

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

Petition No.60(C) of 2013

Dated 28th July, 2014

MSM Discovery Pvt. Ltd.Petitioner

Versus

Den Narmada Network Pvt. Ltd. ...Respondent

BEFORE:

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

For Petitioner : Mr. Abhishek Malhotra, Advocate
Mr. Nittin Bhatia, Advocate

For Respondent : None.

ORDER

By Aftab Alam, Chairperson - M/s MSM Discovery Pvt. Ltd. is a multi-system operator engaged in the distribution of television channels to its affiliate cable operators and subscribers. It has filed this petition against the respondent, M/s Den Narmada Network Pvt. Ltd. which is a local cable operator for recovery of Rs.73,18,916/- as on 28 March 2012 as dues of monthly subscription fee for the period 1 January 2011 to 31 December 2011. The respondent did not appear despite service of notice and hence, the petition is proceeded *ex parte*.

According to the petitioner, the parties were in inter-connect relationship from before and the petitioner was supplying signals for its TV channels to the respondent's network. The penultimate affiliation agreement between the two sides was executed on 27 September 2010. It came into effect retrospectively from 1 April 2010 and came to end on 31 December 2010. After the expiry of this agreement, the petitioner continued to supply its TV channels to the respondent's network as the parties were in negotiation for the renewal of the affiliation agreement. As the supply of signals had remained uninterrupted, the petitioner was also raising monthly invoices on the respondent. Finally, a fresh agreement between the parties came to be executed on 2 November 2011 which, like the previous agreement, was brought into effect retrospectively from 1 January 2011 and was due to end on 31 March 2012. Under this agreement, the respondent was permitted to retransmit the 17 channels of the petitioner (as listed in Schedule A to the agreement) within the municipal limits of Jabalpur city on payment of Rs.8,98,650/- as monthly subscription fee.

It is further the case of the petitioner that the respondent defaulted in payment of the monthly subscription fees and as a result the dues went on accumulating. The petitioner finally gave the disconnection notice to the respondent on 2 November 2011 under clause 4.1 and on 10 November 2011 the public notice under clause 4.3 of the Telecommunication (Broadcasting & Cable) Services Interconnection (Third Amendment) Regulation 2006.

In response, the respondent by its letter dated 30 November 2011 wrote to the petitioner that it did not wish to continue the retransmission of the petitioner's channels under the subscription agreement dated 2 November 2011 as it was financially not viable to carry on with those channels. The petitioner asked the respondent to stop billing it under the agreement for Jabalpur area and further stated that the letter might be treated as notice under clause 4.2 of the Regulation.

Thereupon the petitioner disconnected the supply of signals to the respondent's network after duly complying with the requirements of the law.

The petitioner made demands for payment of its dues and sent a legal notice dated 3 September 2012 asking for payment of Rs.74,17,982/- as due on the date of the notice. The respondent, however, did not take any steps for payment of the dues and the petitioner was finally forced to file this petition. The petitioner has also enclosed a copy of the statement of account as one of the annexures to the petition in support of his claim.

No reply is filed on behalf of the respondent to controvert the statements and allegations made in the petition.

The petitioner examined as its witness, one, Amol Karpe, working as the Area Manager for the petitioner. He identified the affiliation agreement for the period 1 January 2011 to 31 March 2012 and stated that under its terms the

respondent was liable to pay to the petitioner the amount of Rs.8,98,640/- as monthly subscription charges. The affiliation agreement was marked as Exhibit PW-1/1. He also identified the bunch of invoices raised by the petitioner on the respondent for the months of January 2011 to December 2011 which were collectively marked as Exhibit PW-1/2. He also identified the disconnection notice issued under clause 4.1 of the Regulation along with its proof of delivery which were marked as Exhibits PW-1/3 and PW-1/4. He also identified the public notice issued under clause 4.3 of the Regulation which was marked as Exhibit PW-1/5. He further identified the petitioner's response to the notices vide letter dated 30 November 2011 which was marked as Exhibit PW-1/6. He identified the legal notice along with its proof of delivery which were marked as Exhibits PW-1/7 and PW-1/8. He identified the statement of account which was marked as Exhibit PW-1/9. In paragraph 6, 7 and 14 of his deposition the witness stated as under:

“6. I say that the Respondent has, since the commencement of the terms of the Agreement dated 01.01.2011, continued to default on its obligations to pay to the Petitioner equated monthly instalments of the agreed subscription fees on the respective due dates.

7. I say that the Petitioner has continuously followed up with the Respondent for the payment of its legitimate dues, however, despite repeated requests made by the Petitioner in this regard, the Respondent has deliberately failed and neglected to clear the outstanding subscription charges due and payable to the Petitioner.

14. I say that as per the information gathered from the finance department of the Petitioner company the Respondent has till date not cleared the outstanding subscription charges due and payable to the Petitioner and accordingly is liable to clear the outstanding dues of Rs.73,18,916/- (Rupees Seventy Three Lakhs Eighteen Thousand Nine

Hundred and Sixteen Only), being the outstanding subscription charges along with interest. The Statement of Accounts of the Petitioner maintained in relation to the Respondent Network, demonstrating that there is an outstanding amount of Rs.73,18,916/- (Rupees Seventy Three Lakhs Eighteen Thousand Nine Hundred and Sixteen Only) due and payable by the Respondent to the Petitioner is exhibited as **Exhibit PW1/9 (Colly)**.

To sum-up, the witness fully supported the case of the petitioner. The deposition of the witness and the documents produced on behalf of the petitioner remain unchallenged and there is no reason not to accept their veracity. The strongest evidence in support of the petitioner's claim is perhaps the petitioner's letter of 30 November 2011 (Exhibit PW-1/6) in which the respondent admits the execution of the affiliation agreement (Exhibit PW-1/1) on which the claim of the petitioner is based.

In light of the discussions made above, the claim of the petitioner is accepted and the petitioner is held entitled to receive the sum of Rs.73,18,916/- from the respondent as dues of monthly subscription fee along with interest @ 10% from 5 February 2013 (the date of the filing of the petition) till the realisation of the decretal amount.

The office is directed to draw-up a decree accordingly.

.....
(AftabAlam)
Chairperson

.....
(Kuldip Singh)
Member