TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 8th June, 2011

Petition No.323 (C) of 2010

P.R.T. Satellite Network System …Petitioner

Vs.

Sun Distribution Services …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 Mehta, Advocate
Mr. Sukant Vikram, Advocate

For Respondent : : Mr. Maninder Singh, Sr. Advocate
Ms. Gauri Setia, Advocate

JUDGMENT

S.B. Sinha

The petitioner herein is a distributor of TV channels. The respondent is a content aggregator of various channels including the Sun Group of Broadcasters.

2. The petitioner filed a petition before this Tribunal, which was marked as Petition No. 255 (C) of 2010.

By an order dated 03.8.2010, the prayer for an order of injunction in that petition was refused, as had been prayed for, stating :-

> *"One of the contentions raised by Mr. R. Krishnamurthy, learned counsel appearing for the petitioner before us was that the public notice had been published only in one newspaper and not in any regional newspaper.*
>
> *Ms. Sibal produced before us copies of two newspapers to show the requirements of clause 4.3 of regulations has in fact been complied with.*
>
> *The petitioner has even not annexed the copies of the invoices for the months of January, 2009 to March, 2009 wherein the number of subscriber base in respect of the aforementioned three channels would tally with those in the agreement. Nothing has been produced before us to show that the petitioner has at any point of time, raised any protest thereagainst. If the contention of the petiitoner is correct, we would have expected it to come out with a true disclosure of the amount which was payble by it to the respondent and/or the number of its subscribers in respect of different channels. We say so particularly in view of the fact that atleast in relation to Gemini Bouquet, the respondent has shown the subscriber base to be only 3710 vis-a-vis the statement of the petitioner that it had 5450 connections. Even in relation to the said channels, the petitioner has also not produced before us its statement of account to show as to even according to it how much was payable and how much it had been paying to the respondent on a monthly basis. In this view of the matter, we are of the opinion that petitioner has failed to make*

out any prima facie case for passing of an order of interim injunction in its favour.

We, therefore, reject the prayer of the petitioner for granting an order of ad-interim injunction."

3. The said petition was permitted to be withdrawn on a prayer made by petitioner herein with leave to petitioner to file another petition by an order dated 06.9.2010.

The said order reads as under:-

"Mr.Nasir Hussain, Advocate appearing on behalf of Mr.Jayant K.Mehta, the learned counsel for the petitioner states that this petition may be permitted to be withdrawn with liberty to the petitioner to file a fresh petition. Such a liberty is granted.

In this view of the matter, this petition is permitted to be withdrawn."

4. This petition has been filed on or about 20.9.2010 on almost similar grounds on which the earlier petition was filed.

5. Admittedly, petitioner has been obtaining signals of the channels of respondent wherefor they had been entering into agreements.

It is, however, not in controversy that signals were being received in respect of the channels by petitioner since 2003.

Inter-alia on the premise that petitioner has defaulted in payment of a sum of Rs. 81,98,254/- towards feed charges, a notice was issued by respondent on or about 09.7.2010, stating:-

> *"Sub : 4.1 notice issued as per TRAI regulations, 2006 – reg.*
>
> *We would like to inform you that you have a subscription due amount of Rs.81,98,254/- (Rupees Eighty One Lakhs Ninety Eight Thousand Two Hundred and Fifty Four Only) as on 30.06.2010. We hereby call upon you to pay the above said due amount, immediately on receipt of this notice, failing which we will be constrained to disconnect the signals presently being provided to you.*
>
> *This notice may be treated as notice issued under clause 4.1 of the Telecommunication (Broadcasting and Cable Services) Interconnection (Third Amendment) Regulation, 2006."*

6. A public notice was also issued in two local newspapers, the English translation whereof is as under :-

"LEGAL NOTICE

This is to inform the public that M/s. P.R.T. Satellites, functioning No. 18/11, Rajaji Salai, 2nd Floor, Krishna Complex, Panruti TK, Cuddalore-607106, Tamil Nadu, is doing in the business of operating cable TV has defaulted in paying the regular Subscription due amount to us, for receiving Sun Group of Channels. Therefore those customers who have got their connections from the above said cable operator will not receive the Sun TV Network Channels after 21 days from this day. This notice is published under clause 4.3 of Telecommunication (Broadcasting and Cable Services) Interconnection (Third Amendment) Regulations, 2006."

7. Admittedly, however, the parties entered into an agreement on or about 01.04.2009 which was valid upto 31.3.2010.

This Tribunal did not pass any interim order in this petition as the signals to petitioner's network had been disconnected by respondent on or about 03.8.2010.

8. In this petition, petitioner inter-alia contended :-

a) Since 2003 onwards it had been forced to subscribe 'Gemini' and 'Teja' Channels by respondent herein in relation whereto petitioner objected by its letters dated 26.7.2004 and 24.8.2005;

b) By reason of a letter dated 25.12.2005, petitioner alleged :-

"We have agreed to pay 5450 points only which was agreed by you too. Even after our repeated request, filled and counter signed agreement copy was not sent to us till today.

But you are compelling us to pay more and more of points which is not reasonable and unjust able.

We have requested you to De-Activate Gemini and Teja and not to bill it too. But our request was not considered by you so far and without signal we are billed.

We kindly request you to send us the counter signed and filled agreement copy and also request you to stop excess billing and to De-Activate Gemini and Teja immediately."

The said letter was sent under certificate of posting.

Yet again, another letter was issued on or about 17.12.2007. Finally on 17.12.2007 petitioner requested respondent to discontinue 'Gemini' and 'Teja' Channels.

It was also requested to conduct a joint survey and to bill it on the subscriber base on the basis thereof. According to petitioner, it had only a subscriber base on the basis of 5450; whereas in the agreement dated 01.4.2009, the subscribers of petitioner was shown to be : Sun TV 12010, KTV Bouquet 7370 and Gemini Bouquet 3710;

(c) According to petitioner, Sun TV became a pay channel only from 01.12.2007 although it had come to learn thereabout only in March 2008.

The petitioner sent a letter on or about 21.04.2008, which reads as under :-

> *"I came to understand from the letter of TRAI, copy of it enclosed here with, that Sun TV has turned to pay only from 01.12.2007.*
>
> *But you have been collecting money for that channel from us from December 2006 itself.*
>
> *As we are suffering heavy loss by your excess billing of KTV, Gemini, Teja, we kindly request to refund the amount paid by us for Sun TV from December 2006 to December 2007 immediately.*
>
> *Or it may be credited in our account and a credit note may be sent to us for our account and records.*
>
> *Awaiting for your immediate and favourable response."*

9. Admittedly, petitioner received a bill/invoice from respondent dated 06.01.2009 for the period 01.01.2009 to 31.01.2009 showing not only the number of subscribers but also the rates thereof. In that invoice, a balance of Rs.55,88,224.22P was shown to be due for the said period.

The subscription charges together with tax was stated to be Rs.3,39,866.53P. Thus, a sum of Rs.59,28,090.70P was said to have become due.

The petitioner sent a letter on or about 03.02.2009 to respondent by registered post, stating as under :-

> *"From 2005, for the first time, I have received your invoice No.B1-195281 dt. 06.01.2009 for Rs.3,39,866-53. On the above invoice you have shown an outstanding amount of us as Rs.5928090-75.*
>
> *We object the invoice as totally wrong and against truth and agreement reached between us.*
>
> *So many times, we have brought to your notice orally and in writings that we have only 5450 points. But your invoice is totally irrelevant to the actual fact and very much excess to the agreed point.*
>
> *From 2005, we have been sending our agreed payments regularly and we are having no dues as on date. We have also requested you for the refund of Sun TV billing too which we have paid for one year Dec 2006-Dec 2007.*
>
> *So we kindly request to verify the account and send us a copy of statement from Jan 2005 up to date for our accounts verification and records."*

10. The petitioner annexed with the petition a statement of accounts, wherein for the period 07.02.2005 and 31.7.2010, it is shown to have paid a sum of Rs.91,73,601/- on the premise that its subscriber base was much less

than that was shown in the agreement, according to it the total amount payable was only Rs.66,58,810/-. It, therefore, contended that it made an excess payment of Rs.25,14,791/-.

In support of the said statement, petitioner has averred as under :-

"POINTS TO BE BILLED (AGREED BY BOTH OF US)

JAN 2005 TO NOV 2007 ……23 MONTHS

FOR KTV ….5450 POINTS x RS.15 = Rs.81750.00

RS.81,750 x 23 MONTHS =	*18,80,250.00*

DECEMBER 2007 TO JULY 2010 …. 32 MONTHS

FOR KTV ……5450 POINTS x RS.81750.00

RS.81750 x 32 MONTHS =	*26,16,000.00*

FOR SUN TV …5450 POINTS x RS.12.40 = RS.67580

RS.67580 x 32 MONTHS =	*21,62,560.00*
TOTAL	***6,58,810"***

Thereafter, the aforementioned impugned notices were issued.

11. The petitioner in this petition, has inter-alia prayed for the following reliefs :-

" *(a) Declare the notices dated 9.7.2010 and 13.7.2010 to be illegal, null and void and further declare that there is no amount outstanding from the Petitioner to the Respondent;*

(b) Direct the Respondent to sign and execute a written subscription agreement with the Petitioner on its true and correct subscriber base and on a fair, transparent and non-discriminatory basis for uninterrupted supply of good quality signals of KTV Bouquet-1 and Sun TV to the Petitioner's network.

(c) Direct the Respondent to maintain true, fair, correct and proper accounts of the dealings with the Petitioner on the basis of the true and correct subscriber base of the Petitioner;

(d) Declare that the practice of the Respondent in claiming and recovering the subscription charges on the basis of differential subscriber base for different channels is illegal;

(e) pass such other or further orders as this Hon. Tribunal may deem fit and proper in the facts and circumstances of the case."

12. The respondent in its reply, on the other hand, contended :-

(i) Sun TV became a pay channel in December 2006 wherefor in terms of Regulations 7.1 an information was sent to the Telecom Regulatory Authority of India (the TRAI), stating :-

"Sub : Conversion of Channel Status – FTA to PAY

With reference to the above, please be informed that the below mentioned channel will become pay with effect from 2nd December, 2006. A public notice to this effect would be issued shortly. The below mentioned rate is for NON CAS markets only.

1. SUN TV

The charge for the channel is as given below :

Sl. No.	*Channels*	*A la Carte (Rs.)*	*Bouquet (Rs.)*
1	*Sun TV*	*12/-*	*Stand alone channel*

Please note that the abovementioned channel will be Free to Air in Chennai CAS area.

This is for your information."

(ii) Respondent had many operators in the district of Cuddalore who had been transmitting the 'Gemini' and 'Teja' channels being quite popular in the region.

(iii)The petitioner had never served any notice of disconnection of 'Teja TV' and 'Gemini TV' as was statutorily required under Clause 4.2 and 4.3 of the Regulations;

(iv)In November 2009, the channels of respondent were upgraded from MPEG-2 technology to MPEG-4 technology and many cable operators operating in the area of Cuddalore who did not update their boxes, started receiving connections from petitioner illegally upon linking to its network, being :-

S. No.	A/c No.	Network Name	Area
1.	*10005826*	*VEERA KUMAR AMMAN CABLE NETWORK*	*Semmedu*
2.	*10004015*	*DEEPAM CABLE*	*Siruwathur*
3.	*10004637*	*S.C.S. SAT SYSTEMS*	*Kavarapattu*
4.	*10004834*	*SAROJA CABLE*	*Meimettukupam*
5.	*10004758*	*VIJAY CABLE NETWORK*	*Meriluppu*
6.	*10005661*	*RAJAN CABLE*	*Kadambuliyur*
7.	*10004082*	*FRIENDS CABLE NETWORK*	*Thattampalayam*

(v) The letters, said to have been issued by petitioner, have never been received and the certificate of postings filed by it are manufactured documents.

(vi) The respondent has not received the purported letters dated 03.02.2009 and 15.6.2007.

So far as the question of down gradation of the petitioner's subscriber base is concerned, its contention that Mr. Arul got itself delinked from its network is not correct and, in fact, it was never a part thereof.

(vii) 'Sun TV' became a pay channel from December 2006. Apart from the invoice dated 06.01.2009, all the requisite invoices have been served, which have been marked collectively with the Reply as Annexure R-5.

(viii) The respondent had repeatedly been asking petitioner telephonically through Mr. Anandan to pay its outstanding dues.

(ix)It is incorrect to contend that the petitioner signed a blank agreement as in fact it had signed a completely filled up agreement at the Chennai office of respondent in the presence of Mr.Samuel Rajan; Mr. Yuvraj being a witness thereto.

It is the practice of the broadcasters to bill different channels on different basis based on their demand in the market and on the basis of TRP ratings and other commercial factors. The respondent in this behalf has given the break up of three of its MSOs of Gemini and TV.

13. This Tribunal by an order dated 08.11.2010 framed a large number of issues, which are as under:-

"(i) Whether any amount is outstanding from the petitioner to the respondent towards subscription charges?

(i) Whether the petitioner is entitled to the signals of KTV Bouquet I and Sun TV Channels? If so, on what terms and conditions and at what subscriber base?

(iii) Whether having regard to the rival contentions of the parties as to whether the agreement dated 01.4.2009 was signed blank by the petitioner, the same is valid?

(iv) Whether the respondent has been billing the petitioner at the petitioner's correct subscriber base?

(v) Whether in the facts and circumstances of the case, the invoice raised by the respondent reflects the correct subscriber base?

(vi) Whether the petitioner has requested the respondent to disconnect signals?

(vii) Whether the petitioner is entitled to signals of the respondent as it has been indulging in illegal transmission of the signals of the respondent?

(viii) Whether the notices dated 9.7.2010 and 13.7.2010 are null and void?

(ix) What was the basis, if any, for supply of Gemini and Teja channels by the respondent to the petitioner and/or disconnection thereof?

(x) Whether the petition is not maintainable?

(xi) To what relief, if any, the petitioner is entitled?"

14. The petitioner in support of its case has examined Shri R Anandan, its Proprietor. We may notice that with the affidavit of the said witness, it had annexed all other requisite documents, except the letter dated 03.02.2009.

We may, furthermore, notice the statements made in paragraph 18 of his affidavit :-

> *"18. I state that I sent a letter to the Respondent on 3.2.2009 clearly stating that no amount is due from me to the Respondent and that there is an excess billing. I also state that my subscriber base is 5450 whereas the invoice received by me shows a highly exaggerated subscriber base. I requested the Respondent for a statement of account for my verification. I state that the letter dated 3.2.2009 has been signed by me and was sent through Regd. AD Post. I state that the Respondent duly received the said letter but failed to reply to it."*

15. It also filed affidavits of Shri D Prabhakaran and Shri D Devanathan. Whereas Shri D Devanathan appeared before this Tribunal as a witness, Shri D Prabhakaran did not do so.

16. The respondent in support of its case examined Mr. Samuel Rajan.

We may also place on record that on or about 24.9.2010, a copy of the agreement dated 01.4.2009 was served on Counsel for respondent but for the reasons best known to petitioner, it did not file the same before this Tribunal.

17. Mr. Jayant Mehta, learned Counsel appearing on behalf of petitioner took us through the materials on record, as also the evidence of the witnesses and urged :-

1. The petitioner has adduced evidence to show that its subscriber base had all along been only 5450 and that it has signed a blank agreement.

2. The handwritten portion of the agreement dated 01.4.2009 was not in his pen.

   Except the invoice for the month of January 2009, petitioner has not received any other invoice.

3. Not only no amount is due to respondent from petitioner but, in fact, it had made an over payment of Rs. 25 Lacs.

   The action on the part of respondent to disconnect the signals of petitioner's network must, thus, be held to be wholly illegal.

4. The respondent has failed to establish the basis for fixation of the subscriber base of petitioner in the agreement dated 01.4.2009.

5. From the testimony of Mr. Samuel Rajan, it would appear that he has completely failed to prove the assertions of respondent in its reply :-

   "(a) While the affidavit of Mr. Samual Rajan claims that the Respondent has a list of the cable operators of the Petitioner, yet the said witness deposes that no such list is available with the Respondent and that the Respondent only has the

details of the areas of Petitioner's network (see para 16/pg. 46 with page 54A);

(b) *No written requests or reminders were sent by the Respondent to the Petitioner demanding the outstanding subscription charges;*

(c) *The witness does not recall as to whether the agreement dated 1.4.2009 was the first agreement between the parties or that there was any prior agreement thereto. The witness was called upon to verify this fact from the records of the Respondent and to produce the relevant records. The witness has not produced the same (see pg. 54B);*

(d) *Respondent does not have the SLR of the Petitioner (pg. 54B);*

(e) *No negotiations took place between the Petitioner and the Respondent prior to the execution of the 2009 agreement (pg. 54B). The agreement dated 1.4.2009 was signed at Vadalore. Interestingly, the agreement dated 1.4.2009 at pg. 78 shows to have been executed at Chennai;*

(f) *The Petitioner was not given any unsigned and blank copy of the agreement prior to 1.4.2009;*

(g) *The handwritten details at pgs. 67, 68, 69 and 79 are the handwriting of the employees of the Respondent (pg. 54C);*

(h) *No joint survey of the Petitioner's subscribers was conducted by the Respondent (pg. 54C). Nor did the Respondent ask the Petitioner for a joint survey;*

(i) *Between 2007 and 22.9.2010 the witness was not party to any negotiations between the Petitioner and the Respondent regarding subscription of signals by the Petitioner (pg. 54C);*

(j) *The only document available with the Respondent to show the connectivity of the Petitioner is the agreement dated 1.4.2009. The witness was called upon to check if there is any other record and to produce the same. No document has been produced by the Respondent (pg. 54E);*

(k) *No written acknowledgement showing delivery of a countersigned copy of the agreement dated 1.4.2009 to the Petitioner has been produced by the Respondent. The witness claims that the same was misplaced. Yet, strangely, no such plea is taken in the reply or in the affidavit of evidence;*

(l) *As on March 2009 an amount of Rs.60 lacs was outstanding from the Petitioner to the Respondent. The witness claims that he is not aware as to whether any notice was sent by the Respondent to the Petitioner claiming this amount prior to March 2009. No written acknowledgement was taken from the Petitioner either prior to or at the time of the signing of the agreement dated 1.4.2009 (pg. 54F);*

(m) *The witness was called upon to check and produce as to whether any acknowledgement of dues was taken from the Petitioner by the Respondent at any point of time. However, no document has been produced (pg. 54F);*

(n) *No documents exits to show that the statement of account filed by the Respondent was given to the Petitioner (pg.54F);*

(o) *No negotiations took place between the parties except for September 2010 for any negotiations for subscription of channels;*

(p) *The witness, though, M.Com by qualification claims ignorance about as to whether the accounts of the Respondent are required to be audited every financial year.*

(q) *The witness does not have any knowledge as to whether the audited accounts of the Respondent for the years ended on 31.3.2009 or 31.3.2010 contain any entry showing any dues from the Petitioner;*

(r) *The witness is unaware as to whether there is any document to show that the Petitioner has pirated the signals of the Respondent;*

(s) *The witness does not remember if there is any evidence on record to show that the invoices were either dispatched or delivered to the Petitioner; and*

(t) *The witness admits that the accounts of the Respondent are maintained-not for individual channels but on the basis of the total invoice raised and the receipts. Yet, strangely, the statement of account filed by the Respondent is shown channelwise."*

Our attention has been drawn by Mr. Mehta to the following parts of the cross-examination of Mr. Samuel Rajan :-

> *"Q. Have you been a part of any negotiation between the Respondent and Petitioner regarding subscription of signals by the Petitioner?*
>
> *A. No, except on 22.09.2010 as per the directions of this Hon'ble Tribunal."*

6. The onus to prove that any amount was outstanding from petitioner being on respondent it must be held to have failed to prove the same.

7. Although petitioner had requested for discontinuance of 'Gemini' and 'Teja' channels, only from February 2010 no bill has been raised in respect of the said channels.

8. The respondent deliberately and intentionally did not produce the documents in its power and possession and, thus, an adverse inference should be drawn against it.

18. Mr. Maninder Singh, learned Senior Counsel appearing on behalf of respondent, on the other hand, would urge :-

(i) The petitioner filed Petition No. 255 (C) of 2010, which was withdrawn on the premise that it had not filed the material documents and only the lacunae therein are sought to be filled up by procuring certificate of postings to show issuance of several letters, which in fact had not been received by respondent.

(ii) So far as the allegations that the Gemini bouquet of channels had been thrust upon petitioner is concerned, it was obligatory on its part to prove service of notice in terms of Regulation 4.2 and public notice in terms of Regulation 4.3.

(iii) The claim of petitioner must be held to be barred by limitation.

(iv) In any event, petitioner having stood by and continued to receive signals of said bouquet of channel, it cannot now be permitted to raise any plea contrary thereto and inconsistent therewith.

(v) The petitioner has failed to prove that it was entitled to down gradation having not brought on record any evidence to show that Mr. Arul, a Local Cable Operator had gone out of its network.

(vi) The petitioner has deliberately and intentionally not supplied the details/lists of the subscribers/LCOs for proving its subscriber base.

(vii) The petitioner has admitted its liability as it received invoice for the month of January 2009, wherein the details of its subscriber as also the amount due from it had been shown and as in relation thereto it had not raised any protest or grievance and, thus, it is stopped and precluded from doing so in this petition.

(viii) It cannot be said that petitioner has made out any case for interference of this Tribunal, having neither sent the letter dated 03.02.2009 nor having annexed a copy thereof with his affidavit,

particularly in view of the fact that in paragraph 14 of petition, petitioner has not raised any averment that it has sent under registered cover with acknowledgment due.

(ix) The petitioner deliberately and intentionally did not disclose the date on which date copy of the agreement has been furnished and furthermore, despite service of a copy thereof upon the counsel for respondent, deliberately did not place the same on record.

(x) The validity of the agreement having not been questioned in the petition, it cannot be permitted to do so indirectly which it cannot do directly.

(xi) No issue having been framed as to from which date 'Teja' and 'Gemini' became pay channels, the submission of petitioner that it was not liable to pay therefor, must be rejected and more so as respondent has complied with the requirements of Clause 7.1 of the Regulations by expressing its intention to convert the same to be a pay channel by a letter dated 21.11.2006 addressed to the TRAI. The Tariff Order of the TRAI having coming in to force from 01.12.2007 the answer to the query, to which our attention has been drawn by Mr. Mehta, must be held to be referring thereto only.

(xii) The petitioner is guilty of acts of piracy after change of technology from MPEG-2 to MPEG-4 by retransmitting supply of signals to the cable operators whose names have been stated in the reply.

(xiii) Mr. Arul, being not a link operator of petitioner's network, it could not have claimed any down gradation on that account.

(xiv) So far as the accounts filed by respondent is concerned, it would appear that petitioner has not been charged from February 2010 keeping in view the documents brought on record including the minutes of the meeting dated 22.9.2010 in terms whereof three months credit had been given to petitioner as it did not upgrade the boxes from MPEG-2 technology to MPEG-4 technology for the months of November, December and January.

19. Before adverting to the rival contentions of the parties, as noticed heretobefore, we may place on record the subsequent events also.

From the proceeding sheets of this Tribunal, it would appear that the parties had met on several occasions. However, the minutes of the meeting drawn by respondent has not been signed. When the matter was called out on 11.3.2011, Ms. Gauri Setia, learned counsel appearing on behalf of respondent, produced a letter purported to be written by petitioner being dated 01.3.2011, which reads as under:-

> *"This is with reference to the meeting dated 27th January 2011 held at your Chennai Office, wherein we have opted for an out of Court Settlement. In view of the above, I would like to withdraw the case pending before the Hon'ble TDSAT. I kindly request you to inform your Counsel about the development taken place in the matter and enable me to settle the matter out of Court."*

20. Mr. Mehta, however, submitted that petitioner has been forced to sign the said letter at gun point.

Mr. Maninder Singh, however, would contend that in fact the parties had met on several occasions and apart from the aforementioned letter dated 01.3.2011, petitioner has sent an e-mail on 24.02.2011, which reads as under :-

> *"This is to communicate that I am opting for an out of court settlement in petition No. 323 C of 2010 (PRT Satellite Vs. Sun 18 Media Services South Pvt. Ltd.) pending before the honourable TDSAT, Delhi. Hence, I kindly request you to seek an adjournment tomorrow. I have instructed Counsel accordingly."*

21. According to Mr. Singh, pursuant to or in furtherance of the said agreement arrived at in a meeting dated 22.01.2010 petitioner has deposited a sum of Rs. 10 Lacs as part payment towards the amount outstanding in terms whereof the signals of petitioner have been restored.

In the said meeting, it was decided that the parties would meet again after one week to settle the issues but petitioner failed and/or neglected to do so.

22. Unfortunately, the parties despite the said purported settlement and/or assurance given by petitioner to withdraw the case, have not filed any application to dispose of their petition in terms thereof is required under Order XXIII Rule 3 CPC. Had such an application been filed and had petitioner objected recording of the said compromise, this Tribunal could have entered into a summary trail for the purpose of finding out as to whether the said agreement is genuine or not. We have, therefore, no other option but to determine the issues between the parties on their own merits.

23. Although a large number of issues have been framed, this Petition principally involves the following :-

1. Whether petitioner has received the monthly invoices?
2. Whether petitioner has signed any agreement?
3. Whether respondent had disconnected the signals of petitioner's network illegally?

24. Indisputably, the issues are inter-connected.

The relationship between the parties beginning from 2003 is not in dispute. The petitioner admittedly has executed the agreement dated 01.4.2009. It came to an end on 31.3.2010.

We would assume that petitioner had asked for renewal and/or a fresh agreement upon down gradation of its network inter-alia on the premise that one Mr. Arul has gone out of its network. The petitioner admittedly obtained a copy of the agreement dated 01.4.2009 i.e. during pendency of the aforementioned Petition No. 255 of 2009 and before withdrawal thereof.

It, furthermore, admittedly received the invoice dated 06.01.2009 wherein the number of subscribers for each of the channels as also the rate and the monthly amount payable by it were clearly disclosed. Even the arrears had been disclosed therein. It is really a matter of some surprise that petitioner in the earlier petition did not question the said agreement and/or invoice. No reason has been assigned as to why the petitioner did not file the material documents in the earlier proceedings. We have noticed heretobefore that while refusing to pass an interim order therein, this Tribunal noticed the contention of respondent with reference to the subscriber base. It was placed on record that even in relation to the said channel, petitioner had not produced any statement of accounts to show how much was payable and how much it had been paying to respondent on monthly basis. The said agreement dated 01.4.2009 was produced before this Tribunal on 03.8.2010. No document had been produced by petitioner to show that it had raised any protest in regard to the invoices for the months of January 2009 to March 2009 wherein the subscriber base in respect of the aforementioned three channels were mentioned and the same tallied with those contained in the agreement. No

interim order having been passed in favour of petitioner, the supply was discontinued on 3rd August, 2010.

25. There are two aspects of the matter, namely, (1) petitioner wanted renewal of the agreement in which event Clause 8.1 of the Regulations would be attracted; and (2) petitioner wanted to enter into a fresh agreement with a reduced subscriber base wherefor Clause 3.2 would apply.

26. In the event the renewal clause is attracted, the validity of the said agreement would be three months of the expiry thereof, subject of course to the Second Proviso appended thereto. The agreement therefore expired in June 2010. Even otherwise, the said agreement could be terminated only upon publication of notices in two newspapers in terms of Clause 4.3 of the Regulations, which requirement had been complied with.

27. It is not a case where Clause 3.2 of the Regulations would be attracted. If petitioner intended to invoke the said clause, it should have made a fresh request.

No such written letter of request has been brought to our notice. In any event, it was a matter of negotiation between the parties, so far as the subscriber base is concerned.

28. For one reason or the other, the parties have not produced the Subscriber Line Reports. The Subscriber Line Reports are required to be furnished to the Broadcasters on a monthly basis in terms of Clause 11 of the Regulations. It is also required to be filed at the time of renewal of the agreement as provided for in Clause 8.1 of the Regulations.

The petitioner is not a small operator.

Whatever be the declared number of subscribers, admittedly it had a large subscriber base.

We would presume that petitioner has been maintaining the books of accounts. It had been paying the amount by way of subscription fee to respondent by cheques or demand drafts. The petitioner must have with him a list of subscribers, a list of local cable operators and that the total number of subscribers.

The petitioner if had direct connectivities must also be maintaining a list of subscribers. It was within its special knowledge as to what was the total number of subscribers. It failed/neglected to bring the said documents on record.

29. Mr. Mehta would contend that respondent itself accepted that it had a list of cable operators wherein the name of Mr. Arul does not figure. On the said premise, it was vehemently urged and a large number of decisions were

cited to contend that an adverse inference should be drawn against respondent.

It is true that the parties in possession of the documents should produce the same if they have a bearing on the outcome of a petition. But in a case of this nature, petitioner cannot take advantage of the said rule, it itself being in possession of the said documents. The petitioner has questioned the validity of the agreement. It, however, did not make any prayer for setting aside the said agreement or a declaration that the agreement was void having been obtained by commission of an act of fraud. It only asked for a declaration that the notices dated 09.7.2010 and 13.7.2010 are illegal.

30. In terms of the second proviso appended to Clause 8.1, respondent is not required to assign any of reason in its public notice other than the expiry of the agreement, as admittedly the term of the agreement had expired. It, otherwise, was sufficient for respondent to show that some amount was outstanding. If the allegations made by petitioner are correct, it was required to allege the particulars of fraud. It was required to allege the effect of the document, validity whereof was challenged.

31. According to petitioner, it although signed the agreement, the same did not amount to execution thereof, as there was no application of mind, so far as the number of subscribers is concerned.

32. Mr. Mehta urged that Mr. Samuel Rajan in his evidence admitted that he did not take part in any negotiation and, in fact, no negotiation was held with regard to the subscriber base of petitioner.

The petitioner does not deny or dispute that the relationship between the parties started from 2003 and has continued. Several agreements therefor must have been executed by the parties. What was the subscriber base of petitioner in those agreements, have not been disclosed which again was necessary as it although not directly but indirectly has sought for a declaration that the agreement dated 01.4.2009 is void. In fact, petitioner itself has annexed the invoice dated 01.10.2009 which has been issued on the basis of an agreement which was valid only upto 31.3.2009.

The said invoice contained the number of subscribers in respect of each of the three bouquets of the channels of respondent.

In the agreement dated 01.4.2009, the number of subscribers did not increase; it remained the same. There, therefore, might not have any occasion to hold any detailed negotiation as for all intent and purport merely the agreement was to be renewed. If petitioner for a long time had been paying in terms of the subscriber base as disclosed in the invoice and not protested thereagainst despite its knowledge, it must thank itself therefor.

33. The agreement contains not only the subscriber base but also the area of operation. Despite the fact that Annexure-I provides for a list of sub-operators and sub-affiliate's cable operators of the areas of operation of the franchisees as also direct connectivities, the details thereof have not been supplied.

34. In answer to a question in cross examination, respondent's witness, Mr. Samuel Rajan that petitioner must have filed an Affiliation Registration Form, stated that he was not sure.

35. We have noticed heretobefore that although the parties had met during pendency of this proceeding, yet a question was raised as to whether there had been any negotiation between the parties for subscription of the channels, to which the witness volunteered that the parties had met in September 2010 under the directions of this Tribunal. Three documents were marked for identification as 'X', 'Y' and 'Z' including the minutes of the meeting on which petitioner did not sign.

36.The burden of proof in terms of Section 102 and 103 of the Indian Evidence Act was on petitioner.

It was for it to adduce sufficient and cogent evidence to show that no amount had remained outstanding. It could have established the same provided it had questioned the validity of the agreement.

Indisputably, if the agreement is valid, the amount(s) mentioned therein would be payable. It must be borne in mind that in the event such a declaration is granted without petitioner's asking for a definite relief in regard to the validity of the agreement, respondent would be seriously prejudiced.

37. If the contention of petitioner that it merely signed a blank agreement is correct, there cannot be any doubt or dispute that the amount of consideration, which is a sign qua non, for entering into a valid agreement having not been fixed, the agreement would be void.

38. Mr. Samuel Rajan, appearing as a witness on behalf of respondent, however, has asserted that blanks of the said agreement had been filled up by one of the employees out of two whose names he had taken and the same was signed by petitioner at the Chennai Office of respondent only after the blanks were filled up.

The petitioner does not contend, nor even raised any such contention in the earlier round of litigation that despite the fact that the parties had been transacting cable business from 2003, no agreement in writing had been entered into. It did not say that even for the financial year 2008-2009, no agreement was entered into. It does not say what was the amount payable under the old agreements.

Keeping in view the fact that this Tribunal has to appreciate the evidence only on the basis of the statement made by Mr. Anandan on the one hand and Mr. Samuel Rajan on the other i.e. oath vs. oath, the aforementioned circumstantial evidences were required to be considered.

39. The petitioner states that its number of subscribers is much less than what has been mentioned in the purported agreement. Having executed the agreement, the onus was on the petitioner to show that it was a void document or otherwise contained incorrect statements.

In Den Networks Vs. Multi Vision (Petition No. 200 (C) of 2008), it has been noticed by this Tribunal as under :-

> *"25. In MST. Kharbuja Kuer Vs. Jangbahadur Rai & Ors. {(1963) 1 SCR 456 : AIR 1963 SC 1203} the Supreme Court opined as under:-*
>
> > *"In the instant case the learned Munsif and, on appeal, the learned Subordinate Judge found concurrently that the two widows put their thumb marks without understanding the*

true import of the document. Imam, J., in second appeal reversed the said findings on the ground that they were vitiated by an erroneous view of the law in the matter of burden of proof. The judgment, if we may say so with respect, consists of propositions which appear to be contradictory. The learned Judge, after reviewing the case law on the subject, concludes his discussion by holding that it was the duty of the plaintiff to prove that there was fraud committed and that, as that had not been established, the question whether the document was read over and explained to the plaintiff, in his opinion, in the circumstances, did not arise. This proposition, in our view, is clearly wrong and is contrary to the principles laid down by the Privy Council in a series of decisions. In India pardahnashin ladies have been given a special protection in view of the social conditions of the times; they are presumed to have an imperfect knowledge of the world, as, by the pardah system they are practically excluded from social intercourse and communion with the outside world. In Farid-Un-Nisa v. Mukhtar Ahmad 1 Lord Sumner traces the origin of the custom and states the principle on which the presumption is based.

"In this it has only given the special development, which Indian social usages make necessary, to the general rules of English law, which protect persons, whose disabilities make them dependent upon or subject them to the influence of others, even though nothing in the nature of deception or coercion may have occurred. This is part of the law relating to personal capacity to make binding transfers or settlements of property of any kind."

“Of course fraud, duress and actual undue influence are separate matters”

It is, therefore, manifest that the rule evolved for the protection of pardahnashin ladies shall not be confused with other doctrines, such as, fraud, duress and actual undue influence, which apply to all persons whether they be pardahnashin ladies or not.”

26. It was observed by this (sic for the) Court :-

“The legal position has been very well settled. Shortly it may be stated thus : The burden of proof shall always rest upon the person who seeks to sustain a transaction entered into with a pardahnashin lady to establish that the said document was executed by her after clearly understanding the nature of the transaction. It should be established that it was not only her physical act but also her mental act. The burden can be discharged not only by proving that the document was explained to her and that she understood it, but also by other evidence, direct and circumstantial.”

It is, therefore, evident that if the executants of the document is not a perdanashin lady, subject to other propositions of law which may be found to be applicable, the burden of proof would be on the party who alleges fraud, misrepresentation etc."

40. Has petitioner discharged the burden of proof cast on him?

The answer thereto must be rendered in the negative.

Even otherwise, the petitioner was bound to reimburse respondent to the extent it derived benefit from the supply of signal in terms of Section 70 of the Indian Contract Act.

For that purpose also, it was bound to show its total connectivity including the number of subscribers the LCOs had.

We would assume, for the purpose of this case that both the parties have not filed the documents which could have been filed.

If that be so, the adverse inference must be drawn against both of them.

41. At this juncture, we may notice the decisions on which reliance has been placed by learned counsel.

42. In Murugesam Pillai Vs. Manickvasaka Pandara & Ors. reported in Law Report 1917 Indian Appeals page 98, it has been stated :-

> *"A practice has grown up in Indian procedure of those in possession of important documents or informations lying by, trusting to the abstract doctrine of the onus of proof, and failing, accordingly, to furnish to the Courts the best material for its decision. With regard to third parties, this may be right enough—they have no responsibility for the conduct of the suit; but with regard to the parties to the suit it is, in their Lordship's opinion, an inversion of sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the written evidence in their possession which would*

throw light upon the proposition. The present is a good instance of this bad practice."

43. The said decision has been noticed by the Supreme Court of India in M/s. Gopal Krishnaji Ketkar Vs. Mohamed Haji Latif, 1968 SC 1413, stating :-

> *"Mr. Gokhale, however, argued that it was no part of the appellant's duty to produce the accounts unless he was called upon to do so and the onus was upon the respondents to prove the case and to show that the Dargah was the owner of Plot No.134. We are unable to accept this argument as correct. Even if the burden of proof does not lie on a party the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof."*

(See also Messers Bansidhar Ganga Parshad Vs. Chanan Lal, ILR (1975) 1 Delhi 445 at pages 451 and 455).

44. This Tribunal also in its judgment dated 28.5.2010 in Bargachh Telelinks Pvt. Ltd. Vs. Noida Vision, being Petition No. 37 (C) of 2009, stated the law as under :-

> *"We may only notice that the respondent in his evidence admitted that books of accounts were being maintained. It was furthermore admitted that the said books of accounts would show as to who were the concerned employees and what was the amount of salary paid to them. The respondent however, neither produced the books of accounts nor adduced any other evidence to show that the said Shri Ravi and Shri Bobby were not its employees. The respondent therefore has withheld the best evidence. It is neither in doubt nor in dispute that in terms of Section 106 of the Indian Evidence Act, the respondent has special knowledge as to who were its employees. He despite the fact that Shri Umesh Pal Singh was cross examined on 10th February, 2010 and the respondent has filed his affidavit on 22.02.2010, although stated that Shri Ravi and Shri Bobby were not his employees, but did not produce any document in support thereof."*

45. In a case of this nature, the onus of proof assumes importance.

As petitioner has failed to discharge the onus which was on it, we have to proceed on that basis and in particular keeping in view the conduct of petitioner and in particular non-raising of any protest in relation to the contents of the invoice.

46. On a query made by us, Mr.Mehta would submit that one of the prayers was made by petitioner by way of interim relief for appointment of a Local Commissioner for a joint survey. Such an interim prayer to our mind, cannot be granted at the final hearing.

It is now a well settled principle of law that the Court cannot pass a decree which cannot be implemented and/or over which it cannot exercise a supervisory jurisdiction.

In any event, if petitioner was interested in pressing for the interim relief for appointment of a local Commissioner, steps were required to be taken by it in terms of Order XXVI Rule 9 of the Code of Civil Procedure.

When a report is submitted by the local Commissioner, it forms part of the record in terms of Order XXVI Rule 10 of the Code of Civil Procedure. The report becomes an evidence which is required to be considered by a Court of law for arriving at a conclusion one way or the other upon considering the same along with the other evidences brought on record.

Similarly, apart from the prayer for injunction, no other interim prayer was also made during pendency of this proceeding.

47. So far as the question of the petitioner's opting out of the Gemini Bouquet is concerned, there cannot be any doubt or dispute that petitioner was required to serve a notice in terms of Clause 4.2 and a public notice in terms of Clause 4.3 of the Regulations. It is, however, accepted that it did not issue any such notice.

48. The petitioner in support of its case sought to rely upon a few documents. The respondent has denied and disputed the receipt of any of them.

According to petitioner, it has despatched the requisite documents under Certificate of Posting with its letters dated 15.6.2007 and 21.4.2008. However, it alleged protest in regard to one of the invoices was raised by a letter dated 03.02.2009, which was sent under Registered cover with Acknowledgement Due.

The respondent has denied and disputed the receipt thereof.

It was, therefore, obligatory on the part of the petitioner to prove the said documents in accordance with law. The petitioner in para 14 (c) of the petition did not mention the mode of delivery. It has not filed the postal registration receipt or the acknowledgement due showing the receipt of the said letters by respondent.

49. We may notice that so far as the letter dated 25.12.2005 is concerned, in para 7 of the petition it was specifically mentioned that it was sent only under the Certificate of Posting in support of which a postal receipt has been filed. The said letter was addressed to 'Channel Plus' at the address mentioned therein.

Dispatch of a letter under certificate of posting is a weak piece of evidence.

The petitioner should have proved that somebody had tendered the letters to the postal authorities.

In State of Maharashtra Vs. Rashid B. Mulani 2006 (1) SCC 407, the Apex Court stated the law as under :-

> *"17. A certificate of posting obtained by a sender is not comparable to a receipt for sending a communication by registered post. When a letter is sent by registered post, a receipt with serial number is issued and a record is maintained by the post office. But when a mere certificate of posting is sought, no record is maintained by the post office either about the receipt of the letter or the certificate issued. The ease with which such certificates can be procured by affixing antedated seal with the connivance of any employee of the post office is a matter of concern. The Department of Posts may have to evolve some procedure whereby a record in regard to the issuance of certificates is regularly maintained showing a serial number, date, sender's name and addressee's name to avoid misuse. In the absence of such a record, a certificate of posting may be of very little assistance, where the dispatch of such communications is disputed or denied as in this case. Be that as it may."*

50. So far as the question of petitioner opting out from 'Gemini' bouquet is concerned, according to it a request therefor was made in 2005.

51. It is, however, accepted that it did not issue any notice in terms of Clause 4.2 of the Regulations in relation thereto.

The petitioner in support of its case sought to rely upon the few documents. The respondent has denied and disputed the receipt of any of the documents. In a situation of this nature and having regard to the fact that respondent has denied and disputed the receipt of the said documents, petitioner ought to have examined the postal peon who had tendered the documents to the authorised representative of respondent.

So far as the letter dated 08.02.2009 is concerned, petitioner accepted that the same was sent through Registered A/D. It, however, in para 14 of petition has not stated that the mode of delivery of the said letter was under Registered cover with Acknowledgement Due. The petitioner has also not filed the Registration Receipt or the Acknowledgment Due. In a case of this nature, any presumption of service of the said notice in terms of Section 114 (f) of the Indian Evidence Act cannot be raised also keeping in view the fact that petitioner had filed a petition earlier before this Tribunal but chose to withdraw the same on the premise of not filing the requisite documents which were material for determination thereof.

Nothing prevented the petitioner to pursue the matter in the earlier petition, particularly in view of the fact that at that point in time, no signal was being supplied to petitioner's network.

Moreover, the letter dated 03.02.2009 was not annexed with the affidavit of its witness. When a document is tendered, a reference thereto has to be made. We would assume that it was not necessary to annex the said letter with the affidavit, but there cannot be any doubt or dispute that the identification

thereof was required to be made on oath. Even if the same did not form part of the affidavit, petitioner's witness could have obtained the leave of this Tribunal and tendered the said document at the time of tendering the affidavit by way of Examination in Chief. In law, the documents are required to be tendered, if reliance thereupon is to be placed.

52. The next question, which would fall for our consideration is the alleged fabrication of accounts.

Answer to the said question again lies on the subscriber base of petitioner. If respondent is correct that the said agreement had been entered into, the subscriber base stated therein must have been accepted. If that be so, no fault can be found with the accounts of respondent.

The learned counsel would, however, submit that respondent has not proved service of any invoice from February, 2010 onwards.

Our attention has furthermore been drawn to the minutes of meeting dated 06.10.2010, which has been placed on record subject to objection. Although, formally the said document has not been brought on record, having not been marked as an Exhibit, but it is not unlikely that the parties had met.

No suggestion has been given to Mr. Samuel Rajan that the parties had never met during the pendency of the present proceeding.

53. By an order dated 08.11.2010, the parties were granted leave to file additional documents, if any, in support of their respective cases. They were also required to take steps for admission or denial of the documents as also application, if any, for summoning the witness in terms of the Order 16 Rule 1 of the Code of Civil Procedure. Neither any additional document was filed nor any witness had been summoned by any of the parties.

54. Mr. Maninder Singh pointed out that as petitioner did not accept the IRD boxes of MPEG-4 in respect of Gemini bouquet, bill was raised. However, petitioner must be held to be entitled to adjustment so far as subscription charges for the months November and December, 2009 and January, 2010 are concerned. But, only because the same had not been done, the same would not mean that the books of accounts would be thrown away. It must be borne in mind that it is not a case where respondent has been claiming a huge amount from petitioner.

The petitioner has sought for declarations and other directions, which if granted, would attract the doctrine of res-judicata, in terms whereof respondent would not be able to file any petition for recovery of the amount.

In that view of the matter and particularly the conduct of the parties; the provisions of Section 102 and 103 of the Indian Evidence Act assume importance.

Even otherwise, respondent for the purpose of disconnection of supply of the signal is not required to show the exact amount due. It may be possible for it to show some amount was due, which would meet the requirements of Clause 4.1 of the Regulations.

55. As noticed heretobefore, in the statement of account furnished by petitioner is correct, it not only proceeded on the basis that it had 5460 points, but also on the basis that Ruby Cable had gone out of its network for 37 months and, thus, it has not been able to realize a sum of Rs.3,90,313/- from it, and to the said effect, it should have been given credit.

56. The petitioner has failed to prove that the aforementioned Ruby Cable was within its network or that it had been serving invoices on it.

57. One of the questions, which survives for our consideration, is as to whether Sun TV became a Pay Channel from December, 2007.

The question as to from which date a Free to Air channel may convert itself into a Pay Channel is governed by the Regulations as also Tariff Order of 2007.

58. Clause 7.1 of the Regulations reads as under :-

> *"7.1 The nature of any channel, i.e., Free To Air or Pay will normally remain the same for a period of one year. Any broadcaster of a Free To Air channel intending to convert the channel into a Pay Channel or any broadcaster of a Pay channel intending to convert the channel into a Free To Air channel shall inform the Authority and give public notice in the manner specified in clause 4.3 one month before the scheduled date of conversion."*

59. The respondent has proved that it had served a notice on the Regulator on or about 01.11.2006. Before us, a newspaper publication has also been filed. The said question was not put in issue. Had any issue in that regard been framed, respondent could have brought some document on record to show that it has fulfilled the statutory obligations. The entire case of petitioner in this regard is a letter of the Telecom Regulatory Authority of India dated 28.01.2008 addressed to one, Shri M. Parmeshwaran.

The TRAI referred to two Tariff Orders and according to it, in terms of the latest amendment of Tariff Order dated 04.10.2007, the channels have been declared on 01.12.2007 as Pay Channel. We may notice that the said Tariff Order came into force with effect from 01.12.2007.

The relevant portion of Clause 4 read as under :-

> *"For clause 4 of the principal Tariff Order, the following clauses shall be substituted, namely:-*
>
> ***"4. Reporting requirement.***

(1) Subject to the provisions of clause 3C, every broadcaster shall, within seven days from the 1st day of December, 2007, furnish the following information to the Authority, namely:-

(a) names, genre and language of all free to air channels offered by the broadcaster;

(b) name, a-la-carte rate, genre and language of each pay channel offered by the broadcaster;

(c) list of all bouquets offered by the broadcaster with prices of each bouquet, indicating the names of all the pay channels and free to air channels contained therein along with the names of owners of other channels in the bouquets;

(d) revenue share arrangement between owners of channels in the bouquet;

(e) target audience of all the pay channels and free to air channels (National or Regional, if Regional, state(s) must be specified);

(f) whether the pay channels are pay channels in whole of the country or only in part of the country. (States must be specified if a channel is a pay channel in part of the country);

(g) advertisement revenue for the last three years;

(h) any other information relevant to free to air channels, pay channels, a-la-carte rates and bouquets offered by a broadcaster.

(2) Every broadcaster who, after the 1st day of December, 2007,—

> *(a) introduces any new pay channel or free to air channel; or*
>
> *(b) converts any pay channel into free to air channel; or*
>
> *(c) converts any free to air channel into pay channel; or*
>
> *(d) discontinues any free to air channel or pay channel; or*
>
> *(e) introduces any new bouquet or discontinues any bouquet or modifies any bouquet, shall, within seven days of such introduction or conversion or discontinuation, furnish to the Authority the information required in items (a) to (h) of sub-clause (1).*

(3) Every broadcaster shall exhibit on its website the information furnished under sub-clauses (1) and (2) immediately except items (d) and (g) of sub-clause (1).”

60. The TRAI’s letter dated 28.01.2008 must be read in the context of the letter of a third party, particularly in view of the fact that according to respondent, some bouquet of channels became a Pay Channel from 02.12.2006.

61. Moreover, petitioner for reasons best known to it, did not annex a copy of the said letter of the TRAI with the Petition. It chose to file the same with his rejoinder only.

62. The petitioner, as an experienced Cable Operator and Distributor of channel, is supposed to know the ground realities. In terms of the Regulations, a publication in newspaper is also mandatory. We, therefore, also do not find any merit in the contention of petitioner.

63. In the aforementioned factual backdrop, it may be noticed that apart from the invoice for the month of January, 2009, respondent has not been able to prove service of the invoice upon petitioner.

By that, we mean that no documentary proof has been filed.

However, petitioner has raised the question with regard to the correctness of the said invoice only in terms of its letter dated 03.02.2009.

We have noticed heretobefore that the mode of issuance of the said letter has not been stated in the petition.

Even if the same is not taken into consideration, it was obligatory on the part of petitioner to file Registration receipt and Acknowledgment Due. The issuance of service of the said letter has not been proved. The inference, which can be drawn, is that petitioner did not pay any amount despite receipt of the invoice nor protested thereagainst. Once an invoice has been found to have been served, which was not the subject matter of any petition, during the currency of the agreement in question, namely it was valid up to 31.3.2009, we fail to understand why in this petition, petitioner should be permitted to question the correctness thereof, particularly when it is found to have manipulated some documents. The attending circumstances, in a case of this nature, assume importance inasmuch as in the earlier petition, no document had been filed by it and on the said ground alone it had not been granted any interim order.

Although it was not entitled to in law to invoke the provisions of Order XXIII Rule 1 of the Code of Civil Procedure to withdraw the petition only on the premise that it had not filed any document, this Tribunal relied on its said statement.

Even in this proceeding, therefore, petitioner should have filed reliable documents so as to enable us to arrive at a conclusion that the action on the part of respondent is totally illegal.

Correctness or otherwise of an action of a contracting party during subsistence of a contract should normally be raised immediately after the agreement is entered into.

A person cannot be heard to say that although in law it has waived its right, if any, it should be permitted to agitate the said question over again.

64. We have noticed heretobefore that if petitioner's contention is correct that it had been raising its grievances with regard to the thrusting upon it the Gemini bouquet of channels since 2005, it is difficult for us to conceive as to on what basis petitioner could have continued to pay the subscription charges for the said bouquet for such a long time. If it intended to rely upon the documents of 2005, it should have come before this Tribunal within the period of limitation.

65. For the reasons aforementioned, there is no merit in this petition which is accordingly dismissed.

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

……………. J
(S.B. Sinha)
Chairperson

…………………
(G. D. Gaiha)
Member

……………….
(P.K. Rastogi)
Member

rkc