

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

DATED 13th AUGUST 2012

Petition No.429 (C) of 2011

Utsav Communication Pvt. Ltd. ...Petitioner

Vs.

Media Pro Enterprises India Pvt. Ltd. ...Respondent

BEFORE:

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

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

For Petitioner : Mr. Vineet Bhagat, Advocate
Ms. Neha Jain. Advocate

For Respondent : Mrs. Pratibha M. Singh, Advocate
Mr. Upendra Thakur, Advocate

JUDGEMENT

The Petitioner, a Multi Service Operator operating in the town of Indore, has filed this petition inter-alia for a direction upon the Respondent to withdraw its notice dated 30.5.2011 as also a direction upon it to supply the counter signed copies of the subscription agreements relating to Zee and Star Channels.

2. The dispute between the parties lies in a narrow compass.

3. The Petitioner entered into agreements with the predecessor in interest of the Respondent, namely, Zee Turner Ltd. and Star Den. As it is now conceded at the Bar that the Petitioner has no grievance with regard to supply of signals as also supply of a copy of the agreement in respect of Zee Group of channels, this petition shall stand confined to supply of signals of Star channels.

4. The Petitioner entered into an agreement with Star Den Media Services sometimes in the month of November, 2010, pursuant where to and in furtherance where of some IRD boxes and VCs were supplied to it.

5. One of the grievances of the Petitioner is that it was not supplied with a copy of the agreement and thus, not aware of the terms and conditions thereof. One of the grievances of the Petitioner also is that it had not been served with monthly invoices also. Moreover, there appears to be a dispute with regard to quantum of the monthly subscription charges.

6. Before advert ing to the controversies/issues between the parties as noticed hereinbefore, we may place on record that pursuant to the order passed on 21.10.2008 by this Tribunal in Petition No. 82 (C) of 2001, an agreement was entered into by and between the parties hereto sometimes in 2009.

7. The Petitioner filed another petition being Petition No. 200 (C) of 2009, wherein an order was passed by this Tribunal.

8. An agreement was also entered into on or about 24.03.2011.

According to the Petitioner, the monthly feed charges therefor was fixed at Rs. 25,000/- ; whereas according to the Respondent, however, the same varied from time to time.

The Petitioner contends that it had paid a huge amount to the Respondent in terms of the provisions of the Memorandum of Understanding but the same had not been properly adjusted by the latter. On or about 20.1.2010, the Respondent was informed by the Petitioner that it had cleared all the dues till 31.3.2011. It also made a complaint that it had not been receiving any invoice.

9. According to the Petitioner, a sum of Rs.4,15,900/- which was to be adjusted in its account was not done. However, now it appears that during pendency of this petition, the Petitioner has given up its claim in respect of the said amount which has been recorded by us in our order dated 2.3.2012.

10. The parties hereto upon framing of issues examined their respective witnesses. Whereas the Petitioner examined Mr. Anand

Parsaniya (PW-I), the Respondent examined Mr. Amarendra Singh, its Deputy Manager (RW-1).

11. Mr. Vineet Bhagat, learned counsel appearing on behalf of the Petitioner, would take us through the cross examination of RW-1 to contend that he having proved three different Annexure 'Cs' showing different amount payable by the Petitioner the claim of the Respondent relying on or on the basis thereof being based on forged and fabricated documents, the entire agreement between the parties hereto became vitiated in law.

According to the learned counsel, it is wholly absurd to suggest that in a case of this nature, where the Respondent's officers filled up the blanks of the agreement would annex with the agreement three different 'Annexure C'.

12. Mrs. Pratibha M. Singh, learned counsel appearing on behalf of the Respondent, on the other hand, urged that the materials brought on record by the parties hereto sufficiently explain that not only the copy of the agreement but also the invoices had been raised and served upon the Petitioner.

It was furthermore submitted that despite allegations of forgery having been made, PW-I remained silent not only with regard thereto but also the alleged non-receipt of the invoices.

13. The learned counsel would, however, concede that in some of the invoices mistakes having been committed, credit notes and debit notes were raised and served upon the Petitioner.

14. PW-I in his evidence, however stated that he had signed both the agreements with 'Star' and 'Zee' channels on the same day although the agreement with Zee had been entered into on or about 18.11.2010. PW-1 accepted that the agreement with Zee did not contain any blanks but in the agreement with Star only the blanks contained therein were filled up at a later date.

15. The said agreement is supposed to have been received by the Petitioner on 8.12.2010. The same had also been sent to it by speed post; the postal receipt wherefor has been filed.

16. At this stage, we may notice the deposition of Shri Amarendra Singh (RW-1).

17. In his cross examination RW-1 stated:-

“Q.35: What has been torn out of the agreement dated 24.3.2011 which would have been Page 17 & 18?”

A: It is a part of acknowledgment which was given to Mr. Anand Parsaniaya. The second part is available in the booklet.

Q.45: I put it to you that you have forged the second Annexure C and for the first time has filed it with your affidavit of evidence?

A: It is incorrect that we have forged anything.

Q.46: How come there are three different Annexure C in the agreement dated 24.3.2011?

A: The Annexures are for different periods of time. The first Annexure C is for 1.1.2011 to 31.3.2011, second one is for 1.4.2011 to 31.12.2011 and third one is the corrected and for the same period as of second one.”

18. He was also given the following suggestions:-

“Q.48: It is correct that you had called the petitioner subsequently for rectifying the agreement because you informed him that the agreement was wrongly filled up for Rs. 35,000/- instead of Rs. 25,000/-. On that pretext you had got further blank agreements signed from the petitioner and filled them up with the manipulated figures subsequently as an afterthought?

(Ld. Counsel for the respondent objects to the tenor of the question.)

A: It is incorrect.

Q.51: I further put it to you that you are leaving no stone unturned to commit forgery in order to defeat the claim of the petitioner because you have further created manipulated Annexure C after the mistake vis-à-vis the invoice and the agreement placed on record by you, was pointed out by the petitioner?

A: It is not correct.”

19. We may also notice the following queries and the RW-I's response thereto:-

“Q.56: Has the amount of this DD been credited to the account of Star Den Media Service Pvt. Ltd?

A: I have to check from the statement of account.

Q.63: I put it to you that the system of issue of UPC receipts has been discontinued by the postal department since about 2 years?

A: We already dispatched invoices as at pages 67, 69, 71 and 73.”

20. We do not see as to why his evidence should not be relied upon. So far as payment/adjustment aspect of the matter is concerned, the Petitioner's statement in para 9 of the petition may be noticed:-

“9. That, thereafter, as per the MOU dated 10.5.2011 the Petitioner withdrew its Petition No. 200(C) of 2009 but the Respondent in complete violation of MoU dated 10.5.2011, sent an invoice dated 23.05.2011 for the month of June 2011 wherein the Respondent has mentioned the outstanding amount as Rs.5,09,302.90/-. Here it is pertinent to mention that the Respondent has included an amount of Rs.4,79,351.37/-, which the Respondent had settled vide MoU dated 10.5.2011.”

21. It may further be noticed that the Petitioner disclosed its subscriber base in the MOU entered into by and between the parties; the subscription amount being Rs.29,952/-, its subscriber base would be 340.

The subscription agreement by and between the Petitioner and the Star Den would show that its subscriber base was 340 for Bouquet I.

22. We may now consider the accounts maintained by the parties hereto.

In para 11 of its amended reply, the Respondent stated that credit of the aforementioned amount of Rs. 4,65,000/- had already been given.

It was furthermore stated:-

“It is reiterated that the Respondent had provided the Petitioner with the counter signed copy of the subscription agreement entered into by the Petitioner with Star Den Media Services Pvt. Ltd. and the proof of the same by way of an acknowledgement of receipt by the Petitioner has already been placed on record in the instant matter.”

23. On the aforementioned premise, we may notice the statement of accounts as per ZTL for the period from 01.04.2011 to 30.6.2011:-

Month	Billing	Collection	Credit note as per MOU	Cum Balance
Opening Balance as on 01.04.2011				419,446
<i>Apr-11</i>	<i>29,952</i>			<i>449,397</i>
<i>May-11</i>	<i>29,952</i>		<i>419,446</i>	<i>59,903</i>
<i>June-11</i>	<i>29,952</i>			<i>89,854</i>
<i>Total</i>	<i>89,855</i>		<i>419,446</i>	<i>89,854</i>

24. The Respondent contends that the said statement of accounts was sent to the Petitioner.

25. The Petitioner, however, has annexed a copy of the 'statement of bank certificates' issued by the Bank of India to show that the payment for the cheque No. 52 dated 10.6.2011 for a sum of Rs.5.00 lakhs was made by the bankers on 2.7.2011.

26. It may further be noticed that a Public notice was issued on 30.9.2011 by the Respondent herein on the ground of non-payment of subscription fee for the channels.

27. The Petitioner questioned the aforementioned public notice. According to it, it has paid the following sums to the Respondent:-

S.No.	Bank Name	Cheque No.	Date of Cal	Rs.
1.	SCB	126043	18.11.2010	5000
2.	SCB	126082	03.03.2011	100000
3.	SCB	13678	03.05.2011	25000
4.	SCB	13679	03.05.2011	25000
5.	BOI	52	02.07.2011	500000
Total Given Amount STAR as for my Cheque Book				655000

28. PW-I in his evidence denied that the Petitioner was to pay a sum of Rs.1,46,289/- plus service tax for the period 18.11.2010 to 31.12.2010.

29. At this juncture, we may notice three different Annexure 'Cs' appended to the aforementioned agreement.

The first Annexure 'C' states that the subscription amount payable thereunder was for the period from 1st January, 2011 to 31st March, 2011 being a sum of Rs.1,46,267.54/-.

The second annexure 'C' states that the subscription amount payable thereunder was for the period from 1st April, 2011 to 31st December, 2011 being a sum of Rs.1,84,306.71/-.

30. In the most controversial Annexure 'C' is dated 24.3.2011, it was stated that the subscription amount payable thereunder for the period from 1st April, 2011 to 31st December, 2011 was Rs.1,55,368.15/-."

Thus an amendment in the second Annexure 'C' has been made.

31. All the three annexures bear the signatures of Mr. Anand Parsaniya. The Respondent contends that having noticed a mistake in the second Annexure 'C', the Petitioner was given due credit as regards subscription amount mentioned in the third one.

32. We do not find that any discrepancy in the first and second Annexure 'C' has taken place; as the first one was upto 31st March, 2011; whereas the second one was from the period 1st April, 2011 to 31st December, 2011. The parties, thus, were agreeable to pay the enhanced subscription amount for the subsequent period.

33. It is difficult to conceive that the Petitioner who had been on litigating terms with the Petitioner and/or its predecessor in its

interest would sign three validation agreements without understanding the contents and consequences thereof. The signature of Mr. Parsaniya, authorized signatory of the Petitioner company, even in the third agreement is not denied or disputed. It was to its advantage as by reason thereof a lesser amount became payable.

34. Having regard to the materials brought on record by the parties hereto, we are of the opinion that the explanation furnished by the Respondent that the negotiated amount for the period 1.4.2011 and 31.12.2011 had been Rs.1,55,000/- is sufficient as it had wrongly been shown therein that for the said period, the subscription amount was to be calculated @ Rs.1,84,306.71p per month.

35. So far as the question of reflection of the said amount in the invoices is concerned, from a perusal thereof, it appears that the revised amount showed that the requisite credit therefor, was given to the Petitioner.

In the invoice dated 2.6.2011, a sum of Rs.1,71,371.08p has been shown as the total amount due. However, a credit note was issued by the Respondent on 20.5.2011 for a sum of Rs.28,502.92p.

36. So far as the invoice dated 26.11.2010 is concerned, it appears that the same had been sent to the Petitioner under 'certificate of posting'. From the 'certificate of posting' annexed to the reply, it

would appear that the same related to a large number of persons and thus, it is difficult to believe that the same had not been issued by the Respondent herein.

Similarly, so far as the invoice No. 3.12.2010 is concerned, a large number of invoices appear to have been sent together. We may also note that for the month of January, 2011 also, similar certificate of posting has been filed.

37. Various documents to which references have been made heretobefore and which were annexed with the affidavit evidence of Mr. Amenders Singh, we are of the opinion that the accounts maintained by the Respondent cannot be faulted.

The 'certificate of posting', if believed, would give rise to a presumption in favour of the Respondent.

[See Green View Radio Service Vs. Laxmibai Ramji & another (1990) Vol.4 SCC 497]

[See also Harcharan Singh Vs. Shivrani & others (1981) Vol.2 SCC 535]

38. We have noticed heretobefore that para 22 of the Respondent's reply.

We may also notice para 12 of the Respondent's reply, which reads as under:-

“It is submitted that when the matter came up for interim hearing on 1.11.2011, the Petitioner wrongly alleged that the Respondent did not comply with the Hon’ble Tribunal’s order dated 21.10.2011 (on which date the Petitioner had mentioned the subject matter before this Tribunal) since it had not restored the signals of all channels distributed by it and only a few channels were activated. In this regard, it is submitted that the signals of all channels to the Petitioner’s network were restored on 21.10.2011 itself. The Respondent craves leave of this Hon’ble Tribunal to rely upon the said document as though the same has been filed as an annexure to the instant petition.”

39. So far as the observations made in this Tribunal's order is concerned, the Petitioner in Para 12 of its rejoinder has made vague denials of the contents thereof.

40. We have also noticed the statement of accounts of the parties. There is absolutely no reason as to why the Petitioner having been paying the subscription amount of Rs. 25,000/- for a few months,

would pay a sum of Rs.5.00lakhs on 2nd July, 2011 as there was no such occasion therefor.

41. Ms. Jain, would however submit that the said payment had been made by way of advance but that is not the case of Petitioner.

42. From the aforesaid reasons, this petition being devoid of any merit is dismissed.

43. In the facts and circumstances of the case, there shall be no order as to costs.

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

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

HKC/