

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

Dated: 27th August, 2014

Petition No. 544(C) of 2012

Raftaar Media Pvt. Ltd. ...Petitioner

Vs.

Noida Software Technology Park Ltd. ...Respondent

BEFORE:

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

For Petitioner : Mr. Mahipal Singh, Advocate

For Respondent : Ms. Ruchira Goel, Advocate

ORDER

Kuldip Singh: The petitioner is a company incorporated under the Companies Act, 1956 and engaged in the business of broadcasting its news channel 'Raftaar News' through various distributor platforms. The respondent is a company registered under the Companies Act, 1956. It was providing up-linking facility and transponder services to the petitioner from its gateway at Greater Noida.

2. The petitioner is aggrieved by the disconnection of its uplink facility by the respondent, which as per it is without any legal/justifiable case, and claims damages on account of the same. The respondent, in turn, has made

a counter-claim from the petitioner for outstanding dues of Rs.27,97,318/- along with interest @ 18% per month. As per the respondent, this outstanding is on account of default on the part of the petitioner in making payment of monthly subscription fees.

3. The broadcasters of television signals generally uplink their TV channels to some satellite, such as INSAT, using an earth station, also called a gateway. The satellite in turn broadcasts the signals back towards the earth. These signals can be received by various distributors such as MSOs, DTH operators, HITS operators, etc., with the help of suitable equipment and IRDs (Integrated Receiver and Decoder) provided by the broadcasters. Some broadcasters who do not use/have their own uplink facilities may hire such facilities called 'Teleport' from other service providers, such as, the respondent in the present case.

4. The parties, herein, entered into an agreement on 07.08.2008, as per which the respondent was to provide the uplink facility as well as transponder service on 'INSAT-4A' satellite to the petitioner for a period of three years. As per amendment dated 18.08.2009 (Appendix 'A-payment schedule'), the charges for the service provided by the respondent were Rs.4,80,000/- per month, including service tax and WPC fees. These were payable monthly in advance.

5. It is the case of the petitioner that respondent, unilaterally and without any justifiable cause, and without taking the consent of the

petitioner, increased the monthly subscription charges from Rs.4,80,000/- to Rs.5,39,328/- from the month of April, 2012. On protest by the petitioner to rectify the invoices, the respondent started harassing the petitioner and switched off the sound of the news channel of the petitioner on several occasions and also disconnected its channel on one such occasion. The respondent sent a legal notice dated 05.07.2012 to the petitioner calling upon the petitioner to clear the outstanding amount of Rs.27,97,318/- and threatening it with disconnection of its services and termination of its agreement. The signals of the petitioner were disconnected on 03.08.2012 and on the failure of the respondent to reconnect the same, despite request made by the petitioner, the present petition was filed praying inter-alia to direct the respondent to pay a sum of Rs.25 lakhs towards damages suffered by it on account of illegal disconnection of its signals.

6. Issues were framed by the Tribunal vide its order dated 17.10.2012.

7. Ms. Ruchira Goel, learned counsel for the respondent, submitted that the petitioner had been defaulting in making regular monthly payments since March, 2010 for which the respondent had been reminding it from time to time. She drew our attention to letter dated 14.9.2011 written by the respondent to the petitioner reminding him about the outstanding amount of Rs.16,55,000/- as on that date (page 68 of the paperbook) Further reminders were written on October 14, 2011 and January 10, 2012 (page 69 and 70 of the paperbook).

8. The respondent adduced evidence by way of affidavit of Mr. Rajeev Singh Rawat, Senior Executive- Scheduling and Billing with the respondent company. The witness exhibited a letter dated 10th March, 2010 (exhibit RW-2) as per which the petitioner was told that the respondent is not receiving the payments on due dates and was requested for timely payment of the same. The witness stated that the respondent has sent ten email communications from 6th January, 2011 to 9th May, 2011 requesting the petitioner to clear the outstanding dues towards the respondent.

Mr. Mahipal Singh, learned counsel for the petitioner raised an objection that Mr. Rajeev Singh Rawat had no authorization from the Board of Directors to appear as a witness and evidence given by him is, therefore, liable to be rejected.

9. We may note that clause 17 of the agreement provides for the discontinuation of service by the respondent in case of nonpayment of dues. The clause is as under:-

“17. Termination of the Agreement

(i) By the Broadcaster;

(a) In event of the occurrence of the creditable outage as set out hereinabove, which exceeds a consecutive period of four Day during one-month period, broadcaster can terminate the services.

(b) Broadcaster may terminate this agreement if NSTPL commits any breach of this agreement and fails to remedy such breach within 15 days from the date it receives notice of such breach given by the Broadcaster.

(ii) By the NSTPL;

(a) If the Broadcaster commits any breach of any obligations and/or terms of this agreement and fails to remedy such breach within 30 days from the date of receipt of such notice, from NSTPL.

(b) Non-Payment of dues beyond 30 days the services are liable to be discontinued and to be resumed only on clearance of old dues and advance payment for the forthcoming month.”

We note from the pleadings of the petitioner that the respondent had sent a legal notice dated 05.07.2012 to clear the outstanding dues of Rs.27,97,318/- as on that date. The letter is as under:-

“Date: 5th July, 2012

Dear Sir,

This letter is in reference to the Uplinking agreement dated 7th August, 2008. We would like to bring to your kind notice that we are not receiving the payment of the Uplinking services since April 2012 and also the payment we have received in the past were irregular.

As per our finance department your total outstanding as on date is Rs.27,97,318/- (Twenty Seven Lacs Ninety Seven Thousand Three Hundred and Eighteen Only).

We have been informing your esteemed organization about irregular payment through phone calls and mailers.

The cheques given for the release of the payment has bounced several times, the latest two cheques were bounced on 2nd June, 2012 of PNB Bank of amount Rs. 3 lacs and Rs. 2 lacs.

We would request you to kindly clear the total outstanding immediately. In lieu of failure on your part, we would be constrained to take appropriate action including disconnection of services and termination of the agreement dated 7th August, 2008 along with initiation of legal proceedings against your company.”

In view of the fact that the petitioner was put to notice with regard to the outstanding dues, we find that the respondent was entitled to discontinue the services in terms of the agreement between the parties. As regards the contention of the petitioner that the up-linking of its channels was discontinued without complying with the requirements under the Regulations, this Tribunal has held in M/s Noida Software Technology Park Ltd. New Delhi Vs. Northern India

Holding Pvt. Ltd., Uttranchal¹ that though the provider of teleports services (petitioner in that case) is a service provider within the meaning of the provisions of Clause 2 (J) of the TRAI Act, keeping in view the nature of service provider, it is difficult to hold that it would come within the purview of a distributor of TV channels as defined in Clause 2 (J) thereof. The relevant part of the order is as under:-

“22. It is not in dispute that the petitioner is a service provider within the meaning of the provisions of Clause 2 (j) of the TRAI Act.

It reads as under:-

(j) “service provider” means the [Government as a service provider] and includes a licensee”

23. The Regulations, however, defines “service provider” to mean:

(n) “service provider” means the Government as a service provider and includes a licensee as well as any broadcaster, multi system operator, cable operator or distributor of TV channels.

Clause 1 (ii) of the Regulations reads as under:

“1 (ii) This regulation shall cover arrangements among service providers for interconnect and revenue share for all Telecommunication (Broadcasting and Cable) Services throughout the territory of India.”

¹ Petition No. 436 (C) of 2011

24. *The definition of the “service provider” as contained in Clause 2 (n) of the Regulations although appears to be exhaustive in nature, keeping in view the nature of services provided by the petitioner herein, it is difficult to hold that it would come within the purview of a “distributor of TV channels” as defined in Clause 2 (j) thereof.*

25. *We may notice the said provision also”*

“(j) ‘distributor of TV channels’ means any person including an individual, group of persons, public or body corporate, firm or any organization or body re-transmitting TV channels through electromagnetic waves through cable or through space intended to be received by general public directly or indirectly. The person may include, but is not limited to a cable operator, direct to home operator, multi system operator, head ends in the sky operator;”

26. *For the purpose of attracting the said clause a person must have the right of retransmitting the TV channels.*

27. *It is, however, not in dispute that whereas uplinking of the channel was to be done by the petitioner, the down linking thereof was to be performed by the respondent itself.*

28. *The petitioner, in the aforementioned situation, cannot be held to be retransmitting signals in the strict sense of term.*

By reason the said agreement the parties, moreover, cannot be said to have entered into an interconnection agreement whereby any revenue is to be shared.

29. *Clause 4.2 of the Regulation primarily would apply to a multi service operator or a local cable operator but not a passive infrastructure provider like the petitioner.”*

In view of the aforesaid circumstances, we do not find that services being provided by the respondent to the petitioner in up-linking of its channels were disconnected illegally.

10. The respondent has raised a counter-claim of Rs.27.97,318/- along with an interest of 18 per cent per annum as the outstanding dues for the services provided. The respondent's witness exhibited its statement of accounts showing the petitioner's outstanding dues (exhibit RW-12). As per this statement of accounts, the net outstanding as on 31.07.2012 is Rs. 27,97,318/-. In this regard, we may also note that an MoU dated 06.07.2011 was signed between the parties as per which there was a total outstanding payable by the petitioner on 30.06.2011 of Rs.14.75 lakhs towards the up-linking charges and Rs. 1.00 lakh towards professional consultancy. In the MoU, the petitioner also promised to pay the monthly

up-link charges on time every month. This MoU is reproduced below:-

“This MoU is signed in Delhi on July 6, 2011 and in settlement of outstanding of Raftaar Media Pvt. Ltd., Ranchi.

Present:-

1. *Mr. Harendra Singh (chairman, Raftaar Media Pvt. Ltd.)*

2. *Mr. Sunil Malhotra (Director Finance – NSTPL)*

3. *Mr. Rakesh Gupta (NSTPL)*

4. *Mr. Ravi Rai (NSTPL)*

• *The total outstanding agreed as on June 30, 2011 is Rs.14.75 lakhs towards Uplink charges including Rs.1.00 Lakhs towards professional consultancy after giving discount.*

• *Raftaar Media will clear all outstanding Rs.14.75 lakhs before July, 31, 2011 and Uplink charges of Rs.4.80 lakhs for month of July, 2011.*

• *The cheque of Syndicate Bank, Ranchi branch details are given as below:-*

1. Cheque No. 695823	Rs.495000
2. Cheque No. 695822	Rs. 200000
3. Cheque No. 695830	Rs.250000
4. Cheque No. 695831	Rs.250000
5. Cheque No. 695832	Rs.250000

6. Cheque No. 695829 Rs.271000
Total Rs.1716000

- Raftaar Media will provide detail of payment made to NSTPL for Rs.2.39 lakhs. On providing the satisfactory document, NSTPL will deduct this amount from total outstanding.
- If the cheque bounced, NSTPL will be free to suspend the uplink services immediately and discount will not be provided.
- The Raftaar Media also promises to pay the monthly uplink charges on time every month.

Sd/-

(Signed – on behalf of Raftaar Media Pvt. Ltd.)”

Though this MoU is not disputed by the petitioner, Mr. Mahipal Singh submitted that the same was signed by the petitioner under force as it was afraid that its signals will be switched off and its business will suffer. We are not convinced with this submission. Ms. Ruchira Goel, drew our attention to three cheques given by the petitioner which were dishonored due to funds being insufficient (page 93-95 of the paper book). Mr. Mahipal Singh submitted that as per his statement of accounts (page 29-31 of the paperbook) an amount of Rs.70,000/- only is outstanding. A perusal of this statement shows a number of entries relating to amounts paid but whose payment details are not given. Mr. Mahipal Singh submitted that these amounts were paid in cash. However, he was unable to produce any receipts

in support of the same. He was also unable to explain some other amounts shown as adjusted towards DSNG van. Under the circumstances, we do not see any reason to disbelieve the statement of accounts submitted by the respondent. However, we note that in this statement of accounts, the monthly payment for the month of April, 2012 to July, 2012 is shown as Rs. 5,39,328/- per month as against the amount as per agreement of Rs.4,80,000/- per month. As per the respondent this increase is due to service tax. Ms. Goel submitted that in terms of the Clause 21 of the agreement, , taxes were to be paid separately. However, we note from the appendix A- payment schedule (amendment dated 18.08.2009) that the amount of Rs.14,80,000/- per month is including the service tax. In view of this, we find that the respondent has wrongly charged Rs.59,328/- per month for the four months of April, 2012 to July, 2012 which amounts to Rs.2,37,312/-. After deducting this amount from the total outstanding, we find the balance outstanding payable by the petitioner is Rs.25,60,006/- We also see that in terms of the Clause 16 (C) of the agreement, the petitioner is to pay interest @ 18 per cent per annum for delayed payments beyond 15 days of the due date. Clause 16 (C) of the agreement reads as under:-

“The Broadcaster agrees to make the payment promptly and not later than 15 days of the due date. In case of delay in payments, the Broadcaster shall be liable to pay interest @ 18 % per annum.”

11. In the aforesaid facts and circumstances of the case, the petition is not allowed. The counter claim of the respondent is allowed for Rs.25,60,006/- along with interest @ 18 per cent per annum for delayed payments beyond 15 days in terms of the agreement between the parties till the date of filing of the petition, along with further interest @ of 9 per cent from the date of filing of the petition till the time the amount is paid. A decree is directed to be drawn accordingly.

Parties to bear their own costs.

.....
(Aftab Alam)
Chairperson

.....
(Kuldip Singh)
Member

HKC/19.08.2014