

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

**Dated 17.5.2012**

**Petition No.61 (C)/2010**

M/s Guntur Communication Network Pvt. Ltd., A.P. ... Petitioner

Vs.

M/s Eswar Cable Vision, A.P. ... Respondent

**BEFORE:**

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

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

For Appellant : Mr.G.Tushar Rao, Advocate  
Mr.Atanu Mukherjee, Advocate.

For Respondent : Mr.B.S. Sai, Advocate

## **J U D G M E N T**

Petitioner, a company incorporated and registered under the Indian Companies Act, 1956, has filed this petition for recovery of a sum of Rs.4,01,665.45 paise against the Respondent herein, is a Local Cable Operator (LCO) operating in the town of Guntur, Andhra Pradesh.

2. The parties hereto by reason of an oral arrangement had been supplying and obtaining supply of signals of the channels of ETV and ETV-2 @ Rs.10/- per subscriber. They entered into an agreement on or about 1.5.2007 on a subscriber base at 2500.

3. Respondent, however, contends that despite several reminders, the Petitioner has denied to supply a copy of the said agreement. According to it, it's subscriber base was only 2315.

4. Inter alia on the premise that the Respondent had been making short payments for the period 1.2.2006 to 1.2.2009 the present petition has been filed.

5. Respondent, however, contends that although no invoice was served on it, it had been making payments in cash and in fact, it has paid a sum of Rs.12,07,235/- i.e. an excess sum of about Rs.2 lakhs.

6. Furthermore the case of the Respondent is that although it had been running its head-end from a premise known as Kakumanuvari Thota, it had stopped obtaining supply of signals as it had closed on its business from July, 2009.

7. Petitioner, however, contends that the Respondent had been running its head-end from a premise situated at Reddla Bazaar after July, 2009.

8. This petition was decreed Ex-parte for a sum of Rs.3,02,482/- by an order dated 6.10.2010. This Tribunal was of the opinion that the Petitioner is entitled to a decree for the period 1.3.2007 to 1.2.2010; keeping in view the provisions of the Limitation Act, 1963.

9. On an application filed by the Respondent for setting aside the Ex-parte decree under Oder IX Rule 13 of the Code of Civil

Procedure, the same was set aside, subject to the condition that the Respondent deposited 25% of the decretal amount.

The said direction, it is stated at the bar, has been complied with.

10. In support of its case Mr.K.R.H.S. Hanumantha Rao was examined by the Petitioner; whereas the Respondent examined one of its partners Mr.Macherla Jagan Mohan Rao.

11. The relationship between the parties is not in dispute. It is also not in dispute that the Respondent had been taking supply of signals of ETV and ETV-2 from the Petitioner herein upto July, 2009.

12. Petitioner, it is also accepted had been issuing receipts for the amounts it used to receive in cash.

13. In support of its contention, the Petitioner has produced its ledger accounts sofar as the Respondent is concerned. It has also brought on record a large number of invoices and contended that the same had been served.

14. A notice dated 31.7.2009 was also served upon the Respondent, stating as under :-

"We acknowledge the receipt of payment of Rs.25815 (Receipt No.ACH 00565 & ACH 0000566, Dated 9.7.09) towards monthly subscription charges payable to us as per the contract entered into between us.

While going through our books of accounts, it is noticed that outstanding balance payable by you is accumulated to a big amount towards subscription fee due till date.

Kindly make note that owing to partial and irregular payments from your end the outstanding due to us as on date has accumulated to an amount of Rs.183242 (Rupees One Lakh Eight Three Thousand Two Hundred and Forth Two only).

Despite the repeated requests, follow-ups and regular payment reminder from our company executives, the dues are yet to be settled. In the event of no response to this payment reminder we will be constrained to take appropriate legal action in pursuance to the Interconnect Regulations for which you will be solely responsible."

15. The learned counsel for the parties have taken us through the documents brought on record.

16. Respondent has denied and disputed the receipt of a copy of the agreement except by way of Annexure P-2. It appears, that the Respondent by a letter addressed to the Managing Director of the Respondent declared that it had 2500 connections for which it was

agreeable to pay for the purpose of receiving the signals of ETV and ETV-2 from the Petitioner, despite the fact, it had 2315 connections in 13 areas in the town of Guntur.

17. It is no longer in dispute that the consideration for receipt of the signals of the said channels was fixed at Rs.10/ per month as RW-1 in his evidence has admitted the same.

The non-receipt of a copy of the agreement, therefore, would take a back seat keeping in view the fact that the principal terms of the agreement have been proved through other documents.

18. Mr.Sai, learned counsel appearing on behalf of the Respondent would contend that, although, technically the Petitioner had been running its business in the name of Guntur Communications Pvt., Ltd. it is in fact a branch of Siti Cable which has later been taken over by Wire & Wireless India Pvt. Ltd.

19. Keeping in view the agreement between the parties, as also the transactions carried out by them, we are of the opinion, it is not necessary for us to determine the said question being of not much relevance.

20. This petition was filed on 22.3.2010. The period of limitation would, therefore, start from 23.3.2007.

21. The fact that the Petitioner has been acknowledging receipt of some amount of cash and had been granted kachha receipts, is not in dispute. We are not concerned with the amount said to have been paid by the Petitioner before 23.3.2007. We may notice the relevant portion of evidence :-

“(Attention of the witness is drawn to Annexure P-2 at page 14 of the paper book.)

It is correct that this is the Franchisee Agreement but the contents are not known and it does contain my signatures.

The address shown of the Respondent at page 14 of the paper book is the correct address of the Respondent.

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Q: Which are the areas covered under the agreement?

A: The areas shown at page 20 of the paper book are covered under the agreement. I did not receive any invoices at all throughout the period from 1.5.2007 till July 2009, when my business was closed due to losses.

I have not filed any statement of accounts to show that I closed my business in the month of July 2009.

Q: Have you filed your partnership deed on the record?

A: No.

Q: Have you filed any income tax return or any other document to show that you had closed your business on account of losses in the month of July 2009?

A: No.

Q: Have you filed any affidavit of any of the other three partners swearing that the business was closed in the month of July 2009 on account of losses?

A: No.

Q: Have you reconciled or settled accounts between the partners after closure of business in July 2009, on account of losses?

A: No.

Q: Have you given any written notice to the Petitioner informing about the closure of Respondent's business on account of losses?

A: No.

Vol. I had given oral information on or about the beginning of July 2009.

(Attention of the witness is drawn to para 2 of his affidavit as also page 14 of the paper book.)

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Q: Whom did you give the information regarding closure of business-Siti Cable or the Petitioner?

A: I gave the information to Siti Cable through Mr. Krishna Mohan.

Q: Have you filed postal registration certificate along with your counter affidavit?

A: Yes.

(However, after checking the witness states that it is not on record.)”

22. Sofar as issuance of invoice is concerned, it is now not in dispute that a code being 00112 was assigned to the Respondent. Respondent feigned ignorance thereabout, stating that only his Auditor knew about it.

23. In his cross examination, the Respondent as regards his contention that over payments had been made by it, stated as under:-

“White paper receipts, which were hand written and not pre-printed, were issued by the Petitioner in place of proper collection receipts as annexed at pages 205 to 208 of Vol. II of the paper book. Pages 205 to 208 are photocopies and the originals have not been filed on the record. It is incorrect to suggest that all these amounts in white paper receipts have been accounted for and adjusted in the accounts of the Petitioner.

(Attention of the witness is drawn to page 206, Vol. II of the paper book.)

It is correct that a payment of Rs. 28,060/- was made on 8.5.2006.

(Attention of the witness is drawn to pages 209 and 210, Vol. II of the paper book.)

It is correct that both the documents contain the date 29.05.2006 and the code number 00118. The collection receipt numbers are 734 and 735 respectively.

(Attention of the witness is drawn to page 200, Vol. II of the paper book.)

It is correct that the first two entries on this page show the date 29.05.2006, code number as 00118 and receipt numbers as 734 and 735, which show an amount of Rs. 18,060/- and Rs. 10,000/- respectively. The details mentioned at page 200 is true and correct.

In all these years, the Petitioners have never given any receipts of the date on which the payments were made. The dates were either prior or after the date of actual payment.

It is correct that the payments shown at page 207 are also reflected at page 200, Vol. II of the paper book.

It is incorrect to suggest that the white paper receipts were duly accounted for by the Petitioners or that they had issued proper receipts later on.

It is incorrect to suggest that the Petitioners have made proper accounts of all the payments and that they are demanding the balance due.

Vol. Petitioners have to refund us.

It is incorrect to suggest that invoices were raised and given to me.

It is incorrect to suggest that the parties had negotiated for a subscriber base of 2,500.

Vol. I had given my list of subscribers which is shown at page 20, Vol. I of the paper book.

Q: What was the agreed rate per subscriber?

A: It was Rs. 10/- per subscriber exclusive of taxes.

Q: Since you have been running business for a long time, have you been maintaining statement of accounts?

A: No.

Q: Have you maintained any accounts with respect to the payments made to the Petitioner?

A: No.”

24. The matter relating to non-service of the invoice to our mind is a non-issue as according to the Respondent itself it used to visit the office of the Petitioner to make payments. Such payments were evidently being made on the same basis.

In its reply the Respondent stated :-

“... That after closing its business since July 2009 only the Petitioner started to send the invoices by post/Courier, otherwise the Petitioner never send the invoices to the Respondent by post/Courier.”

25. Petitioner has also brought on record a large number of materials to show that even after July, 2009, the invoices used to be sent to the Respondent through courier services, registered post with acknowledgement due or under certificate of posting, which were also refused to be accepted by the Respondent herein.

26. Respondent, as noticed heretobefore, admitted that the Petitioner had been sending invoices to it.

27. In the Annexure R-2, filed with its reply, the Respondent filed a table of the amounts paid which reads as under :-

**STATEMENT SHOWING TOTAL SUBSCRIPTION PAID DURING THE PERIOD FROM 1.2.2006 TO 1.7.2009 BY THIS RESPONDENT :**

(Financial Year which starts from 1<sup>st</sup> April – to 31<sup>st</sup> March)

<b>Year</b>	<b>Details</b>	<b>Amount Paid Rs.</b>
2006-7	Original Receipts	2,97,995-00
	(From 01-02-2006)	1,37,596-00
2007-08	White Paper Receipts	3,09,780-00
2008-09	Original Receipts	2,83,965-00
	Original Receipts	77,445-00
2009-10	Original Receipts	1,03,260-00
	White Paper Receipts	
	Original Receipts	
	<b>Total Paid</b>	<b>12,10,041-00</b>

28. Although, according to it, it had made over payments, admittedly neither any notice was sent nor any counter claim has been filed.

29. So far as the year 2008 is concerned, as indicated heretobefore, the following payments have been made for which no formal receipt is said to have been issued:-

Subscription paid during the year 2006-07 :: Valid White Paper Receipts issued by the Petitioner ::

<b>Year</b>		<b>Rs.</b>
9/4/2008		25,815-00
16-06-2008		25,815-00
18-09-2008		25,815-00
	Total:	77,445-00

30. It, however, appears that for the months of April, 2008, June, 2008, and September, 2008 the amounts of Rs.25,815/- for each of the three months are duly accounted for as would appear from Annexure R-2.

31. It is not the case of the Respondent that it had made double payments. Respondent's witness also did not say so.

No material in this behalf has also been placed on record. No such averment was also made by the Respondent in its reply. No such case has also been made out in the Respondent's application for setting aside the Ex-parte decree.

32. It is true that ordinarily one receipt should be granted for the entire payment received for the month in question. It is also true that different dates have been shown in the books of accounts filed by the Petitioner vis-à-vis the white paper receipts granted by it to the Respondent.

33. In a case of this nature where the Respondent did not file its books of accounts, did not for that matter even show the genesis of the agreement as also whether it had been making payments to the Petitioner on the basis of 2315 subscribers, we are of the opinion, that the Petitioner must be held to have proved its case so far as supply of signals to the Respondent's network is concerned. The amount of subscription fee raised by the Petitioner cannot also be said to be incorrect as its bills subject to quantum of tax payable also tallies with its demand. The only question which remains to be considered is as to whether the Petitioner has been supplying signals from July, 2009.

34. Sofar as the claim of the Petitioner in respect of the period after July, 2009 is concerned, evidently, no notice has been issued by the Respondent as envisaged under Clause 4.2 of the Regulations nor any public notice had been issued in terms of Clause 4.3 thereof.

35. The controversy between the parties shortly stated is that whenever according to the Petitioner it had continued to supply signals of its channels even after July, 2009 and the Respondent in fact had shifted its head-end to Reddla Bazaar in the town of Guntur itself, the Respondent denies and disputes the same.

36. From the records it appears that from the month of July, 2009 till February, 2010, invoices had been sent at the Reddla Bazaar address of the Respondents but the same were refused to be accepted by it as would appear from the endorsements made in that behalf by the Postal authorities.

37. On the one hand, the Respondent submits that there has been a total closure of its business, but indicated heretobefore, it had accepted that the Petitioner had been sending its invoices to it.

Apart from the fact that there is a presumption that any letter/article handed over to the postal authorities had reached the addressee, keeping in view the positive statement made by the Respondent the fact that the Petitioner had been sending invoices being not disputed, we have no other option but to hold that invoices had been served on the Respondent.

38. Mr.Tushar Rao, relied upon the affidavit of Mr.Y. Raja Shekhar, Executive of the Channel +, who in his affidavit filed in P.No.9 (C)/2010 deposed that he had visited the Control Room of the Petitioner at Reddla Bazaar and the later had disclosed to him that he had been taking supply of signals from the Petitioner.

39. We, however, are of the opinion that the said affidavit is inadmissible in evidence. Petitioner intended to bring on record the said affidavit. By reason of an order dated 19.12.2011, the Petitioner's application for Order 18 Rule 17 of the Code of Civil Procedure (the Code) was dismissed.

40. In that view of the matter the Respondent did not get an opportunity to cross-examine the said witness.

41. Mr.Tushar Rao would contend that keeping in view the fact that at least an attempt had been made by the Petitioner to summon the said witness, the said affidavit should be taken into consideration.

42. We are, however, of the opinion that as the same is inadmissible in evidence the question of its being relied upon even for corroborative purpose does not arise.

43. Petitioner says that the Respondent shifted its head-end to the premise at Reddla Bazar. Respondent denies the same but asserts that it closed its business in July 2009 itself.

44. When the control room was shifted by any LCO from one place to other, the connectivity with the MSO will be disconnected and has to be connected again to receive the signals from the MSO to other location. No record has been produced by the Petitioner that the control room of the Respondent was shifted to Reddla Bazar and it provided the signals at new address.

45. Further, according to the Petitioner, it sent a notice dated 31.07.2009 demanding an outstanding amount of Rs.1,83,242/-. It

also asserted therein that in case of failure of the Respondent to pay, it would face legal action.

As seen from the copy of the ledger account produced by the Petitioner, Respondent did not pay a single paise after July 2009 while it was paying monthly subscription amount to the Petitioner on regular basis without any break. It is not understood as to why and how the Petitioner continued to supply signals to the new control room of the Respondent although the Respondent did not make any payment to it from July 2009 onward. Petitioner although issued legal notice to the Respondent for payment of arrears of subscription charges to the extent of Rs.1,83,242/-, but it did not resort even to issuance of a notice under Regulation 4.1 for discontinuing the signals which it could have done easily anytime or it could have discontinued the signals to the Respondent specifically when the Respondent stopped making payment completely and the Respondent was not even accepting any letter from the Petitioner.

46. Therefore, the contentions of the Petitioner for continuing signals after July 2009 at new location cannot be relied upon.

47. It may be true that the Respondent failed and/or neglected to bring on record several documents which it was bound to do, but the onus of proof being on the Petitioner and, thus, it should have proved its case.

48. For the reasons as aforementioned, this petition is in part. Petitioner is entitled to claim arrears of difference in amount for the period 1.3.2007 to 31.03.2009 being its claim for arrears for period prior to 1.3.2007 to the extent of a sum of Rs. 2,82,000 – 1,93,025/- = Rs. 88,975/- with costs. Petitioner is entitled to interest @ 9% per annum for the past, pendent lite and future.

49. Advocate's fees assessed at Rs. 10,000/-.

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

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

**May 17, 2012**  
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