

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

Dated 18th March, 2014

Petition No. 178 (C) of 2011

Sri Muthumari Cable Vision ... **Petitioner**

Vs.

Sun 18 Media Services South Pvt. Ltd. & Ors. ... **Respondents**

BEFORE:

HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON

HON'BLE MR. KULDIP SINGH, MEMBER

For Petitioner : Mr. Jayant K.Mehta, Advocate
Mr. Sukant Vikram, Advocate

For Respondent : Mr. Abhishek Malhotra, Advocate
Mr. Nittin Bhatia, Advocate
for TMT Law Practice

ORDER

Kuldip Singh

In the present petition, an amount of Rs.29,52,872/- is claimed from the respondent no.1 on account of over-payment of subscription charges. The prayers made in the petition relating to the signals of respondent no.1 are not

pressed during arguments as the petitioner has stopped taking the signals of this respondent.

2. The petitioner is a proprietorship concern of Mr. R. Kamaraj and is engaged in distribution of cable TV signals in Pappanadu Village in Thanjavur district of Tamilnadu. Respondent No.1 is the distributor of Sun Group of channels. The petitioner was taking the signals of Sun TV and K TV from respondent No.1 with effect from the year 2006.

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

- (i) It has made an over-payment of an amount of Rs.29,71,865/- [figure corrected during evidence as Rs. 29,52,872] to the respondent No.1. In support of its claim, it has annexed a statement of accounts at pages 25-28 of the Paper Book.
- (ii) There was a sudden and arbitrary increase in the subscription charges from Rs.56,672.18, the monthly subscription charges invoiced for January 2011, to Rs.3,01,287.19 which has been invoiced in the month of February and March, 2011. The petitioner received two invoices on 19.3.2011 for the months of February

2011 and March 2011 both for an amount of Rs. 3,01,287.19 each. This amount was never agreed to by the petitioner.

- (iii) When the petitioner approached respondent No.1 for seeking credit for the said [overpaid] amount, respondent no. 1, illegally and dishonestly, issued notices on 10.3.2011 and 11.3.2011 under clauses 4.1 and 4.3 of the Interconnect Regulations on the ground that it has not come forward to renew the agreement that expired on 31.3.2010.

4. As per the invoices (pages 18-24 of the Paper Book) the petitioner was being charged Rs.55,584.58 per month as subscription till 06.12.2010. Further as per invoice dated 06.12.2010, there was total outstanding dues of Rs.57,338.324 in addition to the outstanding dues of Rs.25,642.13 towards Sun Distribution Services (SDS), predecessor-in- interest of respondent no.1. As per the invoice dated 06.01.2011, the subscription amount for the month of January 2011 increased to Rs.56,672.18 However, the total outstanding dues went up to Rs.7,96,118.32 Further, the outstanding dues of SDS payable to the respondent no. 1 also went up to Rs.12,54,155.15. The monthly subscription for the months of February 2011 and March 2011 further went up to Rs.3,01,287.19 per month.

5. Respondent No.1 in its reply has denied that the petitioner has made any over-payment and in support has annexed the statement of accounts (pages 106-109 of the Paper Book) as per which, after giving due credit for all the payments, there is a net outstanding of Rs.17,31,255.41 as on 22.8.2011. As per it, it has entered into an agreement with the petitioner for the financial year 2009-10, as per which the petitioner was to pay monthly subscription amount of Rs.55,584/-. However, the petitioner was indulging in piracy of signals of respondent no.1 and was unauthorizedly collecting money for the areas where it had no authorization to supply signals. The parties had a meeting on 19.11.2009 wherein the petitioner agreed to declare its correct area of operation by 25.11.2009. The petitioner further made a part payment of Rs.2.5 lakhs to respondent no.1 against the total outstanding amount payable by the petitioner. In support of its contention, a copy of the minutes of meeting dated 19.11.2009 is exhibited as Exb. R1W1/1.

6. Respondent no. 1 further submitted that the petitioner, upon being confronted by it about unauthorized transmission of signals, agreed to merge the networks for which the petitioner was unauthorizedly transmitting signals. The petitioner and other operators willing to merge their networks with the petitioner also addressed letters to the respondent No.1 requesting the respondent No.1 to merge their networks with the network of the petitioner and to transfer their outstanding amounts to the account of the petitioner.

Thereafter, the petitioner merged the networks of two link operators completely and part of networks of two other link operators and provided respondent no.1 with a duly filled up Form-1 for merger of networks on 29.03.2010. The respondent no. 1 has exhibited copies of duly filled up Form-1 for merger of networks as Exb. R1W1/2 (Colly).

7. It is the case of respondent no. 1 that thereafter, the parties negotiated a fresh subscription fee for the year 2010-11 for next 6 months and finally entered into an agreement for the said financial year on 6.10.2010, in terms whereof, the petitioner agreed to pay a revised subscription amount of Rs.3,01,287.19 to it with effect from April 2010. Respondent No.1 had provided a duly filled up countersigned copy of the Agreement to the petitioner which was acknowledged by the petitioner, Copy of the Agreement dated 6.10.2010 as entered into between the petitioner and the respondent No.1 for the period from April 2010 till March 2011 is annexed as Exb. R1W1/3 and a copy of the acknowledgement of the receipt of the copy of the Agreement is annexed as Exb. R1W1/4.

8. As per respondent no.1, the parties further agreed that the invoices at the new rates would be issued only from February 2011 in view of system up gradation of respondent's accounting system. Accordingly, the invoices issued

to the petitioner for the months of November and December 2010 and January 2011 reflected the older amounts.

It was accordingly agreed that respondent no.1 would issue separate debit notes for the period from April 2010 till December 2010 in the names of respondent no. 1 and its predecessor-in-interest, Sun Distribution Services respectively for the balance differential outstanding for the said period. Hence the respondent No.1 issued Debit Notes Nos. TN-01010 and DN1190 for Sun Distribution Services and respondent No.1 respectively.

9. The petitioner submitted that the documents relied upon by respondent No. 1 are false and fabricated. Mr. Jayant Mehta, Ld. Counsel for the petitioner, referred to the letter of respondent no. 1 dated Feb. 10, 2011 [page 16 of paper book] and argued that as per this letter itself, there is no agreement between the parties with effect from 31.3.2010. He submitted that the petitioner had signed on a blank agreement under coercion as respondent no.1 was very powerful and the petitioner could not have survived in cable business by antagonizing it. He further submitted that no merger took place between the networks as alleged by respondent no.1 and the signatures of the petitioner were obtained on blank merger forms under coercion. In support of his case , Mr. Mehta referred to the cross examination of Mr. Samuel Rajan, the witness of respondent no.1 [R1W-1], and submitted that the witness was

neither able to produce any record/communication in support of the merger of networks nor show any settlement of account with the four networks which were to be merged with the network of the petitioner. He drew our attention to the admission on the part of this witness that the merger forms as well as the agreement was filled by one Mr. Nirmal Ratan, the then area manager of the respondent no.1 . He further drew our attention to an invoice dated 4th March, 2011, issued by the respondent no. 1 to Mani Cable Vision which was one of the networks to be merged.

10. Mr. Mehta referred to the evidence of Mr. V. Palaniyappan, PW-2, who is a partner of M/s Golden Entertainment Network, which is one of the networks to be merged. The witness stated that M/s Golden Entertainment Network continues to run its own network and has never merged into the network of the petitioner.

11. With regard to the disputed invoices, Mr. Mehta referred to letters dated 15.2.2011 and 14.3.2011 addressed by the petitioner to respondent no. 1 in which it has protested against the same. He also referred to the cross examination of R1W-1 regarding his statement that the parties had agreed for issuance of invoices at new rates with effect from February, 2011, and

submitted that the witness was unable to produce any record in support of this.

12. As per the agreement dated 26.4.2010 for the period 1.4.2010 to 31.3.2011 [page 81 to 93 of paper book], the monthly subscription payable by the petitioner is Rs. 2,73,152.48 which is exclusive of the taxes and may vary with the subscriber base of the petitioner. However, as per the letter of the respondent dated 10.2.2011 and the public notice dated 11.3.2011, the petitioner had no agreement with the respondent after 31.3.2010. Mr. Abhishek Malhotra, Ld. Counsel for the respondent no.1 submitted that these were issued by mistake and were withdrawn subsequently but we are not convinced. This conduct of the respondent, seen further in the light of the cross examination of its witness, puts a question mark on the authenticity of this agreement.

With regard to the merger of the four networks, Mr. Malhotra referred to the additional affidavit of R1W1 wherein the witness stated that the petitioners had addressed letters to respondent no 1 and requested for the merger of these networks. Two letters requesting for merger of Golden entertainment Network and Mani cable Vision were exhibited as Exhibit RW1/21 and RW1/22. The witness also stated that respondent no. 1 had received letters from the four networks also that were willing to merge and exhibited one letter from Golden

Entertainment network as Exhibit RW1/23. However, Mr. Mehta argued that these were obtained from the petitioner under pressure. Further, PW2 denied that the signatory of the letter for Golden Entertainment had ever been a partner or employee of the firm. The letters exhibited do not bear any date or place. During cross examination, the witness admitted that he was not sure about the date and that these were not prepared or signed in his presence. He also could not produce document in support of receipt of these letters.

13. Let us now examine the conduct of the petitioner as the same assumes significance to interpret the evidence on record. As per its own statement of account, it has suddenly made large payments to the respondent no.1 in the months of June, 2010 [Rs. 21,50,000] and July 2010 [Rs. 11,33,000] . These are much more than payments that were being made by it prior to and after these months. When we questioned Mr. Mehta about the reason for this, there was no satisfactory answer but an averment that these were made under coercion. We can understand that the petitioner may be coerced into signing on blank agreement and blank merger forms but to pay such a large amount without sufficient reason, especially when the monthly subscription as alleged by the petitioner was Rs. 55,584.58, is difficult to believe. If we see the invoices for the months of September, 2010 to December, 2010, all these show some arrears. When the petitioner had paid such large amounts and the invoices still showed arrears, why it did not protest? Even when it finally protested much

later vide its letter dated 15.2.2011, it did not mention anything about these amounts or any overpayments made by it but only stated that as per their account, there was no outstanding. It was only in March, 2011 that vide its letter dated 14.3.2011, which was just days before the petition filed in the Tribunal, petitioner raised the issue of excess payment for the first time.

14. The petitioner in its rejoinder submitted that it has never provided any signals to the networks allegedly merged with its network and had no dealing with the said networks, yet Mr. R. Kamraj, proprietor of the petitioner and appearing as its witness PW1, when asked during cross examination about one Mr. K Senthil Kumar, denies knowing him but when asked, *“I put it to you Mr. K Senthil Kumar is the authorized representative of Golden Entertainment Network”* categorically states *“It is incorrect”*. How does he know that with such surety when the petitioner has had no dealings with this firm?

15. In its rejoinder, the petitioner categorically states that the invoices and debit notes relied by the respondent no.1 do not exist and the petitioner has never received any such debit note. However, during cross examination, PW1, when asked *“ Did you communicate with the respondent no. 1 when you received the debit notes-cum-invoices at pages 95 and 96 of the paper book?”* states *“Yes, upon receipt of these debit notes-cum-invoices we had addressed a*

communication to the respondent no.1” Later on during re-examination he stated that he received these in January, 2011 or sometimes thereafter.

16. With regard to the meeting on 19.11.2009, the petitioner denied that there was any such meeting. The averment in this regard is “.....It is denied that there was any such meeting on 19.11.2009 as alleged. In any case, such meeting is irrelevant to the present disputes.....” [para 4.3 page 115 of paper book]. During cross examination, PW1 admitted that a meeting was held and stated that the same was not prefixed and when he reached the venue of the meeting, the people who signed the minutes of the meeting were already present and the MOM were already prepared.

As per the minutes of this meeting, the petitioner not only gave postdated cheques for a sum of Rs. 2,50,000 as a part payment against an overdue amount of Rs. 8,63,801 but also agreed that it will not supply signals to the two other networks. Mr. Mehta would have us believe that these minutes were also signed by the petitioner under coercion. We, however, keeping in view the various inconsistencies in the averments/witness’ statements and facts as they emerge during cross examination, are not convinced with these arguments.

17. In view of the foregoing, we find that while there is a question mark on the written agreement between the parties and the actual merger of the four networks with that of the petitioner, apparently the petitioner was supplying signals to other networks where it was not authorized and there was some understanding arrived at between the parties as per which some large payments were made by the petitioner to the respondent no.1. We believe that this claim of over payment of Rs.29,52,872/- was an afterthought when the relations between the parties turned sour and the petitioner decided to approach this Tribunal. We do not find any merit in the claim of the petitioner and the petition is accordingly dismissed. Keeping in view the facts and circumstances of the case, there is no order as to costs.

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(Aftab Alam)
Chairperson

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(Kuldip Singh)
Member

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