

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**

**NEW DELHI**

**Dated : June 1, 2012**

**Petition No. 66(C) of 2012**

MSM Discovery Pvt. Ltd.

...Petitioner

Vs.

Rajat Cable Network

...Respondent

**BEFORE:**

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

For Petitioner : Mr.Amitesh Mishra and Ms. Mazag  
Andrabi, Advocates

For Respondent : None

1. Pettioner is a content aggregator. Respondent herein is a Multi Service Operator.

2. The parties hereto entered into an affiliation agreement on or about 6.4.2010 which was valid till 31.12.2010, in terms whereof of a sum of Rs.58,930/- (exclusive of taxes) was payable by way of monthly subscription fee.

3. A fresh agreement was entered into on or about 01.01.2011 which was valid upto 31.12.2011 in terms whereof the Respondent was to pay subscription fee for a sum of Rs.61,650/- exclusive of taxes per month.

4. Inter alia, on the plea that the Petitioner has paid only a sum of Rs.8,93,445/- out of a total sum of Rs.12,30,721/- payable in terms of the said agreement, this petition has been filed for recovery of a sum of Rs.3,37,276/-.

5. Respondent, however, by a letter dated 25.5.2011 sought for deactivation of the channel "The One Alliance".

6. By letter dated 28.5.2011 the Respondent was asked by the Petitioner to comply with the provisions of Clause 4.3 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulations, 2004, stating:

"We wish to bring to your notice that in terms of Clause 4.2 of TRAI's Regulations dated 04.09.2006; you are to give us atleast three weeks' notice before disconnecting/discontinuing re-transmission of signals together with reasons as to why signals are proposed to be disconnected.

Further, in terms of Clause 4.3 of the said Regulations, you are also liable to give notice to Consumers in two local newspapers of which at least one notice should be in local language.

Though we are proceeding to consider your letter dated 25th May 2011, as sufficient notice to us in terms of Clause 4.2 and termination notice of the Affiliation Agreement however, we request you to

immediately and in any case not later than 2nd June 2011 issue Public Notices as contemplated in Clause 4.3 giving them 21 days' time prior to deactivation of channels subscribed by you. We hereby confirm and clarify that we shall deactivate signals to your network on 23rd June 2011 and that you shall remain liable to pay monthly subscription fees and applicable taxes till 23rd June 2011.

You are also advised to clear the pending dues and surrender the IRD, S by 30th June 2011 failing which we shall be constrained to take appropriate legal actions entirely at your risk and cost.

In the event you have already complied with provisions of Clause 4.3 then please let us know so that notice period may accordingly be calculated and signals may be deactivated to your network at an earlier date."

7. Admittedly the signals were deactivated on 27.7.2011 pursuant to the said notice. Despite service of notice, nobody has appeared for the Respondent.

8. It may be placed on record that the notice was sent to the Respondent under Speed Post and from the Indian Post Tracking Record it appeared that the same has been served upon the Respondent.

9. It was in the aforementioned situation by an order dated 3.4.2012 this petition was directed to be posted for hearing. However, by way of abundant caution a copy of the said order was again sent to the Respondent.

11. In support of its case the Petitioner has filed a Statement of Account which is said to have been maintained by it in ordinary course of its business.

12. Shri Arun Arora has filed an affidavit to the said effect. The said deponent has also filed an additional affidavit. The Petitioner has also proved the agreement and Validation Form. From a perusal of the statement of account it appears that a sum of Rs.3,37,276/- was due and owing from the Respondent to the Petitioner.

13. A legal notice dated 19.8.2011 was sent to the Respondent through speed post.

14. Although no acknowledgment due has been filed by the Petitioner, keeping in view the fact that the same was posted at the correct address of the Respondent, a presumption may be drawn that the same has duly been served.

15. Keeping in view the materials brought on record as also the affidavit and additional affidavit affirmed by Shri Arun Arora; we are satisfied that the Petitioner has made out a case for passing an ex parte decree for a sum of Rs.3,37,276/-.

16. The Petitioner shall also be entitled to interest past, pendente lite and future @9% per annum.

17. This petition is allowed to the aforementioned extent. However, in the facts and circumstances of the case, there shall be no order as to costs.

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

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

**June 1, 2012**  
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