

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL,**

**NEW DELHI**

**Dated- 15<sup>th</sup> July, 2011**

**Petition No.154 (C) of 2011**

M/s. Indian Cablenet Company Ltd. ...Petitioner

Vs.

M/s. Jhanjra Home 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**

1. This petition by the petitioner herein which is Multi Service Operator is for recovery of a sum of Rs.2,20,818/- said to be the amount due from the respondent as on 28.02.2010.

2. The respondent is a Local Cable Operator having been operating in the town of Jhanjra in the district of Burdwan in the State of West Bengal.

An agreement between the parties was entered into on or about 30.10.2008 for a period of three years in terms whereof the subscription fee at the rate of Rs. 69,300.8 per month was fixed for supply of signal to the network of the respondent so as to enable it to retransmit the same to the operators mentioned in annexure III appended thereto.

The rates payable for different broadcasters were also mentioned therein.

3. The petitioner had been raising and serving the invoices upon the respondent which are at pages 29, 30, 31, 32, 33, 34 and 35, 36 of the paper book. An invoice for the month of February 2010 was sent by Speed Post on or about 01.02.2010 which was received by the respondent.

4. A demand letter dated 13.02.2010 demanding a sum of Rs.1,30,904/- as on 31.01.2010 was also sent under registered cover with acknowledgment due which has been received by the authorized representative of the respondent.

5. The petitioner in support of its claim has filed the ledger account to show that as on 20.08.2010 a sum of Rs. 2, 10, 818/- became owing and due from the respondent to it upon adjustment of the payments received from it .

6. This Tribunal issued a notice to the respondent which was refused to be accepted by the respondent on 09.06.2011. The petitioner has also served a said notice on it in dasti which was also refused to be accepted.

The petitioner has filed an affidavit of service.

7. As the respondent refused to accept the service of notices, an application for substituted service has been filed on 26.04.2011 which having been allowed; notices were published in two newspapers namely "Times of India" and "Protidin".

8. As despite service of the notice, the petitioner did not appear, this petition was set down for ex- parte hearing but by way of abundant precaution another notice was sent by the Registry which the respondent again refused to accept when tendered to him on 08.07.2011.

9. From a perusal of the documents filed by the petitioner as also and an affidavit affirmed by Shri. Atul Kumar Singh, the AVP- Finance of the petitioner Company, we are satisfied that the petitioner has made out a case for passing an ex-parte decree.

10. The deponent of the said affidavit stated as under:-

*“4. I state that the petitioner entered into subscription agreement with the respondent on 30.10.2008 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 30.10.2008, 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 exhibited as EXHIBIT PW1/1 (Pages9-27 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. 2,10,818/-.*

*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.*

11. Moreover, as has been noticed heretobefore, invoices were being raised on a regular basis and the same, as noticed heretobefore, had been served on the respondent. Moreover the last invoice was sent through Speed Post, the postal receipt whereof has been produced before us.

From the statement of accounts filed by the petitioner also it would appear that all the payments made by the respondent have been accounted for.

12. The respondent has signed on each and every page of the said agreement dated 30.10.2008. The terms contained in the said agreement therefore, are not in dispute. In terms of the said agreement also the respondent was to pay the subscription fees regularly the amount mentioned therein.

13. We therefore, are of the opinion that the petitioner must be held to have established its case as has been prayed for passing an ex-parte decree.

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.

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**(S.B. Sinha)**

**Chairperson**

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**(G.D. Gaiha)**

**Member**

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**(P.K. Rastogi)**

**Member**

**/AS/**