

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

Dated 11th August, 2014

Petition No.791(C) of 2012

Media Pro Enterprise India Pvt. Ltd. ...Petitioner

Vs.

Sharon Cable TV (Dindigul) ...Respondent

BEFORE:

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

For Petitioner : Mr. Upender Thakur, Advocate
Mr. Yatin Grover, Advocate for
Singh & Singh Law Firm LLP

For Respondent : None

ORDER

By Aftab Alam, Chairperson - M/s Media Pro Enterprise India Pvt. Ltd., the petitioner, is a Content Aggregator and a Distributor of TV channels. It has filed this petition against the respondent, Sharon Cable TV, which is a local cable operator, for recovery of the sum of Rs.5,13,819.18p as dues of monthly subscription fees as on the date of filing of the petition i.e. 1 November 2012.

The respondent did not appear despite service of notice and hence, the petition has proceeded against it *ex parte*.

According to the petitioner, the respondent had entered into an inter-connect agreement with M/s Zee Turner Ltd. on 22 May 2010. Under the agreement, the respondent was to receive the TV channels of M/s Zee Turner on a monthly subscription fee of Rs.35,378/- plus service tax. The agreement was made to come into effect from 1 April 2010 and it was due to expire on 31 March 2011.

The respondent had executed another agreement with M/s Star Den Media Services Pvt. Ltd. on 16 July 2010. Under this agreement, the respondent was to receive the TV channels of M/s Star Den Media Services Pvt. Ltd. on payment of monthly subscription fee of Rs.52,244.94p with effect from 1 January 2010 and Rs.43,733.04p with effect from 1 April 2010. This agreement was due to expire on 31 December 2010.

In the petition, it is further stated that on the basis of certain agreements executed between them, the petitioner stepped into the shoes of M/s Zee Turner Ltd. and M/s Star Den Media Services Pvt. Ltd. with effect from 1 July 2011.

It is further stated that having taken over the control of the TV channels of the two broadcasters from 1 July 2011, the petitioner from time to time raised invoices on the respondent not only for payment of monthly subscription fees but also for payment of the old outstanding dues payable to M/s Zee Turner Ltd. and M/s Star Den Media Services Pvt. Ltd.

It is finally stated that the respondent failed to clear the outstanding dues to the petitioner and was liable to pay to it Rs.5,18,819.18p.

Copies of the invoices and the statement of account are enclosed as annexures to the petition.

Before proceeding further, it needs to be noted that the two agreements which the respondent is said to have executed came to end on 31 December 2010(with Star Den) and 31 March 2011 (with Zee Turner) respectively; that is to say, long before the present petitioner assumed control of the TV channels of the two broadcasters with effect from 1 July 2011. There is no averment in the petition that even after the expiry of the agreements, the two broadcasters had continued to supply their TV channels to the respondent till 30 June 2011 and after that date, even without any agreement, the petitioner similarly continued to supply the TV channels to them. There is no explanation as to the basis on which the petitioner raised invoices on the respondent. We regret to note that the petition filed by the petitioner is the most sketchy possible.

The fatal omissions in the petition are later sought to be covered-up in the evidence led on behalf of the petitioner. One Mr. Amiya Ranjan Pati working as Deputy General Manager with the petitioner was examined as its witness. In paragraph 4 of the affidavit filed by him it is stated:

“4. I state that the petitioner has continued to provide supply of its TV channel signals to the network of the respondent even after the expiry of

the aforesaid subscription agreement(s) until the deactivation of the petitioner's network on 18.11.2011, only on the assurances of the respondent that it will continue to make payment towards monthly subscription fee and further, will come forward for the negotiation to renew the agreements(s). I state that the petitioner has time to time raised invoices on the respondent not only for payment of monthly subscription fee but also for the payment towards old outstanding dues payable to M/s Star DEN media and M/s Zee Turner Ltd. Copy of invoices raised by M/s Star Den Media, Zee Turner and Media Pro Enterprise India Pvt. Ltd. are exhibited as **EXHIBIT PW1/3(Colly)** (at pages 54-57 of the paper book).”

Here it needs to be noted that the petitioner's evidence (examination-in-chief) was filed on affidavit as per the practice followed by the Tribunal. If the examination-in-chief of the witness were to take place in court, the counsel would not have been allowed to put any question to elicit answers from the witness about facts that are nowhere stated in the pleadings. The statement made by the witness in the affidavit has absolutely no factual basis in the petition filed by the petitioner. We may further note that the affidavit of the witness is dated 26 March 2014. Before that date, some other similar petitions filed by the same petitioner had come-up for hearing and the glaring omissions were pointed out. The affidavit that was filed thereafter clearly tries to cover-up the flaws in the petition.

For the aforesaid reasons, we decline to take into account the statement made in the affidavit filed on behalf of the petitioner.

In the aforesaid circumstances, we are unable to see how the petitioner can get the decree for the amount claimed by it or for that matter even for any lower amount.

We see no merit in the petition. It is accordingly dismissed with costs quantified at Rs.50,000/- for wasting the time of the Tribunal. A receipt showing payment of cost (to be paid in the name of Drawing & Disbursing Officer, TDSAT) to the Mediation Centre of the Tribunal must be filed within two months from today.

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(Aftab Alam)
Chairperson

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(Kuldip Singh)
Member

/sks/