

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL  
New Delhi**

**Dated 1<sup>st</sup> June, 2011**

**Petition No. 237(C) of 2009**  
**(with M.A.No.90 of 2010)**

M/s. Hathway Cable & Datacom Pvt. Ltd. : Petitioner

Vs.

Sai Sagar Cable Communication : Respondent

**Petition No. 238(C) of 2009**  
**(with M.A.No.135 of 2010)**

M/s. Hathway Cable & Datacom Pvt. Ltd. : Petitioner

Vs.

Sainnath Star Channel : 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. Tom Joseph, Advocate  
Mr. Satish Nair, Advocate

## JUDGEMENT

### S.B. Sinha

The principal issues in both the matters being identical, these two petitions were taken up for hearing together and are being disposed of by this common judgment.

2. Whereas in Petition No. 237 (C) of 2009, the petitioner has prayed for recovery of a sum of Rs. 5,88,459/-; in Petition No. 238 (C) of 2009, a prayer for recovery of a sum of Rs. 2,78,734/- has been made.

3. The basic fact, which is not much in dispute, may be noticed at the outset:

- (i) The petitioner is a multi service operator having a Pan India presence. The respondents are link operators being proprietary concerns and are engaged in business of retransmission of channels in the town of Pune.
- (ii) The petitioner contends that it has been supplying signals to respondents in terms of an oral arrangements. The respondent, however, although

agree that they had been taking supply of signals from the petitioner, the period of supply according to it was only 12 months i.e. from January, 2008 to December, 2008.

- (iii) It is furthermore the contention of the respondent that they have been taking supply of signals from another Multi Service Operator from January, 2009.

4. Admittedly respondents before their migration to another MSO did not issue any notice to petitioner in terms of Clause 4.1 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulations 2004 as amended from time to time (The Regulations) or a public notice in terms of Clause 4.3 thereof.

5. On the aforementioned premise, the petitioner has served a legal notice asking respondents to pay the amounts in question. According to the petitioner despite the said notice, no payment having been made within the period stipulated thereunder, it is entitled to the reliefs sought for in these petitions.

6. The respondents, on the other hand, denied and disputed not only the period during which it had received supply of signals

from the petitioner but also contended that it had made all the payments to it and nothing is due and owing from them.

7. The respondents in support of their contentions filed a statement of payment through their bankers in their respective replies as also in the affidavits of their witnesses.

8. We may notice the same.

"Date 05-04-2010 Branch: Pune-main

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To Whom so ever it may concern

We write to confirm that the following Cheques/Demand Drafts have been cleared/issued from the account of M/s. Sai Sagar Cables & Satish Jain and Rajendra Dhore.

DATE	AMOUNT	CHEQUE NO.	IN FAVOUR
30-01-2008	60,000	8308342	Star India Pvt. Ltd.
29-02-2008	70,000	8308346	Hathway Cable
29-03-2008	60000	270052	Hathway Cable
30-04-2008	60,000	270053	Hathway Cable
17-06-2008	60,000	181979	Hathway Cable
18-08-2008	60000	182304	Hathway Cable
26-09-2008	40,000	961004	Hathway Cable
06/10/2008	20000	8308355	Hathway Cable
25-10-2008	20000	961166	Hathway Cable
18-11-2008	40000	961291	Hathway Cable

This confirmation is issued on specific request of Mr. Rajendra Dhore & Mr. Satish Jain.

Karnataka Bank Ltd.  
10, Budhwar Peth, Bajirao Road,  
Pune – 411 002 24450884, 24463147, 24485744

**“TO WHOMSOEVER IT MAY CONCERN**

This is to certify that Mr. LOHOKARE VIJAY D. is holding saving A/C NO 3150 with us. Following cheques were presented and honoured by us

DATE	CHEQUE NO	AMOUNT	PAYEE
01/01/2008	426256	40000	STAR INDIA
01/02/2008	426254	30000	HATHWAY CABLE
03/03/2008	461262	35000	HATHWAY CABLE
02/04/2008	461264	37000	HATHWAY CABLE
03/05/2008	461267	32000	HATHWAY CABLE
06/06/2008	461272	32000	HATHWAY CABLE
09/07/2008	461275	32000	HATHWAY CABLE
06/08/2008	461279	32000	HATHWAY CABLE
02/12/2008	473209	40000	HATHWAY CABLE
	TOTAL	310000	

For RUPEE CO-OP BANK LTD.  
Budhwar Peth Branch PUNE – 2

Authorised Signatory  
Branch Manager”

9. The only question which arises for consideration is as to whether the petitioner is entitled to the relief(s) prayed for herein and in particular recovery for the sums specified in the respective petitions.

10. In support of their respective contentions the petitioner has examined one Shri Deepak Shivale its DGM operations; whereas the respondents examined their respective proprietors namely Mr. Vijay Dhundiraj Lohkar and Mr. Rajendra Tukaram Dhore.

11. Mr. Jayant Mehta, learned counsel appearing on behalf of the petitioner in support of these petitions, urged;

- (i) The receipt of signals being not disputed and furthermore service of at least one invoice having been admitted, respondent must be held to have made themselves liable to pay the amount outstanding towards subscription fees for supply of signals to their network.
- (ii) Having regard to the fact that the petitioners were not aware as to when respondents migrated to the network of another MSO and admittedly having regard to the fact that no notice in terms of the Regulation 4.2 of the Regulations was served, petitioner would be entitled to the recovery of the amounts as prayed for.
- (iii) In any event the petitioner would be entitled to the subscription fee for at least for 13 months i.e. January, 2008 to January, 2009.

- (iv) The receipt of the notices having not been denied and the respondent having not responded thereto, the contents thereof must be held to have been accepted.

12. Mr. Tom Joseph, learned counsel appearing on behalf of the respondents, on the other hand, urged: -

- (a) The petitioner having supplied signals only for 12 months and it having received payments for those months, no amount can be said to be owing and due from them to it.
- (b) The petitioner having not proved the service of invoices, the impugned demands are wholly unsustainable.
- (c) The legal notices having been sent at a wrong and/or incomplete address and that too only under postal certificate, no presumption can be raised that they have been delivered to respondents.

13. Before adverting to the rival contentions raised by the parties, it may be noticed that in Petition No.237 (C) of 2009, respondents are said to have made payment for a sum of Rs. 60,000/- and Rs. 40,000/- by a cheque dated 30<sup>th</sup> January, 2008 and 01/01/2008 respectively in favour of Star India Pvt. Ltd.

14. The rest of the payments which are reflected in the certificates granted by Karnatka Bank Ltd. and Rupee Corporation Bank Ltd. would appear from the ledger account filed by the petitioner itself.

15. It furthermore appears that respondent M/s. Sai Sagar Cable Communication issued some cheques which bounced. Other payments made by respondent have not been denied or disputed by petitioner.

16. It may further be placed on record that the although petitioner has claimed the subscription fees for the period 1.12.2007 and 23.3.2009, before us the claim has been kept confined only for the period January 2008 to March, 2009.

17. It is also not in dispute that respondents have brought on record an invoice issued by one Next Generation Cable Communication for the month of February, 2009. The witnesses of respondent asserted that although no notice in writing in terms of Clause 4.2 of the Regulations was issued but such notices were issued orally as the customers have been making complaints about the poor quality of services provided by petitioner and despite demand it did not issue any no objection and no dues certificates.

18. According to the respondents, petitioner having itself issued a letter on 3.1.2009 asking them to desist from migrating to any other network, it must be held to be aware of the oral communication made by them.

19. In view of the aforementioned materials brought on record by the parties, the issue between them must held to be a narrow one.

20. We may proceed on the basis of the admitted fact. The respondent has not denied or disputed the service of at least one of the invoices. In each of the invoices, the number of connectivity has been mentioned. The amount payable thereunder has been mentioned and the taxes payable therefor, have also been mentioned.

21. The respondents have made substantial payments of the monthly subscription charges in as much as whereas in the first case payment of a sum of Rs. 60,000/- has been made out of the total of Rs. 61,798/- per month and so far as the Petition No. 238 (C) of 2009 is concerned the monthly subscription charges including taxes has been stated in the invoice to be mentioned Rs. 38,202/-. Respondent has been paid less than Rs. 30,000/- per month.

22. The agreement between the parties, in that view of the matter, must be held to have been established. The respondent was, thus, bound to

prove as to on what basis, part payments have been made. In fact, so far as the respondent in Petition No. 238 (C), 2009 is concerned he has made payments of varying sums ranging from Rs. 32,000 to Rs. 50,000/-. The respondents also have not been able to establish by bringing on record any cogent or reliable evidence that the monthly subscription amounts payable in terms of the respective agreements inclusive of tax were Rs. 60,000/- and Rs. 32,000/- respectively.

23. A contention has been raised by learned counsel for respondents that petitioner had been granting receipts in full and final satisfaction of the amounts paid towards the monthly subscription fee. However, it stands accepted that no such plea has been raised in the reply.

24. So far as service of notice of demand and legal notice are concerned it may be placed on record that both the witnesses made statements in cross examination that although house no. had not been given in the notice, they are well known in the locality and anybody can find out their houses.

25. It is, therefore, evident that respondents despite service of notice did not respond thereto. As a matter of fact respondents in their written statements have also not denied or disputed the same.

26. It is also not denied and disputed that the cheques amounting to Rs. 1,60,000/- issued by Shri Rajendra T. Dhore bounced.

27. So far as the respondents are concerned, they have also not been able to show as to on what basis the amount of Rs. 60,000/- or Rs. 40,000/- paid to Star India Pvt. Ltd. It is difficult to accept that respondents had issued blank cheques to petitioner which had been utilized by it for its own benefit. Having issued a cheque in favour of a third party, it was the responsibility of respondents themselves to show as to why payment has been made to Star India Pvt. Ltd.

28. The respondents admittedly migrated to another MSO. The petitioner in its notice dated 3<sup>rd</sup> January, 2009 did not say that respondents had already migrated but merely asked them to desist from shifting to any other MSO without discharging their payment obligations.

29. This it goes without saying would not amount to any admission on the part of petitioner but evidently it was aware of the respondent's intention. The respondents, as noticed heretobefore have established service of invoice by another MSO only from February, 2009. Even otherwise it was bound to pay for the 21 days' notice period.

30. In the peculiar facts and circumstances of this case and having regard to the conduct of the parties, we are of the opinion that interest of justice would be subserved, if a decree is passed on the basis of subscription fee payable for a period of 13 months.

31. In petition no. 237 (C) of 2009, the total amount payable for the said period at the rate of Rs. 61,798/- comes to Rs. 8,03,374/-. Out of the said amount admittedly the respondent has paid a sum of Rs. 4,30,000/-. The petitioner is therefore, entitled to a decree for the rest of the amount i.e. Rs. 3,73,374/-.

32. In petition No. 238 (C) of 2009, the amount payable towards the subscription fee was Rs. 38,202/- per month which if multiplied by 13 comes to Rs. 4,96,626/- out of which respondent has paid a sum of Rs. 2,70,000/-, as it appears from Exhibit RW1/2.

The petitioner, therefore, is entitled to the to a decree for the balance amount namely Rs. 2,26,626/-.

33. On the said amount(s) the petitioner shall be entitled to interest at the rate of 9% p.a. from February, 2009 till the filling of the Petition. It would also be entitled to pedentilite and future interest till realization of its dues at the same rate.

34. These petitions are allowed in part and to the extent mentioned therein before. In the facts and circumstances of this case, however there shall 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**

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