

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated- 5th September, 2011

Petition No.380 (C) of 2010

IndusInd Media and Communication Ltd. ...Petitioner

Vs.

Vikas Patil ...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 cities of India.

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

4. On a subscriber base of 250 (points), the parties hereto entered into an agreement.

As agreed to by and between the parties hereto, the respondent was under an obligation to pay a sum of Rs. 50,562/- per month calculated @ Rs. 180 per point per month excluding the applicable taxes towards subscription charges i.e. 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. 7,23,650/- 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. 4,24,539/- upto Aug 2010, towards interest calculated at the rate of 24% p. a. on the said outstanding amount totalling a sum of Rs. 11,48,189/- from the

respondent. 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, inter alia, prayed for the following reliefs:

- (a) The respondent be ordered and directed to pay the complainant an amount of Rs. 11,48,189/- 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 @50,562/- 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 notice by speed post on 04.01.2011. 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 25.01.2011 and packet returned with remark 'Incomplete Address' on 10.01.2011.*
- 3. Publication is done in free Press Journal and Nav Shakti on 19.03.11."*

10. 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 01.04.1996 and 21.04.2008;

11. Shri Sanjeev Ahuja, Head- 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:-

- 4. I say that the Respondent was having 250 points from the commencement of business transactions till 30.04.08 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. 45,000/- per month plus Service Tax per month i.e Rs. 5,400/- plus Education Cess @ 3% on Service Tax i.e Rs. 162/-. Thus, the total amount payable every month was Rs. 50,562. 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. 7,23,650/- as on 30.04.2008, plus interest @ 24% from April 2008 to August 2010 amounting to Rs. 4,24,539/- which in total amounts to Rs. 11,48,189/- 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 May 2009. 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. 7,23,650/- as on 30.04.2008 plus interest @ 24% from April 2008 to August 2010 amounting to Rs. 4,24,539/- which in total amounts to Rs. 11,48,189/- with further interest till realization.*

13. 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.

14. The petitioner on 04.98.2011 has filed two affidavits, one of which has been affirmed by Mr. Unni Krishnan, who stated that all the invoices which had been handed

over to him by the Accounts department of the company had been delivered every month to the local cable operators for the period 2005 to 2008 but he has not obtained any acknowledgment of the said invoices.

Another affidavit has been affirmed by Mr. Gajanan Kamlakar Kulkarni, working in the accounts department of the petitioner. According to the said witness the amounts paid by the operators are adjusted towards the balance outstanding dues and thereafter towards the current bill.

Ms. Jayasingh urged that the accounts being a running one, the petitioner would be entitled to a decree of recovery of the entire amount.

15. In this case the petitioner has filed the ledger account for the period 31.03.1997 and 21.04.2008. From a perusal of the ledger account it appears that on account payment used to be made by the respondent from time to time; the last of such payment having been made on 25.03.2008. Concedingly, the supply of the signal to the respondent's network was stopped from 30.04.2008. The affidavit of Shri. Kulkarni in the opinion of this Tribunal cannot be taken into consideration as the petitioner has not raised any such contention in the petition.

Moreover, ex-facie the said contention of the said deponent does not appear to be supported by the entries of the ledger account of the respondent. No material has also been brought on record to show that the petitioner company has been following the said practice. How and in what manner the petitioner has used its discretion

therefor having not been established, the contentions of the said deponent cannot be accepted.

16. The petitioner does not contend that the accounts maintained by it in respect of the respondent's network was a mutual, open and current account and there were reciprocal demands between the parties as envisaged under Article I of the Schedule appended to Limitation Act, 1963. This Tribunal in a large number of judgments has held that Article I of the Limitation Act in a case of this nature shall have no application.

17. In that view of the matter the period of limitation for filing this petition must be held to be three years. A decree which, therefore, can be passed in this case is for the amount of the subscription fee for the period 10.11.2007 to 09.11.2010. The petitioner would, therefore, be entitled for a decree for a sum of Rs. 1,50,193/-.

18. 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. 34,752. The petitioner shall also be entitled to interest pendente lite and future at the same rate.

This petition is allowed in part and to the extent mentioned hereinbefore. As the respondent has not appeared, there shall be no order as to costs.

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