

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

Dated 3rd February, 2012

M.A. No.332 of 2011
In
Petition No. 45(C) of 2010

Aamar Cable Entertainment 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.Rabin Majumdar,Advocate
For Respondent : Mrs.Prathiba M. Singh,Advocate
Mr.Tejveer Singh,Advocate
Mr.Vadivelu Deenadayalan, Advocate

ORDER

P.K.Rastogi, Member

This application has been filed for review of our order dated 15.11.2011 to the extent that the petitioner company has to deposit Rs. 5 lakhs within one month and continue to be paid the signal charges on the basis of subscriber base of 4500.

2. The main contention of the applicant is that this Tribunal vide its order dated 15.11.2011 set aside the Commissioner's report, however, it mentioned in the operative portion of the order that petitioner Company shall pay the respondent the signal charges on the basis of subscriber base 4,500. Further, as the respondent had claimed that there were dues of Rs. 11,76,990/- against the petitioner for the months of June, July, August and September. The petitioner was to pay the amount of Rs. 5 lakhs within one month. We may reproduce the relevant portion of the order dated 15.11.2011:

"We are satisfied that the learned Commissioner failed to follow the legal procedure. His report, therefore, cannot be sustained.

It is set aside, accordingly.

We, therefore, are of the opinion that keeping in view the object and purport of the order dated 3.11.2010, it should be directed: -

- (i) The learned Advocate Commissioner must undertake a survey in presence of the parties afresh.*
- (ii) On the date (s) fixed for such survey, one or more LCOs can be randomly picked up so that no advance notice be given thereof but the same must be done in presence of the parties.*
- (iii) With a view to save time, randomly two or three LCOs be checked and figures be compared.*
- (iv) The sub-cable operators being constituents/ shareholders of the petitioner company it would be open to the learned Advocate Commissioner to inspect their books of accounts.*

Another aspect of the matter must also be noticed by us in

view of the prayer made in MA No.166/2011.

Mr. Maninder Singh, learned Senior Advocate appearing on behalf of the respondent on 2.6.2011 has submitted that despite the fact that a huge amount was owing and due from the petitioner, the supply of signals to its network would not be disconnected even if the petitioner does not pay for the next month.

It is stated that the petitioner has not paid any amount thereafter. The respondent has filed a statement of account which reads as under :-

<i>The statement of Account of Aamar Cable Entertainment Pvt Ltd in terms of the order dt. 03.11.2010 clearly reflecting the irregular payments made during this period i.e. 22.11.2010 to 31.7.2011</i>					
<i>S.No</i>	<i>Month</i>	<i>Subs as per TDSAT order dt. 03.11.2010</i>	<i>Monthly billing (in Rs)</i>	<i>Payment received in Rs</i>	<i>Balance due (in Rs.)</i>
1.	Dec'10	4500	2,87,833.37	487834*	-2,00,001
2.	Jan'11	4500	2,87,833.37	287833	-2,00,000.27
3.	Feb'11	4500	2,87,833.37	287833	-1,99,999.91
4.	Mar'11	4500	2,87,833.37	287833	-1,99,999.54
5.	Apr'11	4500	2,87,833.37	150000	-62,166.18
6.	May'11	4500	2,87,833.37	100000	1,25,667.19
7.	June'11	4500	2,87,833.37		4,13,500.56
8.	July'11	4500	2,87,833.37	100000	6,01,333.92
<i>Total</i>			<i>23,02,666.92</i>	<i>1701333</i>	<i>6,01,333.92</i>
<i>Particulars</i>					<i>Amount in Rs</i>
<i>Billing from 01.12.2010 to 31.07.2011</i>					<i>23,02,666.92</i>
<i>Payment recd from 01.12.2010 to till dare (*incl. security deposit of Rs 2 lacs as per order dt. 03.11.2010)</i>					<i>1701333</i>
<i>Payment due upto 31.07.2011</i>					<i>6,01,333.92</i>

It is, however, stated that as the petitioner has not made payments even for the months of June, July, August and September the total amount due now is Rs.11,76,999/-.

We, while remanding the matter to the learned Advocate Commissioner, are of the opinion that the petitioner subject

to the ultimate agreement between the parties shall pay a sum of Rs.5 lakhs within one month from date.

It shall, however, continue to pay without prejudice to its rights and contentions and subject to any settlement between the parties in terms of the order dated 3.11.2010.

The applications are disposed of on the above terms."

3. The main reason for setting aside the report of the commissioner was that it did not follow the correct procedure specifically on the ground that the survey should have been conducted in presence of both the parties. We may notice the relevant portion of the order :

"What was, therefore, necessary keeping in view the objection of the respondent, as has been noticed in the judgment of the Tribunal dated 3.11.2010, was to determine the universe of the petitioner so as to enable the parties to negotiate the commercial terms of the agreement.

For the determination of the subscriber base of the petitioner, it was necessary for the learned Advocate Commissioner to make a survey in the presence of the parties and/or their counsel. It was expected that the procedure, therefor, would be fixed. Presence of the parties and/or their counsel during survey was required to be ensured."

4. The applicant contends that vide order dated 03.11.2011, a direction had been issued for supply of signals to the petitioner on a subscriber base of 4500 for a period of 3 months. However, this order was subject to the outcome of the joint survey. Accordingly, it deposited Rs. 2 lakhs as a security money and

entered into an Agreement dated 22.11.2010 with the Respondent Company upto the month of March, 2011 and it was paying regularly the Signal Charges to the Respondent Company in advance, as directed by this Tribunal on the subscriber base 4,500.

5. According to the petitioner, the respondent has deliberately delayed the conduct of the joint survey. The commissioner submitted its report on 06.05.2010 and according to its survey SLR of the petitioner was 1508. The SLR (Subscribers List Report) of a cable operator is not permanent in nature and it always fluctuates in every month, subject to the service and payment. At the time of making request for supply of signals to the Respondent Company, the Petitioner Company had submitted a Subscriber List declaring its subscriber base 2345. Subsequently, the PW-1 Shri Pradip Ghosh in his Evidence by way of Affidavit dated 11.05.2011 at para 10 has stated that at the relevant point of time, only 1240 existing subscribers had been paying to the Petitioner Company and thereafter, at the time of sending the letter dated 29.03.2011 to the Respondent Company, the subscriber base of the Petitioner Company was 1490 and at the time of conducting of the Joint Survey Commission, the subscriber base of the Petitioner

Company was 1508. Again as per the List of the sub-cable operators under the Petitioner Company dated 30.08.2011 submitted in Petition No. 172 (C) of 2011, the subscribers base of the Petitioner Company was 1540 and after disconnection of the Signals by the M/s MSM Discovery Pvt. Ltd., the Petitioner Company has lost large number of customers and at present, the Petitioner Company is having only 980 Subscribers.

Further, the petitioner was not in a position to pay to the respondent on the basis of 4500 subscribers. The delay of joint survey is not due to any act of default on the part of the petitioner.

6. The respondent did not file any reply to this M.A. However, the learned counsel submitted that while ordering for appointment of Advocate Commissioner for conducting the joint survey, this Tribunal on 03.11.2010 had ordered that subject to any outcome of the joint survey and subject to the petitioner's depositing a sum of Rs. 2 lakhs in advance in the Siliguri office, the respondent was directed to supply the signals to the petitioner on a subscriber base on 4500 for a period of three months. In its order dated 2nd June 2011, the Tribunal had mentioned that "the learned

counsel for the respondent had submitted that pending hearing on the objection to the report of the learned commissioner; the respondent shall not disconnect the supply of signals of the petitioner's network even if the petitioner does not pay for the next month subject of course to the ultimate decision of this Tribunal." So, no interim order was passed by this Tribunal on that time and signals have been continued.

7. In our order dated 15.11.2011, we had set aside the joint survey report and the advocate commissioner was directed to conduct the joint survey in the presence of parties afresh as the advocate commissioner had not followed the proper procedure.

8. In Petition No. 379(c) of 2011 between the petitioner herein and MSM Discovery Pvt. Ltd., we have directed a subscriber base of 2500 pending the conduct of joint survey and the negotiations held in terms thereof.

9. We are of the view that interest of justice would be subserved if we direct that the order dated 15.11.2011 is modified to the extent that the petitioner shall pay for a subscriber base of 2500 instead of 4500 and an amount of Rs. 3 lakhs is paid in

stead of Rs. 5 lakhs to the respondent.

10. This M. A. is disposed of with the aforementioned directions.

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(S.B.Sinha)
Chairperson

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(P.K. Rastogi)
Member

/NC/