

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

DATED 31ST JULY 2012

Petition No.394 (C) of 2011
(M.A. No.341 of 2011)

M/s. Mahankal Cable ... Petitioner

Vs.

MSM Discovery Pvt. Ltd. ... Respondent

BEFORE:

HON'BLE MR. JUSTICE S.B. SINHA, CHAIRPERSON
HON'BLE MR.P.K. RASTOGI, MEMBER

For Petitioners : Mr. Anjani Kumar Mishra, Advocate

For Respondent : Mr. Abhishek Malhotra, Advocate
Mr. Nittin Bhatia, Advocate
Mr. Angad Singh Dugal, Advocate

J U D G E M E N T

The Petitioner, a Multi Service Operator, has filed this petition against the Respondent, a Broadcaster, praying inter-alia for the following reliefs :-

“(a) Direct the Respondent to produce and submit statements of accounts related to petitioner network for the affiliation

agreement year 2010-11 till date and direct the respondent to explain and clarify the payments made by the petitioner in respect of invoices issued by the respondent and actual outstanding amount against the petitioner according to the terms and conditions of affiliation agreements; and

(b) Restrain the respondent from issuing frivolous public notice of outstanding dues and disconnection of signals and to defame the petitioner in the eyes of customers and to realize unreasonable and unaccounted subscription fee which is neither due to the respondent nor legally payable to them.”

2. The said prayer has been made inter-alia on the premise that the Respondent has not credited the amount the payments made by it in its account.

3. The basic fact of the matter is not in dispute.

The parties hereto entered into an agreement for the year 2010.

The validation agreement was signed in April 2010 whereby monthly subscription fee of Rs.4,50,000/- was payable by the Petitioner. According to it, the Respondent had been raising inflated invoices, to which it had all along been objecting to.

The Respondent, however, contended that in terms of the agreement dated 01.01.2010, which was valid up to 31.01.2011, the Petitioner was to pay a sum of Rs.5,00,000/- per month by way of subscription fees.

The Petitioner itself has filed several invoices to which we shall advert to a little later.

We may, however, notice that a MoU was entered into by and between the parties hereto on or about 14.7.2011, the relevant portion whereof reads as under :-

“it is hereby unanimously agreed by the MSMD and Mahankal Cable (collectively referred as “Parties”) as follows :

Each party has recorded the fact that this meeting was called to reconcile the SOA and finalize the outstanding and to clear the same. Mahankal Cable has owed an outstanding of Rs. 19,64,530/- (Rs. Nineteen Lacs Sixty Four Thousand Five Hundred and thirty) considering the billing for the current month i.e. July 2011 Mahankal Cable has agreed to submit the TDS certificate that has been deducted on previous payments made to MSMD which amounts to Rs.1,29,303/- (Rs. One Lakh Twenty Nine Thousand Three Hundred Three only) within 30 days from the date of MOM is signed. Rs.2,00,000/- which would be kept pending with Mahankal Cable and the cheque of the same amount will be swiped while giving the payment against the placement deal.

After kept pending both the above (TDS and Placement fee) amount Mahankal Cable agrees to pay and clear the amount of Rs.16,35,227/- (Rs. Sixteen Lacs Thirty five thousand Two Hundred and Twenty Seven only) by July 31, 2011 in three equal installments, details as tabulated :

*1st installment dated 18.7.2011 (Mon) Rs.5,40,076/- demand draft
2nd installment dated 25.7.2011(Mon) Rs.5,45,076/- demand draft
3rd installment dated 30.7.2011 (Sat) Rs.5,45,076/- Cheque to be
cleared by 05.08.2011.*

*MSMD reserves the rights to deactivate the signals of
“The One Alliance” channels (“TOA Channels”) provided to
Mahankal Cable on the basis of Public Notice, the due date of which
is July 16, 2011, if the payments has not been made on the above
mentioned table as scheduled.”*

4. It is not in dispute that the Respondent had published a notice in terms of Clause 4.3 of the Telecommunication (Broadcasting & Cable Services) Interconnection Regulations, 2004 as amended from time to time (‘The Regulations’).

The Petitioner contends that it in fact had paid an excess amount of Rs.5,34,000/- by a cheque dated 22.7.2011 and a sum of Rs.2,00,000/- by a cheque dated 28.7.2011 which have not been accounted for by the Respondent. It is furthermore its contention that the Respondent did not supply a copy of the validation agreement.

This petition has been filed on 12.8.2011.

The invoices for the months of August, September and October show that a demand for sum of Rs.5,40,452/- for the month of August, 2010 and

Rs.5,40,463/- has been raised for the month of September, 2010 by the Respondent.

5. From the order sheet dated 23.12.2011, it appears that the learned counsel for the Petitioner accepted that a sum of Rs.20 lakhs is owing and due to the Respondent from the Petitioner.

It is also not denied that the Respondent has issued a credit note for a sum of Rs.1,11,081/-, Rs.10,82,215/- and a sum of Rs.37,900/-. It has also issued various debit notes.

6. The admissions made by the Petitioner in the MoU as also on 23.12.2011 before us are clear and explicit.

We may, however, notice that the Respondent in its reply not only annexed letters dated 15.02.2011 and 01.3.2011 but also a statement of account, a copy of the agreement and the details of some cheques which bounced, which is as under :-

<i>S. No.</i>	<i>Chq. Date</i>	<i>Chq. No.</i>	<i>Amount</i>	<i>Remarks</i>
1.	28/02/2010	235033	228000	Bounce
2.	31/03/2010	235035	529661	Bounce
3.	30/04/2010	235045	529661	Bounce
4.	31/05/2010	235051	529661	Bounce

5.	31/05/2010	235053	250000	Bounce
6.	29/06/2010	235061	529661	Credit on 15.07.10
7.	30/07/2010	235063	529661	Bounce
8.	18/07/2010	235071	529661	Bounce
9.	31/10/2010	235086	441000	Bounce
10.	30/11/2010	235095	441000	Bounce
11.	28/02/2011	647340	450000	Credit on 08.03.11
12.	30/06/2011	16080	405000	Bounce
13.	22/07/2011	74862	534000	Credit on 04.08.11
14.	30/07/2011	16091	534000	Bounce
15.	30/09/2011	24602	534000	Bounce

7. The Petitioner has itself filed a statement of account, on a perusal whereof it appears that it owed a sum of Rs.19,64,530/- The Petitioner has also filed a statement issued by Dena Bank to show the amount paid by cheques to the Respondent.

8. It appears that the agreement had expired on 31.12.2010. The Petitioner was requested to execute the agreement for the period 01.01.2011 to 31.12.2011 by the Respondent, whereby its Subscriber Line Report (SLR) and other relevant documents were sought for.

9. By reason of another notice dated 01.03.2011, the Petitioner was again requested to come for execution of the subscription agreement wherefor various

informations were sought for. The Respondent has furthermore produced proof of sending the said letter.

10. The Petitioner in its rejoinder to the reply filed by the Respondent does not deny or dispute the receipt of the said letters. Almost all paragraphs of the rejoinder contain general and vague denials of the statements made by the Respondent in its reply.

11. The parties hereto have adduced their respective evidences in the matter.

Mr. Kazi Asifur Rehman was examined on behalf of the Respondent and Mr. Manoj Parmar, said to be the Assistant Manager of the Petitioner firm, was examined as the Petitioner's witness. In his affidavit, receipt of the said notices are not denied and disputed.

We may, however, notice that whereas according to the Petitioner, in the month of April 2010 the agreement was entered into for the year 2011-2012; according to the Respondent, the same was valid for the period 01.04.2010 and 31.3.2011. However, according to the Petitioner the said agreement for 01.01.2011 to 31.12.2011 was signed in August 2011.

12. Mr. Malhotra would contend that the difference in the amounts mentioned in different invoices clearly show that the agreements were entered into at a later date.

13. Mr. Kazi Asifur Rehman in his Examination in Chief, stated :-

“Q. Mr. Rehman, what do you have to say about the invoicing in respect of the petitioner between the months of January, 2010 and June, 2011?”

A. There are instances that few exaggerate invoices were sent to the affiliate in between the mentioned period and the same was being acknowledged to the affiliate where the affiliate did not question/query about the same and was comfortable. Thereafter we issued few debit and credit notes to balance the outstanding.”

RW-1, in his cross-examination, referred to different sums appearing in the invoices for the months of April to December, 2010.

He, in answer to a query as to why the said amount varied, stated:-

“The agreement which was signed between both the parties were mutually understood and agreed.”

So far as signing of the agreement for the year 2011 is concerned, it was stated :-

“Q. Agreement for the year 2011 was signed at which place and who were present there?”

A. The subscription agreement for the year 2011 was duly signed by Mr. Vivek Jaiswal at his office in Shivaji Park, Ujjain. The People present while signing the agreement were Mr. Vijay Vyas and Mr. Khusro Nisar.”

14. The Petitioner’s witness, it may be mentioned, has not denied that an authorized person has signed the said agreement dated 17.8.2011 on its behalf. In the said agreement, even the subscriber bases for three different channels being 5356 for Bouquet I, 2765 for Bouquet II and 1308 for Bouquet III have been mentioned.

15. In this case, indisputably, the Respondent filed a Miscellaneous Application sometimes in December 2011 seeking for leave of this Tribunal to take steps for disconnection of the signals to the network of the Petitioner.

This Tribunal directed as under :-

“When the matter was called out learned counsel appearing on behalf of the petitioner submitted that the Petitioner owes a sum of about Rs.20 lakhs to the Respondent.

The Petitioner, subject to any other or further order that may be passed, must pay the aforementioned sum to the Respondent within a week from date. The Petitioner, furthermore, if not already paid, shall make payment on a regular basis of the subscription amount in terms of the agreement. In the event the Petitioner fails and/or neglects to comply with the order, the Respondent shall be at liberty to disconnect the supply of signals to the Petitioner’s network. This order shall be without prejudice to the rights and contentions of the parties.”

16. Pursuant to the leave granted to the Respondent by reason of the said order, disconnection of supply of signals to the Petitioner’s network has been caused on or about 31.12.2011.

The Petitioner has not, however questioned the said disconnection of its network. We have noticed heretofore that the Petitioner clearly and unambiguously stated that it is a defaulter as would appear from its MoU as also the statement made before us by the learned counsel for the Petitioner.

17. For the reasons aforementioned, there is no merit in this petition. It is dismissed accordingly.

However, in the facts and circumstances of this case, there shall be no order as to costs.

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(S.B. Sinha)
Chairperson

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(P.K. Rastogi)
Member

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