

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated- 11th May, 2011

Petition No.246 (C) of 2010

Neo Sports Broadcasting Pvt. Ltd.

...Petitioner

Vs.

M/s D- 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. Vishal Kumar, Advocate

For Respondent : None

JUDGMENT

S.B. SINHA

This petition was filed by the petitioner for recovery of the arrears of subscription fees due from the respondent.

2. The petitioner is a broadcaster of television channels within the meaning of the provisions of the Telecom Regulatory Authority of India Act, 1997 (The Act).

It is engaged in the business of producing, broadcasting and distributing satellite based television channels and has, thus, the exclusive right to distribute the same within the territory of India.

The petitioner has two 24x7 pay television sports infotainment channels commonly known as "Neo Cricket" and "Neo Sports".

3. The respondent is a cable operator and has been operating its cable business within the territory of the town of Visakhapatnam in the State of Andhra Pradesh. The respondent being desirous of distributing the said channels of the petitioner for the said area approached the petitioner.

4. The petitioner states that on a representation made by the respondent to it, an Interconnect Agreement was entered with on or about 20. 03.2008 which was valid for the period of 01.03.2008 to 29.02.2009, whereby and whereunder the respondent was authorized to retransmit the bouquet of channels comprising of Neo Cricket and Neo Sports by the Petitioner.

5. An agreement had been entered into on the basis of the said representation of the respondent on a subscriber base of 356. The said subscriber base was subject to verification by the petitioner. Under the said agreement the respondent was under an obligation to pay an amount of Rs. 14,900.06 per month calculated @ Rs. 37.25 per

subscriber per month for the said period towards subscription charges upto 31.08.2008; @ Rs. 38.75 per month per subscriber for the year 2008-2009 totaling a sum of Rs. 15,496.06 and at the rate of Rs. 41.45 for the year 2009-2010 totaling a monthly subscription of Rs. 16,276.09. The said revision in rate is stated to be in consonance of the regulations issued by the Telecom Regulatory Authority of India, Act, 1997.

6. According to the petitioner, the total amount which has become payable by the respondent to the petitioner was Rs. 1,61,605/- upon adjustment of payment received from it.

7. The petitioner, as per the terms of interconnection agreement, was also entitled to the amount of Rs. 18,918 upto 25.05.2010/- towards interest calculated at the rate of 24% p. a. on the said outstanding amount.

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

- (a) Pass a decree/order in favour of the petitioner and against the Respondent for recovery of Rs. 1,61,605/- alongwith interest of Rs. 18,918/- upto 25.05.2010 at the rate of 24% totaling to Rs. 1,80,523/- and from 25.05.2010 until the date of filing the present petition; and/or
- (b) Pass a decree/order in favour of the petitioner and against the Respondent for recovery of interest at the rate of 24% per annum pendente lite and until repayment of the said amount in the favour of the Petitioner and against the Respondent and
- (c) Direct the Respondent to return the IRD's boxes to the Petitioner; and/or
- (d) Award the cost of this Petition in favour of the Petitioner and/or
- (e) Pass such other/further Orders as this Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the present case.

9. The respondent, despite service of notice did not appear.

10. The petitioner has filed the following documents:-
 - (i) Copy of the Interconnect Agreement dated 20.05.2008 valid for one year;
 - (ii) Copy of the Statement of Account for the period 05.03.2008 to 25.05.2010;
 - (iii) Copy of the Notice dated 30.10.2009;
 - (iv) Copy of the Legal notice dated 15.03.2010;
 - (v) Copy of the Ledger Account;
 - (vi) Copy of some invoices;
 - (vii) Copy of the SMS Reports.

11. Shri Ranjan Kumar Sharma, Executive- Legal of the petitioner-company has affirmed an affidavit in support of the petitioner's claim.

12. The said deponent in his affidavit stated as under:-

"I state that the aforesaid agreement was signed and executed between the parties and is a duly signed and a concluded agreement. The signals in terms of agreements were supplied continuously to the respondent by the Petitioner.

I state that despite agreeing to all the terms and conditions, the Respondent has continued to default in payment of the agreed subscription amount and has continued to default since inception despite receiving the Services continuously and all the invoices from time to time as per the terms of the Agreement. The Respondent failed to pay any

heed to the invoices. The Respondent has made random payments of Rs. 15,000/- on 05.03.2008, Rs. 14,660/- on 11.03.2008, Rs. 45,000/- on 10.04.2008, Rs. 15,000/- on 02.06.2008, Rs. 30,000/- on 31.07.2008, 15,000/- on 30.09.2008, Rs. 14,660/- on 03.12.2008, Rs. 15,000/- on 31.01.2009 and Rs. 15,000/- on 28.02.2009 which have been accounted for. Copies of the invoice dated 06.01.2008 to 01.03.2010 have been marked as **Exhibit PW 1/ 2-PW 1/16.**

It was also stated:-

"I state that the Log Report of D Networks (Customer Code: CSAPVSO326) bearing VC Nos 40217158175 & 40217147475 for Neo Sports and Neo Cricket are annexed herewith and exhibited as Exhibit PW 1/19.

I state that the Petitioner has sent innumerable reminders and requested the Respondent, orally as well to clear the outstanding dues but to no avail. Since the Respondent was still not making the payment as stated above, the Petitioner was constrained to send a legal notice dated 15.03.2010 for clearing the outstanding but to no avail. Copy of the legal notice dated 15.03.2010 is marked as **Exhibit PW 1/20 and copy of Speed Post receipt is marked as Exhibit PW 1/21."**

13. Having perused the record including the affidavit of the deponent aforementioned and the documents accompanying the petition and the affidavit affirmed in support thereof, we are satisfied that the respondent has made itself liable to pay a sum of Rs. 1,61,605/-. As prayed for, let a decree for the said amount is passed. The rate of interest, however, is allowed @ 9% past, pendente lite and future.

14. This petition is allowed in part and to the extent mentioned hereto before. There shall, however, be no order as to costs in the facts and circumstances of the case.

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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/