

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

**DATED 27<sup>th</sup> JULY, 2011**

**Petition No. 270(C) of 2010**

Hathway Bhaskar Multinet Pvt. Ltd. : Petitioner  
Vs.  
Jaipur Cable T.V. Network, Jaipur : 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. Jayant K. Mehta, Advocate  
Mr. Nasir Hussain, Advocate  
For Respondent : Mr. Vineet Bhagat, Advocate  
Ms. Neha Jain, Advocate

**JUDGEMENT**

**G.D. Gaiha**

The petitioner is a company incorporated and registered under the provisions of the Companies Act, 1956 having its office in Jaipur. It is also registered as a cable television service provider under the provisions of Section 3 of the Cable Television Networks (Regulation) Act, 1995 (hereinafter referred to as Cable Television Act). The petitioner primarily act as a MSO and is engaged in the business of reception and distribution of satellite television, broadcast signals

and other electronic signals primarily to various distributors, franchises, local cable operators and sub-link operators and also directly to individual subscribers on its own.

2. The respondent is a local cable operator operating through the sole proprietor of Mr. Gopal Singh Shekhawat. The parties had entered into an agreement dated 9.3.2009 whereby the petitioner was to provide cable TV signals to the respondent. The term of agreement was of one year commencing from 1<sup>st</sup> Jan, 2009 to 31<sup>st</sup> December, 2009 and the area in which the TV signals were to be provided are as under:-

- a) Officers Campus
- b) Officers Campus Extension
- c) Anand Nagar
- d) Bhartendu Nagar
- e) Sinhbhumi
- f) New Colony
- g) Marudhar Vihar
- h) Tara Nagar
- i) Amar Nagar
- j) Om Nagar and
- k) Lion's Lane Hanuman Nagar Extension.

3. The payment terms are as follows:-

Sl. No.	Month	Amount
1.	January and February, 2009	50 % of the monthly billing amount of Rs.82,349/- per month
2.	March 2009 to December, 2009	Rs.82,349/- per month

The parties hereto entered into arrangement of supply of signals of the channels of various broadcasters since 1999.

4. On or about 9.3.2009, an agreement was entered into by the parties hereto, some of the relevant clauses therein read as under:

*“3. That the system of payment will be calculated as following for the period of connection will be as follows:*

*Para (1) The Second Party will pay 50% of the billing amount which is Rs.82,349/- (Rupees Eighty Two Thousand Three Hundred and Forty Nine only) for two months in the year 2009 (From January, 2009 to February, 2009).*

*Para(2) For the rest ten months (March, 2009 to December, 2009) Second Party will pay the full billing amount which is Rs.82,349/- (Rupees Eighty Two Thousand Three Hundred Forty Nine only) for every month.*

*This system will start from 1<sup>st</sup> January, 2009*

.....

5. That the second party during this period will not migrate to any other Multi-system Operator. If Second Party does so, the First Party is liable to take the amount on behalf of Bhaskar Multinet Limited from the Second Party which was 100% exempted in favour of the Second Party for middle of the year 2008 (June, 2008). The amount of Rs.2,26,288/- is to be paid by Second Party to the First Party, if Second Party fails to abide by the agreement and the subscription amount of Rs.82,349/- per month for the period of July, 2008 to December, 2008, which comes to Rs.4,94,094/- will be paid by the Second Party to the First Party which was earlier 100% exempted. Hence, the Second Party will be responsible and answerable for the total amount of Rs.7,20,382/- to the First Party.

.....

12. On the expiry of this agreement (which will be midnight of 31.12.2009) the maximum amount of Rs.7,20,382/- as per paragraph-5 aforesaid will be payable by Second Party will be considered to be exhausted. Neither the First Party nor the former Firm "Bhaskar Multinet Limited" will be liable for the aforesaid amount and also will not incorporate in any other written agreement. In the event if the agreement continues between the Parties, then the Paragraph-5, aforesaid, will continue."

5. The present petition has been filed against the alleged illegal action of the respondent of migrating from the network of the petitioner to another competing MSO, without complying with the

mandatory provisions of clause 4 of the Interconnect Regulations and without clearing its outstanding dues of Rs.19,55,616/-.

6. As per Interconnect Regulations dated 4.9.2006, it has been considered as under:-

*“Default in Payments*

*Sometimes LCO’s switch from their affiliated MSO’s when they are either unable or unwilling to pay the outstanding dues to their affiliated MSO’s. This result in bad debts for their affiliated MSO’s leading to the latters inability to pay broadcasters for the LCO’s portion of dues....”*

7. The prayers made by the petitioner in the petition are:-

- (i) To direct the respondent to pay to petitioner a sum of Rs.19,55,616/- towards the Cable TV feed Signal charges.
- (ii) To declare the migration of the respondent from the petitioner MSO to other competing MSO without clearing the outstanding dues and without complying with the regulations as illegal.

8. The principal contentions of the petitioner are as follows:-

- (i) Prior to agreement dated 9.3.2009, the respondent was taking signals feed from petitioner for a period prior to Jan, 2009 and an amount of Rs.7,20,382/- was due and

outstanding from the respondent to the petitioner. This amount of Rs.7,20,382/- was conditionally waived off by the petitioner in the agreement dated 9.3.2009 in lieu of the respondent acting in accordance with the agreement and not migrating to any other MSO.

- (ii) The petitioner has been raising invoices upon the respondent which have been duly received by them and had been making payments from time to time on the basis thereof. In the invoices mention of the previous outstanding by the petitioner was made and the outstanding amount mentioned therein has never been objected to by the respondent.

In fact the respondent was a consistent defaulter in payment of the monthly subscription amount to the petitioner as per the agreement and as on 30<sup>th</sup> April, 2010 there was a net outstanding of Rs.19,55,616/-.

- (iii) The petitioner maintains books of accounts in the normal course of the business and the statement of accounts has been appended to with the petition for the period April, 2008 and April, 2010.

The petitioner by a letter dated 20.12.2010 called upon the respondent to clear the outstanding of Rs.17,90,918/- towards the subscription charges.

The respondent has not even bothered to respond the said notice of the petitioner and has migrated to other

competing MSO, i.e, DEN Sky Media Networks Pvt. Ltd. without even clearing the outstanding to wriggle out of its contractual obligations. The letter dated 20.2.2010 sent by the petitioner to the respondent alongwith the proof of delivery is also appended to the petition.

- (iv) No notice under Clause 4.2 and 4.3 of the Interconnect Regulations has been issued by the respondent and therefore it was illegal on its part to migrate to other competing MSO.

9. The main contentions of the respondent are as follows:-

- (i) The three MSOs working in the city of Jaipur are Digi Cable, Hathway Bhaskar and Den Sky Networks Pvt. Ltd. The respondent was taking signals before April, 2009 from the petitioner. Some disputes arose amongst the MSOs which were settled by the intervention of Superintendent of Police, Jaipur whereby the areas of distribution between all the three MSOs were earmarked and as per the settlement the network of the respondent came under the territory of Den Sky Networks Pvt. Ltd and the petitioner disconnected the signals of the respondent.
- (ii) The respondent has since the April, 2009 retransmitted the channels received from Den Sky on its cable TV network and supplying it to its subscribers in both analog

and digital mode and this fact of change of MSO is very well in the knowledge of the petitioner.

- (iii) The respondent has not duly cleared its dues to the petitioner and the petitioner has approached this Hon'ble Tribunal in connivance with other MSO, i.e., Den Sky Ltd.

Since the respondent has filed the case against Den Sky just with the intention to prejudice the case of the respondent. Since April, 2009 the respondent has started taking signals from Den Sky Networks and therefore no payment has been made to the petitioner after March, 2009 because of the stoppage of the feed from it on account of the division of the areas. The respondent is also not taking any dual feed as it has only one cable through which it is transmitting/re-transmitting the signals to its customers. And since the respondent is satisfied with the services being given by the said MSO, i.e, Den Sky Networks Ltd, there is no question of having no relationship with the petitioner after 31<sup>st</sup> March, 2009.

- (iv) The disputes amongst the three MSOs were resolved with the intervention of the SP, Jaipur and as per the settlement amongst the three MSOs; the respondent did not come under the territory of Den Sky Networks Pvt. Ltd.

- (v) It is also denied by the petitioner that it disconnected respondent in April 2009 and since then the respondent

is re-transmitting the signals of Den Sky Networks Pvt. Ltd.

10. This petition was heard along with Petition No.129(C) of 2010 and 420(C) of 2010, entitled Jaipur Cable TV Network vs. Den Star Media Pvt. Ltd.

The petitioner filed an application for its impleadment therein. However, as the reliefs prayed for by the petitioner are absolutely distinct, the present petition has been filed.

11. In this petition interpretation of the aforementioned agreement is the issue; as Mr. Bhagat, learned counsel appearing for respondent would contend that 'migration' referred to in Clause 5 thereof was voluntary in nature and keeping in view the fact that the area of operation of three MSOs were distributed by the Superintendent of Police, Jaipur, respondent No.2 has no other option but to migrate to the network of DEN.

12. A party enters into a commercial agreement with its eyes wide open. It, after the said agreement is worked out and upon receipt of the benefit thereunder cannot be permitted to plead frustration of the contract, as envisaged under Section 56 of the Indian Contract Act.

Clause 3 of the agreement provides for some amount of concession to respondent herein. It was a conditional offer. The terms of the agreement-contract entered into by and between the

parties are binding on them. In terms of the said agreement, migration of respondent to the network of any other multi service operator was prohibited. The waiver of subscription charges was subject to some conditions. Those conditions, thus, were required to be fulfilled before the waiver in payment of subscription fee could be claimed. Keeping in view the shift in the stand taken by respondent in the matter of obtaining feed from different MSOs, it cannot now be permitted to say that the waiver clauses contained in the said agreement shall apply.

13. A person, as is well known, cannot approbate and reprobate at the same time. Moreover, the petitioner has served invoices upon respondent.

The petitioner has also filed proof of despatch of the said invoices before us.

14. The petitioner furthermore has filed its ledger account, from a perusal whereof it would appear that for all intent and purport it had been paying subscription fee at the rate of Rs.82,000/- per month till March, 2008. He started defaulting thereafter, as no payment was made for the subsequent periods. A cheque issued for a sum of Rs.1,50,000/- also bounced.

From July, 2008 payment of a sum of Rs.50,000/- was made in cash in June, 2008. From July, 2008 till February, 2009 no payment was made. It has given two cheques for sum of

Rs.41,175/- each on 28.3.2009. Thereafter again no payment has been made.

It was on the aforementioned premise, a notice was issued by the petitioner demanding the said amount on 20.2.2010.

15. Mr. Bhagat, however, has drawn our attention to the cross-examination of Mr. Gopal Singh Shekhawat, the proprietor of the respondent wherein he contended that a request was made to reduce the subscription charges in view of the territorial division.

The terms of the said agreement dated 9.3.2009 are not in dispute.

The respondent had been on his own showing running its network for the last 15-16 years. The respondent, it would bear repetition to state, has admitted the 2009 agreement whereby a portion of its dues were waived conditionally.

Invoices were raised. He had raised no plea of frustration of contract. Evidently he has been trying to shift from one MSO to the other for reasons best known to him.

He having, thus, violated the conditions of agreement cannot be permitted to resort to so called 'frustration of contract' nor can he be permitted to contend that he was forced to migrate. If it was so, it ought to have terminated the agreement upon complying with the statutory requirements, namely, service of notice under Clause 4.2 and a public notice under Clause 4.3 of the Regulations.

16. For the reasons aforementioned, this petition is allowed. The petitioner shall be entitled to interest @ 9% p.a. on the sum due.

In the facts and circumstances of the case, however, there shall be no order as to costs.

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

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

.....  
**(P.K. Rastogi)**  
**Member**

*HKC/*