as also the Acknowledgment Due thereof. Another copy of the said notice has also been served upon the respondent on or about 15. 11.2010 calling upon it to pay a sum of Rs.3,31,963/- which was also served upon the respondent.

6. The petitioner has also filed its statement of account showing the amount mentioned in the invoices as also the payments received from the respondent from time to time.

7. On the aforementioned premise, this petition has been filed.

A notice was sent to the respondent by the Registry of this Tribunal. The petitioner was also permitted to serve the respondent in dasti.

8. As the respondent has refused to accept the said notices an application for substituted service was filed which having been allowed; notices were

published in two newspapers i.e “Times of India” and “Prabhat Khabar” on 19.05.2011.

The date of hearing was fixed on 08.07.2011 for which another notice was also directed to be issued by the Registry.

The said order has also been compiled with.

9. The petitioner in support of its case has filed an affidavit affirmed by Shri Atul Kumar Singh, the AVP- Finance of the petitioner Company.

He, in his affidavit, stated as under:-

*“4. I state that the petitioner entered into subscription agreement with the respondent on 21.08.2009 for supply of channels/signals of various broadcasters to the respondent. I state that in terms of the said agreement, the respondent was obliged to provide a list of its subscribers with their names, addresses and other relevant information. I state that under the subscription agreement dated 21.08.2009, the respondent was to pay monthly subscription fee/charges to the petitioner on the basis of the number of subscribers disclosed by the respondent to the petitioner. Copy of the subscription Agreement dated 30.10.2008 is exhibit as EXHIBIT PW1/1 (Pages9-31 of the paper book).*

*5. I state that despite availing the signals and receiving the invoices, the respondent has failed to deposit/pay regular subscription charges and its arrears to the petitioner which has resulted in huge outstanding of Rs. 3,31,963/-.*

*6. I state that the respondent was continuously availing the cable signals being provided by the petitioner. I state that respondent, although continued to receive the cable signals from the petitioner, however, in a completely malafide manner consistently made defaults in payments of the regular monthly subscription charges along with arrears for which the respondent is liable to make good the dues.*

10. As noticed heretobefore, the petitioner has not only proved subscription agreement which bears the signature of the respondent on each and every page but also has proved the service of the invoices upon the respondent.

The respondent despite service of demand notices did not respond thereto. The petitioner has also proved the statement of accounts maintained in regular course of business.

11. In view of the materials brought on record, we are satisfied that the petitioner has made out a case for passing an ex- decree for a sum of Rs.3,31,963/-. However, we direct that the petitioner shall be entitled to interest @ 9% per annum from the dates on which they fell due till the date of actual payment.

There shall however, be no order as to costs.

.....

**(S.B. Sinha)**

**Chairperson**

.....

**(G.D. Gaiha)**

**Member**

.....

**(P.K. Rastogi)**

**Member**

**/AS/**