

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

Dated 4th December, 2014

Petition No. 685(C) of 2012

Den Mcn Cable Network Pvt. Ltd. ...Petitioner
Vs.
Satish Sawad & Anr. ...Respondents

Petition No. 687(C) of 2012

Den Mcn Cable Network Pvt. Ltd. ...Petitioner
Vs.
Suryo & Anr. ...Respondents

Petition No. 690(C) of 2012

Den Mcn Cable Network Pvt. Ltd. ...Petitioner
Vs.
Veer Cable & Anr. ...Respondents

Petition No. 694(C) of 2012

Den Mcn Cable Network Pvt. Ltd. ...Petitioner
Vs.
Maruti Cable Network & Anr. ...Respondents

BEFORE:

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

For Petitioner : Mr. Vibhav Srivastava, Advocate
For Respondents (No. 1) : None
(No. 2) : Mr. Nasir Husain, Advocate

JUDGMENT

These are recovery petitions for outstanding dues allegedly owed by respondents at serial no. 1 to the petitioner for availing the transmission of the signals of various pay and free to air channels of the petitioner.

The petitioner has also claimed damages and compensation from respondents at serial no. 1 and respondent no. 2 for the cost of STBs issued to respondents at serial no.1, as well as damages for the loss of property, equipment and optical fiber, as also loss of good-will of the subscribers of the petitioner.

Since facts and circumstances in all these cases are similar, these petitions are being disposed of by this common order.

The petitioner is a Multi System Operator (MSO). Respondents at serial No. 1 are cable operators, who as per the petitioner, were affiliated to it till 17.8.2012 and were re-transmitting the signals of the petitioner in analogue and digital mode. Respondent no. 2 is also a MSO operating in the area of the petitioner.

It is the contention of the petitioner that the respondents at serial no. 1 approached the petitioner for its signals and the petitioner has been supplying these both in analogue and digital mode on the basis of oral agreement between the parties and for subscription fees, the details of which are given below in the Table 'A':

Table 'A'

Petition No.	Party/ Respondent No. 1	Monthly subscription (Rs.)	Outstanding claimed. (Rs.)
P.No. 685(c)/12	Mr. Satish Sawad	10,000/-	3,25,608/-
P.No. 687(c)/12	Mr. Suryo	3,500/-	1,72,632/-
P.No. 690 (c)/12	M/s Veer Cable	27,644/-	8,42,877/-
P.No. 694 (c)/12	M/s Maruti Cable Network	27,644/-	13,06,327/- *

* The figure claimed in prayer is Rs. 13,06,377/-.

In addition to the above, the petitioner also claimed to have supplied STBs @ Rs. 1999/- per STB. The details of the number of STBs and the outstanding claimed for the same is also tabulated in Table 'B' given below :

Table 'B'

Petition No.	Respondent No. 1	STBs supplied @ Rs. 1999/- per STB	Outstanding claimed. (Rs.)
P.No. 685(c)/12	Mr. Satish Sawad	150	2,99,850/-
P.No. 687(c)/12	Mr. Suryo	30	59,970/-
P.No. 690 (c)/12	M/s Veer Cable	Large number (No quantity specified)	2,59,870/-
P.No. 694 (c)/12	M/s Maruti Cable	Large number	3,39,830/-

	Network	(No quantity specified)	
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As per the petitioner, it raised invoices on respondents at serial no. 1 seeking payment of the monthly subscription amount. These invoices were hand delivered each month to the respondent. But as is the common practice in the area, no acknowledgment for the same was given to the petitioner by respondents at serial no.1.

That respondents at serial no. 1 were irregular in making the monthly subscription payments which led to the building up of arrears. In spite of repeated requests to respondents at serial no. 1, they did not clear their dues to the petitioner.

As per the petitioner, during the subsistence of the business relations with it, respondents at serial no. 1 conspired with respondent no. 2 to cut off the petitioner from the LCO's network and started taking signals from respondent no. 2. As a consequence of which, the petitioner was exposed to huge business losses. The petitioner further alleged that the respondents forcibly cut the optical fiber cables of the petitioner and took away its equipment.

Though earlier the issues framed were against respondent no. 2, the Tribunal vide order dated 14.11.2014 framed additional issues against

respondents at serial no. 1.

Respondents at serial no. 1 choose not to appear before the Tribunal in spite of notices duly served on them nor any reply was filed to controvert the averments made by the petitioner. The matter, as far as respondents at serial no. 1 are concerned, proceeded ex-parte.

During the course of the hearing, Mr. Vibhav Srivastava, learned counsel appearing for the petitioner stated that he does not want to press the claim for compensation and damages.

The petitioner has filed the evidence by way of affidavit of Shri Samit Khona, authorized representative of the petitioner company in all the cases. The witness stated that he is the authorized representative of the petitioner company and conversant with the facts and circumstances of the cases and competent to swear the affidavit. Though the following evidence of the witness is given in Petition No. 685(C) of 2012, similar statements are made and documents exhibited in all the other petitions.

The witness exhibited Board Resolution dated 21.9.2012 in support of the statement. (Exhibit PW 1/1) (Annexure P-1 of the petition). The witness confirmed the averments made in the petition by the petitioner and exhibited copy of an invoice issued by it as Exhibit PW 1/2(Annexure P-2 of the

petition).

A complete statement of account was exhibited as Exhibit PW 1/3(Annexure P-3 of the petition).

A copy of the letter was exhibited as Exhibit PW 1/4((Annexure P-4 of the petition). Another letter dated 17.8.2012 demanding outstanding was exhibited as Exhibit PW 1/5 (colly) (Annexure P-5(colly) of the petition).

The witness further stated that the petitioner had installed 150 STBs in the area of Swad quarters and other surrounding location and was providing analogue and digital cable connections. The said statement of the witness in this regard, is as under :

“11. I state that however, the petitioner was shocked to note that during the subsistence of the business relation with the petitioner, the respondent no. 1 had conspired with the respondent no. 2 to cut off from the petitioner from the petitioner’s local service area network and start taking signals from the respondent no. 2. I further state that the petitioner in the recent past had installed approximately 150 digital set top boxes in the area of Swad quarters and other surrounding locations as also was providing analogue signals and digital cable connections to its area and by the action of the respondents the petitioner was exposed to huge business losses.” (emphasis supplied)

Similar statements were made in other petitions also with the number of STBs being different.

With regard to the STBs, we may note that there is no delivery challan or invoice issued for the same on record. From the statement of the witness with regard to the STBs, it can not be made out that the petitioner had supplied the STBs to the respondents. Even the quantities of the STBs are not specified in Petition Nos. 690(C) of 2012 and 694(C) of 2012.

In the aforesaid facts and circumstances of the case, we do not find any justification for the amount claimed by the petitioner for the supply of STBs as tabulated in Table 'B'.

As the petitions were proceeded ex-parte against respondents at serial no. 1, there is nothing to controvert the statement of the witness in regard to outstanding dues on account of subscription fees.

The petitions are accordingly, allowed to the extent of outstanding of subscription fees as tabulated in column "Outstanding claimed" of Table 'A'.

The petitioner has also claimed interest on due payment @ 18% p.a. However, there being no written agreement between the parties, we find it fair and just if the interest @ 9% is allowed on the due payment w.e.f. 18.08.2012 and till the time the due amount is paid.

The Registry is directed to draw a decree accordingly.

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(Aftab Alam)
Chairperson

.....
(Kuldip Singh)
Member

/NC/