

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated- 5th September, 2011

Petition No.385 (C) of 2010

IndusInd Media and Communication Ltd. ...Petitioner

Vs.

Om Skyway Network ...Respondent

BEFORE:

HON'BLE MR.JUSTICE S.B. SINHA, CHAIRPERSON

For Petitioner : Mrs. Vandana D. Jaisingh, Advocate

For Respondent : None

JUDGMENT

This petition has been filed by the petitioner, which is a Multi Service Operator for recovery of the arrears of subscription fees due from the respondent herein.

2. The petitioner is a company registered and incorporated under the Indian Companies Act, 1956.

It is engaged in the business of providing Cable Television Services under the provisions of the Telecom Regulatory Authority of India Act, 1997 (The Act) within the territory of Mumbai and its suburbs and other towns of India.

3. The respondent is a Local Cable Operator and has been operating its cable business within the territory of Vashi, Navi Mumbai in the State of Maharashtra.

4. On a subscriber base of 300 (points), the parties hereto entered into an agreement. The said subscriber base had been raised to 400 (points) on and from 01.04.2002 till 31.05.2006 but reduced to 150 (points) on and from 30.04.2008.

As agreed to by and between the parties hereto, the respondent was under an obligation to pay a sum of Rs. 30,337/- per month calculated @ Rs. 180 per point per month excluding the applicable taxes towards the subscription charges upto 30.04.2008. Invoices are said to have been raised and handed over to the respondent personally every month.

5. According to the petitioner, the respondent has been making payments as per its convenience, and not as per the invoices raised by it in terms of the said agreement. The outstanding amount which has become payable by the respondent to the petitioner is said to be Rs. 17,97,254/- upon adjustment of payments received from it upto 30.04.2008.

6. The petitioner, as per the agreed terms between the parties, was also entitled to the amount of Rs. 10,54,387/- upto Aug 2010, towards interest calculated at the rate of 24% p. a. on the said outstanding amount totalling a sum of Rs. 28,51,641/- is also payable by the respondent to the petitioner. It is stated that the respondent without any notice as envisaged under Clauses 4.2 and 4.3 of the Interconnection Regulation disconnected the feed/signals from the petitioner's network which it came to know sometimes in November, 2008.

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

- “(a) The respondent be ordered and directed to pay the complainant amount of Rs. 28,51,641/- as on 31st August 2010 with further interest @ 24% p.a. compoundable till realization.
- (b) That the Petitioner has transmitted the signals to the Respondent even after 30.04.2008. Hence subscription fees for 21 days @30,337/- p.m. be granted.
- (c) the Respondent be restrained by passing an order of injunction from taking the signals from any other MSO and transmitting the signals to their subscribers, till the outstanding due amount has been paid to the petitioner.
- (d) Hold the said disconnection by the respondent as illegal, violative of the TRAI's Regulation.
- (e) Pass ad-interim/ interim/ex-parte orders(s) in terms of above prayer

- (f) Award the cost of this Petition in favour of the Petitioner and/or
- (g) Pass such other/further Orders as this Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the present case."

8. The respondent despite service of notice did not appear. Apart from the notices issued by the Registry of this Tribunal, the petitioner's advocate has also sent a copy of the petition by speed post on 29.11.2010. The respondent was also informed of the date(s) fixed in the matter from time to time.

9. The status of service of summons/notice on the petitioner is as under:-

- " 1. Affidavit of service has been filed by the petitioner with regard to return of packet with the remarks 'intimation' sent on 04.01.11.*
- 2. Copy of the petition sent by registry on 25.11.2010 and packet returned with remark 'unclaimed' on 13.11/10.*
- 3. Copy of the petition sent by advocate by speed post on 29.11.2010 (receipt available on record).*
- 4. Packet of Notice dated 27.11.10 sent by speed post, returned with remark 'Incomplete Address'.*
- 5. Packet of Notice dated 25.01.11 sent by speed post, returned with remark 'Left'.*
- 6. Packet of Notice dated 01.02.11 sent by speed post, returned with remark 'Left'.*
- 7. Packet of Notice dated 25.02.11 sent by speed post, returned with remark 'not returned'.*
- 8. Publication done in free Press Journal and Nav Shakti on 19.03.11."*

9. The petitioner has filed the following documents:-

(i) Copy of some invoices;

(ii) Copy of the Legal notice dated 09.09.2009;

(iii) Copy of the Ledger Account in respect of the petitioner for the period 01.04.1999 and 16.04.2008;"

10. Shri Sanjeev Ahuja, Head- Legal of the petitioner company has affirmed an affidavit in support of the petitioner's claim.

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

4. "I say that the respondent was having 300 points from the commencement of business transactions and further Respondent was having 400 points from 01.04.2002 till 31.05.06 and thereafter only 150 points till 30.04.2008 and the rate was fixed from time to time by the Petitioner. That in the year 2008, the rate was Rs. 180/- per point and the Respondent was liable and responsible to pay towards Free To Air Franchise Package amounting to Rs. 27,000 per month plus Service Tax per month i.e Rs. 97.20. Thus the total amount payable every month was Rs. 30,337/-. The invoices were handed over to the Respondent personally every month. The Respondent has been making payments as per its convenience and not as per the invoice to the Petitioner. Hence, a running account of the Respondent's name was maintained in the Petitioner's account. The outstanding amount of Rs. 17,97,254/- AS ON 30.04.2008, plus interest @ 24% from April 2008 to August 2010 amounting to Rs. 10,54,387/- which in total amounts to Rs. 28,51,641/- is payable by the Respondent to the Petitioner.

5. *I say that without giving due notice as required under law, the Respondent has abruptly discontinued feed/signals from the Petitioner's network. The Petitioner came to know about the discontinuation only somewhere in November 2008. It is submitted that any such disconnection is violative of clause 4 of the Interconnect Regulation Amendment dated 04.09.2006. The relevant portion of clause 4 of the Interconnect Regulation is reproduced below of the sake of convenience.*

It was also stated:-

6. *" I say that as per the statement of account in the Petitioner's book of accounts, the Respondent is liable and responsible to pay Rs. 17,97,254/- as on 30.04.2008 plus interest @ 24% from April 2008 to August 2010 amounting to Rs. 10,54,387/- which in total amounts to Rs. 28,51,641/-. The certified copy of the Statement of Claim Amount as in the books of the Petitioner is annexed in the List of Documents. "*

12. The petitioner has claimed the arrears of subscription fee upto 30.04.2008 in support whereof it has filed its Ledger Account upto 21.04.2008.

13. In this case the accounts, so far as the respondent is concerned begins from 30.06.1995 and continues upto 30.04.2008. The respondent is said to have made payment of a sum of Rs. 15,000/- on 17.03.2008. In the books of accounts a reversal of excess billing for a sum of Rs. 1,36,204/- as on 25.03.2008 has also been made.

14. Having regard to the fact that this petition has been filed on 10.11.2010 the period of limitation of three years being applicable, a decree for the period 10.11.2007 to 09.11.2010 may be passed. In that view of the matter the decree which can be passed

in this case is the amount of the subscription fee for the period 10.11.2007 to 09.11.2010. The petitioner would, therefore, be entitled to a decree for a sum of Rs. 1,07,023/-.

15. The petitioner would also be entitled to interest @ 9% per annum from the date it fell due till the date of filing this petition i.e. for a sum of Rs. 24,763/-.

The petitioner shall also be entitled to interest pendente lite and future at the same rate.

As the respondent has not appeared, there shall be no order as to costs.

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

/AS/