

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**NEW DELHI****Dated 8th July, 2014****Petition No. 117(C) of 2013****(With M.A. No. 380 of 2013)****Hathway Cable and Datacom Ltd. ... Petitioner****Vs.****M/s Raj Cable Network ... Respondent****Petition No. 118(C) of 2013****(With M.A. No. 381 of 2013)****Hathway Cable and Datacom Ltd. ... Petitioner****Vs.****M/s Sai Cable ... Respondent****Petition No. 120(C) of 2013****(With M.A. No. 382 of 2013)****Hathway Cable and Datacom Ltd. ... Petitioner****Vs.****M/s Sai Ganesh Cable ... Respondent**

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

For Petitioner : Mr. Nasir Husain, Advocate

For Respondent : None

ORDER

This batch of petitions has been filed for recovery of subscription amounts payable for the channels of the petitioner subscribed by the respondents.

2. Petitioner – Hathway Cable & Datacom Ltd. is a company incorporated under the provisions of the Companies Act, 1956 and primarily acts as a Multi System Operator (MSO). It is in the business of reception and distribution of satellite television, broadcast signals and other electronic signals to various distributors, franchisees, local cable operators (LCOs), etc.

Respondents are proprietorship concerns as per details given below and are engaged as local cable operators (LCOs) :-

Petition No.	Name of Respondent	Name of Proprietor
117 (C) of 2013	M/s Raj Cable Network	Mr. Raju Kujiraman
118 (C) of 2013	M/s Sai Cable	Mr. Prashant Kambli
120 (C) of 2013	M/s Sai Ganesh Cable	Mr. Sanjay Shinde

3. It is the contention of the petitioner that respondents entered into an understanding/oral agreement with the petitioner for supply of signals of the petitioner on mutually negotiated price. In terms of this understanding/oral agreement, respondents were taking signals of various channels including Zee, Star, Neo etc. from the petitioner, who in turn, was raising invoices which were duly received by respondents without any protest or demur. However, against the invoices raised, respondents were making part payments only.

4. As per the petitioner, the amount outstanding against respondents as on October, 2012 is as given in the table :-

Petition No.	Name of Respondent	Outstanding Dues
117 (C) of 2013	Raj Cable Network	Rs. 5,48,094/-
118 (C) of 2013	Sai Cable	Rs. 3,60,895/-
120 (C) of 2013	Sai Ganesh Cable	Rs. 12,27,151/-

. Petitioner has prayed for a direction to the respondents to pay the above outstanding amounts along with interest at the rate of 18% per annum.

5. In all the above petitions, respondents failed to appear before the Tribunal in spite of notice duly served on them. Accordingly, all the petitions proceeded ex-parte.

6. Petitioner, in support of its pleadings, submitted evidence by way of affidavit of Mr. Ram Prakash S/O late Mr. Karan Singh working as authorized representative of the petitioner company. The witness confirmed the averments made in the petitions and identified copies of some of the petitioner's invoices including that for the month of October 2012 which were marked as Exb. P-1 (Colly), a copy of statement of

accounts marked as Exb. P-2 and copies of correspondence with the respondents including demand letters/notices sent on 11.6.2012 and 25.7.2012 with proof of delivery marked as Exb. P-3 (Colly). (The demand letters in case of Petition No. 120 (C) of 2013 were dated 25.6.2012 and 25.7.2012).

Petition No. 117 (C) of 2013

7. In this petition, the amount claimed by the petitioner is for Rs.5,48,094/-. However, it is seen from the letter of the respondent dated 13.12.2011 (Exb. P-3) that it had started taking signals of some other MSO due to refusal of down-gradation of its subscription charges by the petitioner to Rs.20,000/-. The relevant part of the letter is as under :-

*“Kindly note that due to refusal of down gradation of our subscription charges to Rs.20,000/- despite your assurance and illegal act of disconnection of signals of your channel, **we are not interested to have any sort of arrangement with your Company.** You are therefore requested to immediately stop raising invoice in favour of our Company as we have taken the signals of other MSO due to illegal disconnection of our signals by your Company.*

We hereby call upon you withdraw your invoices no Oct 35 1st Oct 2011 and invoice No. sep 35 dated 1st Sep 2011 being illegal as being raised after the disconnection of signals of your channels.”(emphasis supplied)

Though in the letter it is alleged that the signals of the channels have already been disconnected illegally, no evidence in support of this is available on record and also the reply of the respondent is not available as the matter had proceeded ex-parte. However, since in the letter it is clearly mentioned that respondent is no longer interested to take signals of the petitioner, taking this as a notice and after allowing for a notice period of three weeks in terms of clause 4.2 of the Interconnect Regulations, the respondent cannot claim any subscription charges with effect from February 2012 (being the month after that in which the notice period expires) whereas as per the SOA, invoices have been raised till October 2012. In our view, the petitioner is, therefore, not entitled to any subscription charges for the months of February, 2012 to October, 2012 which as per SOA amount to Rs.3,62,566/-. The balance outstanding after accounting for this amount, comes to Rs.1,85,528/-. The petition is accordingly decreed for this amount along with interest at the rate of 9% with effect from 14-3-2013, the date of filing the petition, and till the amount is paid.

Petition No. 118 (C) of 2013

8. In this petition, the amount claimed by the petitioner is Rs.3,60,895/-. However, it is seen from the letter of the respondent dated 26.12.2011 (Exb. P-3) that the respondent had requested for disconnection of signals and stopping of the billing as the petitioner failed to reduce the monthly subscription charges. Taking this as a notice and after allowing for a three weeks period in terms of the clause 4.2 of the Interconnection Regulations, the respondent cannot claim any subscription charges with effect from 1st February 2012 whereas, as per the SOA, invoices have been raised till October 2012. In our view, the petitioner is, therefore, not entitled to any subscription charges for the month of February, 2012 onwards and this amount, as per SOA , is Rs.1,81,283/-. The balance of outstanding after accounting for this amount, comes to Rs.1,79,612/-. The petition is accordingly decreed for this amount along with interest at the rate of 9% per annum from the date of filing the petition ,March 14, 2013, and till the amount is paid.

Petition No. 120 (C) of 2013

9. In this petition, the amount claimed by the petitioner is Rs.12,27,151/-. However, it is seen from the letter of the respondent dated 05.5.2012 (Exb. P-3) that the respondent had requested for reduction of subscription amount to Rs. 5000/- per month or else for

disconnection of signals. Taking this as a notice and after allowing for a three weeks period in terms of the clause 4.2 of the Inter Connection Regulations, the respondent cannot claim any subscription charges with effect from 1st June 2012 whereas, as per the SOA, invoices have been raised till October 2012. In our view, the petitioner is, therefore, not entitled to any subscription charges for the month of June, 2012 onwards and this amount, as per SOA , is Rs.2,52,810/-. The balance of outstanding after accounting for this amount, comes to Rs.9,74,341/-. The petition is accordingly decreed for this amount along with interest at the rate of 9% per annum from the date of filing the petition, March 14, 2013, and till the amount is paid.

10. All the above petitions are disposed of on the aforementioned terms.

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(Aftab Alam)
Chairperson

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(Kuldip Singh)
Member

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