



2. The petitioner is a Multi System Operator operating in West Bengal. The respondent is a proprietorship firm having its principal office at Midnapore, Belda and is a cable operator engaged in the business of providing/servicing and connecting signals to subscribers on its cable network.

3. Summary of the petitioner's case is as under :-

(i) M/s. Cablecomm Services Pvt. Ltd., who was a predecessor in interest of the petitioner, entered into a Memorandum of Understanding dated 30.7.2007 with the respondent for supply of its signals. The parties continued the relationship as per the terms and conditions of this MoU till December 2009. Thereafter, the relationship between the parties was governed by an oral agreement based on the terms & conditions as prescribed in the MoU. The petitioner continued the supply of its signals to the respondent till May 2012. Further, the petitioner regularly raised invoices on the respondent who failed to clear the outstanding dues. The petitioner has annexed a statement of accounts (Annexure P-13 at pages 66-73 of the Paper Book) in support of its claim;

(ii) In pursuance to the request of the petitioner for payment of outstanding dues, the parties met on 19.03.2009 in the office of predecessor of the petitioner. In the said meeting, Mr. Samar Modi and Mr. Ashish Maity of the respondent acknowledged that net

outstanding payable by the respondent as on 18.3.2009 was Rs.2,73,175/-. An extract of the minutes of the meeting is attached with the petition (Annexure P-3 at page 45 of the Paper Book).

4. Mr. Gautam Das, learned counsel appearing for the respondent submitted that the MoU dated 30.7.2007 was between the respondent and Cablecomm Services Pvt. Ltd. and not with the present petitioner. He further submitted that the period of this MoU was twelve months after which the same stands expired. As per him, there was an oral agreement between the petitioner and the respondent as per which the signals of the petitioner were being supplied to the respondent. He further submitted that there was no understanding that the respondent would give three months notice to the petitioner before migrating to any other MSO and a notice dated 8.8.2011 was given to the petitioner raising the issue of quality of service and stating that if the accounts of the respondent was not settled by 31.8.2011, then this letter may be treated as notice for termination of service. He further submitted that on 9.8.2011 a public notice was issued that with effect from 01.9.2011 they will be supplying signals of MSO (Manthan Services) against the MSO (Digi Cablecomm Services Pvt. Ltd.) being shown at that time by them. A copy of the notice in vernacular along with its translation in English is available at pages 98-99 of the Paper Book. By another letter dated 18.11.2011 it was stated that in spite of the letter dated 08.02.2011 and the public notice dated 9.8.2011,

the petitioner had still sent invoices for the months of September, October and November, 2011 and it was requested that no further letters or invoices be sent to them. In support of delivery of this service, the respondent has attached receipt from the courier at page 112 of the Paper Book. However, the petitioner denied receiving any of these letters.

5. Admittedly, there was an oral agreement between both the parties. It is also an admitted fact that the respondent was receiving signals of the petitioner till August, 2011. It is the contention of the petitioner that this oral agreement was based on the terms & conditions of the MoU as per which the respondent was required to give three months notice before migrating to any other MSO. Only one public notice was published in the newspaper and that too did not give any reason and therefore the requirement of the Regulations in this regard were not met. The learned counsel for the respondent, however, argued that the oral agreement was only for supply of signals at the agreed rate and there was no obligation as regards to any other terms & conditions of the MoU or the interconnect regulations.

As per clause 4A of the interconnect regulations, 2004[inserted by Notification No. F.3-21/2009-B&CS dated 17<sup>th</sup> March, 2009], it shall be mandatory for the broadcaster of pay channels and distributors of TV channels to reduce the terms & conditions of all their interconnect agreements to writing.

As there was no written agreement between the parties in the year 2011, I am unable to agree with the claim of the petitioner that the respondent was required to issue notices as per these regulations and the respondent shifted from the petitioner illegally or arbitrarily.

Further as no interconnect agreement was signed as per the regulations, and the MoU dated 31.7.2007, which in any case was not with the present petitioner, was valid only for twelve months, I am not convinced that the same continued to govern the relationship between the parties. I am, therefore, not convinced with the case of the petitioner for subscription fee beyond August, 2011.

6. Now, I come to the question of amount the respondent is liable to pay to the petitioner. Though, there is no written agreement between the parties, this Tribunal has consistently held a view that in a case of this nature, the *doctrine of restitution* shall also come into play. In SR Cable TV Pvt. Ltd. Vs. Gulab Chand Panjre (Petition No. 46 of 2012 disposed of on 18.10.2012), the Tribunal held as follows :-

*“12. It has been held in a number of decisions that although an agreement in writing is required to be entered into from March, 2009 in terms of clause 4A which was inserted by Telecommunication (Broadcasting and Cable Services)*

*Interconnection (5th Amendment Regulations 2009), having not laid down any consequences, therefor, the local cable operators are bound to pay a reasonable amount to the distributors of the TV channel having regard to the provisions contained in Section 65 and Section 70 of the Indian Contract Act as supply of signals was not made gratuitously. In a case like this nature, the doctrine of restitution shall also come into play.”*

In view of the fact that the respondent had admittedly been enjoying the signals of the petitioner till August 2011, the petitioner cannot be denied the due subscription charges. It is the contention of the respondent that the petitioner has not raised the invoices from the month of April 2011 till disconnection of signals on 31.8.2011. The learned counsel for the respondent further submitted that the petitioner has failed to prove the service of various letters/notices upon the respondent as well as the ledger/statement of accounts as maintained by the petitioner and therefore, it is not entitled to any claim and no decree can be passed relying on these documents. In support of its contention, the respondent has relied on the Tribunal's judgment dated 19.10.2012 in Petition Nos. 431 (C) to 433 (C) of 2011.

In the written submissions, the counsel for the respondent has also relied on certain judgments not referred to during arguments. However, I am not going into these as the other side did not get a chance to respond to the

decisions. Moreover, in any event these are not applicable to the present case in view of the findings in the following paragraphs.

Though the respondent denied receiving invoices from May 2011 to August 2011, as per its letter dated 18.11.2011, it has been receiving invoices as late as November, 2011. The letter of the respondent is as under :-

*“To*

*The Management, Digi Cablecomm Services Pvt. Ltd. (Kolkata-16)*

*Sir,*

*Both of our representations, with request to payment & account settlement, dated 11.06.2011 and 08.08.2011 were served on you, one through Mr. Sandeep Chandra and another by post but **still you are sending the invoices to us incorrectly.** Vide letter dated 8.8.2011 we requested you to terminate the connection and we also published the public notice on dated 9.8.2011 for the information of all concerned that Belda Sky Vision will start transmitting the signal of Manthan Services from 01.9.2011, still you have sent invoices for the month of September, October and November, 2011 to us.*

*We request you to ensure that no further letters or invoices are sent to us in future.” (emphasis supplies)*

7. In reply to the contention of the petitioner in para 5 of its petition that it has been supplying signals of both paid and free to air channels to the

respondent till date and has been issuing invoices to the respondent every month, the respondent has stated as under :-

5. *“.....the issuing of invoices, if any, by the petitioner is illegal, unlawful and without supply of signal/services. It is submitted that the supply of signals of the petitioner to the respondent has stopped since 1<sup>st</sup> September, 2011.”*

8. The petitioner produced Mr. Sandipan Chandra in the capacity of an employee of the petitioner company as its witness (PW-1). As per the affidavit of this witness, the petitioner has been regularly raising correct invoices upon the respondent and the same were duly served upon the respondent from time to time. Para 4 of the affidavit is as under :-

*“I state that as per the terms of the MoU, the petitioner has been supplying the signals of both paid and free-to-air channel to the respondent till date and has been issuing invoices to the respondent every month. I state that the petitioner has been regularly raising correct invoices upon the respondent and the same have been duly served upon the respondent from time to time. Invoices raised by the petitioner and duly served upon the respondent (from March, 2010 to March, 2012, at pages 26-44, 48-49, 52-53, 55-56, 57-62) are exhibited as Exhibit PW-1/2. Exhibit PW-1/3, Exhibit PW-1/4, Exhibit PW-1/5 and Exhibit PW-1/6 respectively. I state that*

*invoices for the months of April-July, 2012 have also been raised and duly served on the respondent. I shall be carrying the copies of the said invoices for my cross examination. I state that only after receiving the reply of the respondent in the present petition, the petitioner has now disconnected the signals to the respondent.”*

During cross-examination of the respondent’s witness (RW-1), Mr. Samar Modi, partner in the respondent company, is unable to deny receipt of invoices from March 2010 to September 2011. In response to the question “Have you received his invoice from March 2010 to September 2011?”, the witness replied “I am not able to tell which of these invoices I have received”. Again, when the attention of the witness was drawn to pages 48, 52, 55, 57, 59 and 61 of the Paper Book, in response to the question “Have you received these invoices?”, the witness replied “I am not able to tell which of these invoices I have received”.

9. From the letters and pleadings of the respondent as also the statement of PW-1 and cross examination of RW-1, it is clear that the petitioner has been raising invoices on the respondent from time to time and, therefore, I am unable to agree with the contention of the respondent that invoices for the period May 2011 to August 2011 were not raised on it. In Petition Nos. 431 (C) to 433 (C) {Supra}, the facts were different. There was discrepancy in the amounts mentioned in the invoices and claimed by the petitioner. Also there

was no proof of the same having been dispatched to the correct address of the respondent and/or otherwise served. No statement in that behalf was made in the petition. Therefore, the Tribunal in that case had observed as under :-

*12. “.....If the invoices have not been proved to have been raised and served in accordance with law, the question of considering the same does not arise and consequently no reliance can be placed on the statement of account.”*

10. As per the statement of accounts filed by the petitioner (at pages 66 to 73 of the Paper Book), there is an outstanding of Rs.14,54,530/-. The learned counsel for the respondent submitted that sanctity is attached in the law of evidence to books of accounts if they are indeed books of accounts in original; such sanctity cannot attach to private extracts of account books where the original are not filed in Court. He further submitted that the PW-1 apart from not bringing the original books of accounts also stated that he cannot understand the ledger.

Learned counsel for the petitioner, however, argued that since the respondent admits receiving its signals till August 2011 and further since the respondent's witness (RW-1) also admits having received the invoices, the respondent cannot deny its liability to pay and if he does not agree with the SOA filed by the petitioner, he should have filed its own SOA. The petitioner

relies on K.M. Patel Vs. Firm, Mohamadhussain Rahimbux {AIR 1981 SC 977} and Davender Lal Mehta Vs. Dharmender Mehta & Anr. {160 (2009) Delhi Law Times 22} and argued that the petitioner is not required to prove the facts already admitted by the respondent.

11. From the reply filed by the respondent, it is evident that the respondent admits that it has some liability to pay the petitioner for signals till August 2011. At page 78 of the paper book in para 6 the respondent submits as under:-

*“.....It is submitted that the respondent has never offered any excuse regarding payments to the petitioner rather the settlement of accounts between the petitioner and respondent, till August 2011, could not be done due to the non-cooperation of the petitioner and non-compliance of its own assurance given to the respondent and also failing to comply the business practice.”*

Further, in para 8 at page 79 of the paper book, the respondent submits as under :-

*“.....It is submitted that till the month of August 2011 there was a demand of some outstanding from the petitioner which,*

*if jointly discussed and decided by the parties, the respondent is ready to settle the same but the claim of the petitioner by way of raising invoices after August 2011 without service/signal and even after request for disconnection and for his submission of wrongly calculated and incorrect ledger account, being illegal and without any basis deserves rejection with cost.”*

12. During arguments, the learned counsel for the respondent raised the issue that there was an illegal and arbitrary enhancement of Rs.7,000/- per month from September 2010 and illegal stopping of adjustment amount of Rs.5,000/- per month from April 2011, wrong incorporation of Rs.5000/- in the invoice even after directly collecting the said amount from Darsan,

He further submitted that the respondent had raised the issue of deduction of Rs.25,000/- from monthly invoices because of switching over of five of cable operators to Citi Cable, which was very much in the knowledge of the petitioner.

As per the petitioner, Rs.7,000/- per month were charged for OFC drop at Benapur which was provided by the petitioner on the request of the respondent. In this regard, an internal e. mail from Mr. Sandipan (PW-1) is as under :-

*“This is to inform you that we need a drop at Benapur which is in between Hijli & Naryangarh. For this drop Belda Sky Vision will give*

*us a monthly hike of Rs.7,000/- along with their monthly subscription.*

*Kindly approve the same.*

*Thanking you,*

*With regards,*

*Sandipan”*

Mr. Sandipan submitted on affidavit in this regard as under :-

*“8. I state thereafter in July, 2010, Mr. Samar Modi of the respondent approached me and requested to provide a drop point at Benapur. I state that for provision of the said OFC drop, the respondent promised me that it would be pay the petitioner further subscription amount of Rs.7,000/- per month. I state that only on the request of the respondent, the petitioner provided the said OFC drop at Benapur and accordingly the respondent was to pay an increased subscription fee from the month of September, 2010. Internal mail exchanged between the employees of the petitioner is annexed hereto and marked as Exhibit PW-1/8. I state that the said email has been printed from my official computer system, which has used regularly for storing and processing such information. I state that I am authorized to use and I exercise complete control over the said computer system. I further state that I have been using the same for a long period of time. I also state that the said computer system has been*

*working properly, without affecting the accuracy of the electronic information stored therein.”*

During cross-examination of the witness in this regard, he stated as under :-

*“Q. At page 3 of your affidavit in para 8 you have stated that Mr. Samar Modi of the respondent approached me and requested to provide a drop point at Bena Pur. Do you have any proof of communication in this regard?”*

*A. It was a verbal request by Mr. Samar Modi.*

*Q. I put it to you that there was no such request.*

*A. It is incorrect.*

*Q. I put it to you that the internal mail as referred at page no.3 in respect to the exhibit PW 1/8 (page No. 130 of the paper book) is fabricated.*

*A. It is incorrect.*

*Q. Do you have any document regarding installation/provision of the referred drop point at Bena Pur?*

*A. It may be available with the technical deptt. I can produce the same.”*

In view of the statement of the witness and his cross-examination as well as the fact that this amount was being raised with effect from September 2010

onwards when the payments were being made by the respondent, I do not agree with the contention of the respondent that it is not liable to pay this amount.

As regards the stopping of adjustment amount of Rs.5,000/- per month from April, 2011/wrong incorporation of the same in invoices, it is the contention of the petitioner that it was receiving some amounts in cash which varied from Rs.5,000/-, Rs.5,017/- to Rs.10,000/- and the same has been accounted for as and when received from the respondent. From the entries made in the statement of accounts for these amounts, it can be seen that the same is mentioned as cash which supports the arguments of the petitioner. As regards the contention of the respondent that it had raised the issue of deduction of Rs.25,000/- from monthly invoices because of switching over of five cable operators, no case has been made out by the respondent that any agreement was reached with the petitioner in this regard.

13. With regard to the question whether respondent is liable to pay Rs. 56,000/- towards installation charges of equipment, Mr. Dogra referred to installation report dated 12/8/2011 [page 65 of paper book] as per which, some equipment was installed at the office of respondent. However, the same is strongly denied by the respondent. Be that it may, there is nothing on record to

show that the same was installed on the request of the respondent or it agreed to pay for the same.

14. In view of the foregoing, the petitioner is entitled to subscription charges till August 2011. From the invoice dated 31-Aug-2011 as well as the SOA, the amount due and payable by the respondent till August ,2011 is Rs. 4,00,065/- The respondent is directed to pay this amount to the petitioner along with interest with effect from 1<sup>st</sup> September, 2011, pendente lite and future interest at the rate of 9% till the amount is paid.

The petition is allowed to the above extent. Considering the facts and the circumstances of the case, there is no order as to costs.

.....

**(Kuldip Singh)**  
**Member**

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