

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

Dated- 03rd May, 2011

Petition No.238 (C) of 2010

Neo Sports Broadcasting Pvt. Ltd. ...Petitioner

Vs.

New G. K. 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. Vishal Kumar, Advocate

For Respondent : None

JUDGMENT

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

2. The petitioner is a broadcaster of television channels in terms 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 this 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 Haridwar in the State of Uttarakhand. The respondent being desirous of distributing the said channels of the petitioner approached it for distribution thereof in the said area.

4. The petitioner states that on a representation made by the respondent to it, an Interconnect Agreement was entered with on or about 15. 09.2007 which was valid for a period of 15. 09.2007 to 14.09.2008, whereby and whereunder the respondent was authorized to retransmit the signals of the bouquet of channels comprising of "Neo Cricket and Neo Sports" by the Petitioner.

5. An agreement has been entered into on the basis of the said representation of the respondent on a subscriber base of 470. 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. 19, 671.48 per month calculated @ Rs. 37.25 per subscriber per month towards subscription charges upto 14.09.2008; the subscription fee payable without taxes was Rs. 17,507.50 per month for the said period.

6. According to the petitioner, the total amount which has become payable by the respondent to the petitioner was Rs. 1,69,436/- upon adjustment of payments received from it.

7. The petitioner, as per the terms of interconnection agreement, was also entitled to the amount of Rs. 83,524/- upto 25.05.2010/- towards interest calculated at the rate of 24% p. a. on the said outstanding amount. Thus, the total amount payable by the respondent to the petitioner after inclusion of interest as per the terms of the interconnection agreement would be Rs. 2,52,960/-.

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

- (a) Pass a decree/order in favour of the petitioner and against the Respondent for recovery of Rs. 1,69,436/- alongwith interest of Rs. 83,524/- upto 25.05.2010 at the rate of 24% totaling to Rs. 2,52,960/- 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 15. 09.2007 which was valid for a period of 15. 09.2007 to 14.09.2008;
- (ii) Copy of the Statement of Account for the period 01.10.2007 and 25.05.2010;
- (iii) Copies of the Notices dated 04.03.2009 and 05.10.2009;

- (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 Newspaper "Rashtriya Sahara" to show publication of notice dated 19.03.2011.

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 a Irregular payments of Rs. 50,000/- on 31.05.2008, Rs. 20,000/- on 31.05.2008, Rs. 10,000/- on 31.05.2008 and Rs. 28,357/- on 05.09.2008 which have been accounted for. Copy of invoice dated 01.10.2007-01.10.2008 are marked as **Exhibit PW 1/ 2-PW 1/15."**

It was also stated:-

"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 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.

I state that the Log Report dated_____ in Univision Cables Network **(Sic)** (Customer Code: CNUPHA0063) bearing VC Nos 4017715809 & 40177207764 for Neo Sports and Neo Cricket are annexed herewith and exhibited as **Exhibit PW 1/17.**"

13. Having perused the record of the matter including the affidavit of the deponent aforementioned and the documents accompanying the petition and/or the affidavit affirmed in support thereof, we are satisfied that the respondent has made itself liable to pay a sum of Rs. 1,69,436/- 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.

.....
(S.B. Sinha)
Chairperson

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

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

/AS/