

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated : August 27, 2012

Petition No.73(C) of 2012

(MA No.357 of 2012)

Durga City Cable Network ...Petitioner

Vs.

MSM Discovery Pvt. Ltd. ...Respondent

BEFORE:

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

HON'BLE MR.P.K. RASTOGI, MEMBER

For Petitioner : Mr.Shourjyo Mukherjee and Mr. Paul Roy
Paske, Advocates

For Respondent : Mr.A.C. Misra, Advocate

J U D G M E N T

1. In this petition the Petitioner has, inter alia, prayed for a declaration that the notice dated 16.1.2012 issued by the Respondent purported to be in terms of Clause 4.1 of the Telecommunication (Broadcasting & Cable Services) Inter Connection Regulations, 2004 as amended from time to time (the Regulations) is null and void.

2. The Petitioner earlier filed a petition before this Tribunal which was marked as Petition No.322(C) of 2011 entitled Durga Citi Cable Network Vs. MSM Discovery Pvt. Ltd., which by a judgment and order dated 4.11.2011 was disposed of with a direction upon the parties thereto to enter into negotiations therewith.

3. The Petitioner was directed to furnish its Subscriber Line Report to the Respondent within one week from the said date on the basis whereof the parties were to enter into negotiation for settling the commercial terms for renewal of the agreement in terms of Clause 8.1 of the Regulations.

4. The said petition was filed, inter alia, on the premise that the agreement between them although was continuing but the network of the Petitioner was disconnected. The said plea was accepted on the premise that there exists an automatic renewal clause in the agreement itself.

5. The Petitioner filed this petition wherein it claimed down gradation of its subscriber base from 1000 to 380.

6. The Respondent, however, has contended that from July, 2011, the Petitioner did not pay its subscription fees as a result whereof a sum of Rs.6,42,253/- became due upto 14.2.2012 on which date, the supply of signals was discontinued.

7. By reason of an order dated 24.2.2012, the supply of signals to the Petitioner's network was directed to be restored on the Petitioner's depositing a sum of Rs.3.00 lakhs.

8. In view of the fact that this Tribunal by the said order furthermore directed the Petitioner to pay its monthly subscription fees regularly, inter alia, on the premise that the Petitioner despite the said order did not comply with the same, liberty was sought for by the Respondent, inter alia, to disconnect the signals of the Petitioner with immediate effect. The said application was registered as MA No.357 of 2012. By an order dated 20.07.2012 the said application was directed to be considered along with the main petition.

The matter was heard in part on 20.7.2012.

9. It is not in dispute that in terms of the agreement entered into by and between the parties hereto, the subscription fee payable by the petitioner was fixed at Rs.67,000/-. There exists a dispute between the parties as to whether the joint survey was undertaken in terms of the order dated 24.2.2012 of this Tribunal.

10. It furthermore appears that the Respondent published a public notice on or about 21.1.2012; validity/legality whereof is not in question.

11. Mr. Mukerjee, learned counsel appearing on behalf of the Petitioner would contend that having regard to the fact that the Petitioner admittedly had supplied a copy of the SLR to the Respondent as would appear from its letter dated 4.1.2012 (Annexure A-5); there was absolutely no reason as to why the same could not be verified by it.

12. According to the learned counsel, the Petitioner went to the office of the Respondent at Bengaluru but he was rudely treated and had to come back empty handed.

13. So far as, the MA No.357 of 2012 is concerned, it was urged that from a perusal of the letter dated 25.12.2011 issued by the Petitioner it would appear that it had only 28 subscribers and when a purported raid was made by the Respondent, the same was reduced to 14 subscribers only. It was contended that the Respondent in its aforementioned letter dated 4.1.2012 itself stated as under:

“We acknowledge the receipt of the SLR (Subscriber Line Report) which was sent from your end which was sent to our Delhi office and the same however was not received by our Bangalore office.”

14. Mr. Misra, learned counsel appearing on behalf of the Respondent would contend that this petition is barred under the principles of Res Judicata. It was pointed out that the Petitioner's network has been disconnected on or about 14.2.2011 and only in the month of April, 2011 the Petitioner had made some payments. It was pointed out that a miscellaneous application was filed as the Petitioner had not made even a single payment after depositing the aforementioned sum of Rs.3.00 lakhs. Moreover, the Petitioner did not come forward to negotiate with the Respondent to settle the commercial terms of the agreement and as such no equity lies in its favour.

15. So far as the question of this petition being barred under the principles of Res Judicata is concerned, this Tribunal is of the opinion that this Petition

having been filed on a subsequent cause of action, the said principle will have no application.

16. However, the fact remains that the Petitioner did not comply with the order of this Tribunal dated 24.2.2012. It appears from the petition that no statement has been made as to who was to be blamed for not carrying out the joint survey. The petition also does not contain any statement that the Respondent did not carry out any negotiation. Reliance placed by the Petitioner on air tickets purchased by it allegedly for going to Bengaluru cannot be accepted as a proof of its contention that the Respondent behaved with the Petitioner rudely or it had to come back empty handed.

17. It is now a well settled principles of law that the truth of the matter must be culled out, inter alia, from the pleadings of the parties. It has been so held in Maria Margarida Sequeria Fernades and Others vs. Erasmo Jack De Sequeria (Dead) Through LRs. 2012(3) SCALE 550 in the following terms:

“51. In the administration of justice, judges and lawyers play equal roles. Like judges, lawyers also must ensure that truth triumphs in the administration of justice.

52. Truth is the foundation of justice. It must be the endeavour of all the judicial officers and judges to ascertain truth in every matter and no stone should be left unturned in achieving this object. Courts must give greater emphasis on the veracity of pleadings and documents in order to ascertain the truth.

Pleadings

53. Pleadings are the foundation of litigation. In pleadings, only the necessary and relevant material must be included and unnecessary and irrelevant material must be excluded. Pleadings are given utmost importance in

similar systems of adjudication, such as, the United Kingdom and the United States of America.”

18. It was furthermore observed:

“61. In civil cases, pleadings are extremely important for ascertaining the title and possession of the property in question.”

19. The petitioner, moreover, as noticed heretofore, did not amend the petition so as to question the legality of the public notice dated 21.1.2012.

The agreement between the parties hereto in terms of the judgment and order passed by this Tribunal in the aforementioned Petition No.322(C) of 2011 was to remain valid only upto 31.12.2011.

20. The commercial terms between the parties along with other terms and conditions, thus, remained valid upto 31.3.2012.

The parties did not arrive at any settlement on or about the said date, and, thus, the agreement has ceased to remain operative.

21. The Petitioner had sought to suo motu revise the monthly subscription fee according to its own contention. He could not have done so. He even did not comply with the order of this Tribunal dated 24.2.2012.

The Petitioner’s network was disconnected on 14.2.2011. It was directed to be restored by reason of the aforementioned order dated 24.2.2012.

22. It was, therefore, obligaory on the part of the Petitioner to comply with the order of this Tribunal. In any event having failed to plead and consequently establish that it had complied with this Tribunal’s judgment and

order dated 4.1.2011 in Petition No.322(C) of 2011, the Petitioner is not entitled to any relief whatsoever.

This petition is, therefore, dismissed with no order as to costs.

M.A. No.357 of 2012 is also disposed of accordingly.

(S.B. Sinha)
Chairperson

(P.K. Rastogi)
Member

August 27, 2012
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