

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated ^{October} 29 September, 2013

Petition No.367(C) of 2012

MSM Discovery Pvt. Ltd. ...Petitioner

Vs.

JAKG Communication Pvt. Ltd. ...Respondent

Petition No.369(C) of 2012

MSM Discovery Pvt. Ltd. ...Petitioner

Vs.

Sky Network ...Respondent

Petition No.373(C) of 2012

MSM Discovery Pvt. Ltd. ...Petitioner

Vs.

Cable Vision - Karur ...Respondent

Petition No.374(C) of 2012

MSM Discovery Pvt. Ltd. ...Petitioner

Vs.

Namakkal Network ...Respondent

BEFORE:

HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON
HON'BLE MR. KULDIP SINGH, MEMBER

For Petitioner : Ms. Vidya Prabhakaran, Advocate

For Respondent : None

Aftab Alam, Chairperson – These four petitions were filed by the same petitioner, together along with five others, as part of a batch of nine cases. The respondents in the other five cases appeared in response to notice and contested the petitioner's claim against them. Those five cases are pending at different stages before the Tribunal. The respondents in the present four cases, however, chose not to appear in response to the notices and consequently by order dated October 5, 2012, all these cases were directed to proceed ex parte.

As noted above, all the four cases are by the same petitioner against four different respondents. The petitioner is a broadcaster and a content aggregator. The four respondents in the four cases are multi-system operators, operating in different parts of Tamil Nadu and the respective territories of their operation are described in the agreements they entered into with the broadcaster, petitioner. All the four cases are for recovery of different sums as dues of monthly subscription

charges from the four respondents and but for the differences in amounts and some of the relevant dates, all the cases are identical. Nevertheless, due to differences in the amounts claimed and some of the relevant dates, each of the four cases is dealt with separately.

Petition No.367(C) of 2012

The case of the petitioner is that it entered into an Affiliation Agreement with the respondent for the period commencing from January 1, 2011 and coming to end on December 31, 2011. On the date of the agreement, the amount due against the respondent was Rs.12,30,915.00p and in terms of the Affiliation Agreement, the monthly subscription fee was Rs.4,53,310.00p. In terms of the agreement, the petitioner provided its channels to the respondent and duly raised invoices for the same. The respondent, however, defaulted in making payments forcing the petitioner to issue the disconnection notice under Clause 4.1 of the Interconnect Regulations on October 10, 2011 and the public notice under Clause 4.3 of the Regulations on October 4, 2011. The public notice under Clause 4.3 was published in "Deccan Chronicle" and "Malai Malar". Despite service of notice, no payment was made by the respondent and consequently the respondent's network was deactivated on November 4, 2011. On the date of the deactivation of the network, the respondent owed to the petitioner a sum of Rs.25,96,485.00p as dues

of monthly subscription fee. The petitioner sent a legal notice to the respondent on March 2, 2012 but even then the respondent failed to make any payments and the petitioner was thus left with no option but to come to the Tribunal seeking a decree for the aforesaid sum along with *pendente lite* and future interest at the rate of 18% per annum.

The respondent did not appear and filed no reply and thus the averments made in the petition remained uncontroverted.

The petitioner filed its evidence on affidavit affirmed by Mr. D.C. Dhilip Raj who is working with the petitioner company as the Territory Manager. He fully supported all the averments made in the petition. He proved the Affiliation Agreement executed on behalf of the petitioner and the respondent and it was marked as Exhibit – PW 1/1. He also proved the invoices which were collectively marked as Exhibit – PW 1/2. He also proved the notice dated October 10, 2011 issued under Clause 4.1 and the postal receipt under which it was sent to the respondent (Exhibit – PW 1/3). He also proved the notices published under Clause 4.3 in two newspapers which were collectively marked as Exhibit – PW 1/4. He also proved the statement of account showing that the amount due against the respondent was Rs.25,96,485.00p. The statement of account was marked as

Exhibit – PW 1/5. He lastly proved the office copy of the legal notice sent to the respondent which was marked as Exhibit – PW 1/6.

There was no cross-examination of the respondent's witness.

The pleadings of the petitioner, duly proved by reliable evidence remain unquestioned and there is no reason for this Tribunal not to accept the petitioner's case. We accordingly allow the petitioner's claim. The respondent is held liable to pay to the petitioner Rs.25,96,485.00p along with interest at the rate of 18% per annum from June 12, 2012 till the date of realization of the amount.

Let a decree be prepared accordingly.

As there is no appearance on the part of the respondent, there will be no order as to cost.

Petition No.369(C) of 2012

The case of the petitioner is that it entered into an Affiliation Agreement with the respondent for the period commencing from February 18, 2011 and coming to end on December 31, 2011. In terms of the Affiliation Agreement, the monthly subscription fee was Rs.1,35,993.00p. In terms of the agreement, the petitioner provided its channels to the respondent and duly raised invoices for the same. The respondent, however, defaulted in making payments forcing the petitioner to issue the disconnection notice under Clause 4.1 of the Interconnect

Regulations on August 18, 2011 and the public notice under Clause 4.3 of the Regulations on July 27, 2011. The public notice under Clause 4.3 was published in “New Indian Express” and “Malai Malar”. Despite service of notice, no payment was made by the respondent and consequently the respondent’s network was deactivated on September 15, 2011. On the date of the deactivation of the network, the respondent owed to the petitioner a sum of Rs.4,53,544.00p as dues of monthly subscription fee. The petitioner sent a legal notice to the respondent on March 2, 2012 but even then the respondent failed to make any payments and the petitioner was thus left with no option but to come to the Tribunal seeking a decree for the aforesaid sum along with *pendente lite* and future interest at the rate of 18% per annum.

The respondent did not appear and filed no reply and thus the averments made in the petition remained uncontroverted.

The petitioner filed its evidence on affidavit affirmed by Mr. D.C. Dhilip Raj who is working with the petitioner company as the Territory Manager. He fully supported all the averments made in the petition. He proved the Affiliation Agreement executed on behalf of the petitioner and the respondent and it was marked as Exhibit – PW 1/1. He also proved the invoices which were collectively marked as Exhibit – PW 1/2. He also proved the notices published under Clause 4.3 in two newspapers which were collectively marked as Exhibit – PW 1/3. He

also proved the notice dated August 18, 2011 issued under Clause 4.1 and the postal receipt under which it was sent to the respondent (Exhibit – PW 1/4). He also proved the statement of account showing that the amount due against the respondent was Rs.4,53,544.00p. The statement of account was marked as Exhibit – PW 1/5. He lastly proved the office copy of the legal notice sent to the respondent which was marked as Exhibit – PW 1/6.

There was no cross-examination of the respondent's witness.

The pleadings of the petitioner, duly proved by reliable evidence remain unquestioned and there is no reason for this Tribunal not to accept the petitioner's case. We accordingly allow the petitioner's claim. The respondent is held liable to pay to the petitioner Rs.4,53,544.00p along with interest at the rate of 18% per annum from June 12, 2012 till the date of realization of the amount.

Let a decree be prepared accordingly.

As there is no appearance on the part of the respondent, there will be no order as to cost.

Petition No.373(C) of 2012

The case of the petitioner is that it entered into an Affiliation Agreement with the respondent for the period commencing from January 1, 2011 and coming to end on December 31, 2011. On the date of the agreement, the amount due

against the respondent was Rs.10,35,928.00p and in terms of the Affiliation Agreement, the monthly subscription fee was Rs.2,77,000.00p. In terms of the agreement, the petitioner provided its channels to the respondent and duly raised invoices for the same. The respondent, however, defaulted in making payments forcing the petitioner to issue the disconnection notice under Clause 4.1 of the Interconnect Regulations on October 10, 2011 and the public notice under Clause 4.3 of the Regulations on October 4, 2011. The public notice under Clause 4.3 was published in "Deccan Chronicle" and "Malai Malar". Despite service of notice, no payment was made by the respondent and consequently the respondent's network was deactivated on October 31, 2011. On the date of the deactivation of the network, the respondent owed to the petitioner a sum of Rs.13,20,600.00p as dues of monthly subscription fee. The petitioner sent a legal notice to the respondent on March 2, 2012 but even then the respondent failed to make any payments and the petitioner was thus left with no option but to come to the Tribunal seeking a decree for the aforesaid sum along with *pendente lite* and future interest at the rate of 18% per annum.

The respondent did not appear and filed no reply and thus the averments made in the petition remained uncontroverted.

The petitioner filed its evidence on affidavit affirmed by Mr. D.C. Dhilip Raj who is working with the petitioner company as the Territory Manager. He fully

supported all the averments made in the petition. He proved the Affiliation Agreement executed on behalf of the petitioner and the respondent and it was marked as Exhibit – PW 1/1. He also proved the invoices which were collectively marked as Exhibit – PW 1/2. He also proved the notice dated October 10, 2011 issued under Clause 4.1 and the postal receipt under which it was sent to the respondent (Exhibit – PW 1/3). He also proved the notices published under Clause 4.3 in two newspapers which were collectively marked as Exhibit – PW 1/4. He also proved the statement of account showing that the amount due against the respondent was Rs.13,20,600.00p. The statement of account was marked as Exhibit – PW 1/5. He lastly proved the office copy of the legal notice sent to the respondent which was marked as Exhibit – PW 1/6.

There was no cross-examination of the respondent's witness.

The pleadings of the petitioner, duly proved by reliable evidence remain unquestioned and there is no reason for this Tribunal not to accept the petitioner's case. We accordingly allow the petitioner's claim. The respondent is held liable to pay to the petitioner Rs.13,20,600.00p along with interest at the rate of 18% per annum from June 12, 2012 till the date of realization of the amount.

Let a decree be prepared accordingly.

As there is no appearance on the part of the respondent, there will be no order as to cost.

Petition No.374(C) of 2012

The case of the petitioner is that it entered into an Affiliation Agreement with the respondent for the period commencing from January 1, 2011 and coming to end on December 31, 2011. On the date of the agreement, the amount due against the respondent was Rs.10,68,964.00p and in terms of the Affiliation Agreement, the monthly subscription fee was Rs.3,32,512.00p. In terms of the agreement, the petitioner provided its channels to the respondent and duly raised invoices for the same. The respondent, however, defaulted in making payments forcing the petitioner to issue the disconnection notice under Clause 4.1 of the Interconnect Regulations on October 10, 2011 and the public notice under Clause 4.3 of the Regulations on October 4, 2011. The public notice under Clause 4.3 was published in "Deccan Chronicle" and "Malai Malar". Despite service of notice, no payment was made by the respondent and consequently the respondent's network was deactivated on October 31, 2011. On the date of the deactivation of the network, the respondent owed to the petitioner a sum of Rs.13,66,755.00p as dues of monthly subscription fee. The petitioner sent a legal notice to the respondent on March 2, 2012 but even then the respondent failed to make any payments and the petitioner was thus left with no option but to come to the Tribunal seeking a decree

for the aforesaid sum along with *pendente lite* and future interest at the rate of 18% per annum.

The respondent did not appear and filed no reply and thus the averments made in the petition remained uncontroverted.

The petitioner filed its evidence on affidavit affirmed by Mr. D.C. Dhilip Raj who is working with the petitioner company as the Territory Manager. He fully supported all the averments made in the petition. He proved the Affiliation Agreement executed on behalf of the petitioner and the respondent and it was marked as Exhibit – PW 1/1. He also proved the invoices which were collectively marked as Exhibit – PW 1/2. He also proved the notice dated October 10, 2011 issued under Clause 4.1 and the postal receipt under which it was sent to the respondent (Exhibit – PW 1/3). He also proved the notices published under Clause 4.3 in two newspapers which were collectively marked as Exhibit – PW 1/4. He also proved the statement of account showing that the amount due against the respondent was Rs.13,66,755.00p. The statement of account was marked as Exhibit – PW 1/5. He lastly proved the office copy of the legal notice sent to the respondent which was marked as Exhibit – PW 1/6.

There was no cross-examination of the respondent's witness.

The pleadings of the petitioner, duly proved by reliable evidence remain unquestioned and there is no reason for this Tribunal not to accept the petitioner's

case. We accordingly allow the petitioner's claim. The respondent is held liable to pay to the petitioner Rs.13,66,755.00p along with interest at the rate of 18% per annum from June 12, 2012 till the date of realization of the amount.

Let a decree be prepared accordingly.

As there is no appearance on the part of the respondent, there will be no order as to cost.



(Aftab Alam)
Chairperson

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(Kuldip Singh)
Member

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