

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 30th MAY, 2014

Petition No.235(C) of 2011
(With M.A.No.129 of 2012)

Neo Sports Broadcast Pvt. Ltd. ...Petitioner

Versus

Aakash Cable ...Respondent

Petition No. 418(C) of 2011

Neo Sports Broadcasting Pvt. Ltd. ...Petitioner

Vs

Aakash Cable ...Respondent

Petition No. 419(C) of 2011

Neo Sports Broadcasting Pvt. Ltd. ...Petitioner

Vs

Aakash Cable ...Respondent

Petition No. 420(C) of 2011

Neo Sports Broadcasting Pvt. Ltd. ...Petitioner

Vs

Aakash Cable ...Respondent

Petition No. 421(C) of 2011

Neo Sports Broadcasting Pvt. Ltd. ...Petitioner

Vs

Aakash Cable ...Respondent

Petition No. 422(C) of 2011

Neo Sports Broadcasting Pvt. Ltd. ...Petitioner

Vs

Aakash Cable ...Respondent

Petition No. 423(C) of 2011

Neo Sports Broadcasting Pvt. Ltd. ...Petitioner

Vs

Aakash Cable ...Respondent

Petition No. 424(C) of 2011

Neo Sports Broadcasting Pvt. Ltd. ...Petitioner

Vs

Aakash Cable ...Respondent

Petition No. 425(C) of 2011

Neo Sports Broadcasting Pvt. Ltd. ...Petitioner

Vs

Aakash Cable ...Respondent

Petition No. 426(C) of 2011

Neo Sports Broadcasting Pvt. Ltd.

...Petitioner

Vs

Aakash Cable

...Respondent

Petition No. 427(C) of 2011

Neo Sports Broadcasting Pvt. Ltd.

...Petitioner

Vs

Aakash Cable

...Respondent

BEFORE:

HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON

HON'BLE MR. KULDIP SINGH, MEMBER

For Petitioner : Mr. Gaurang Panandikar, Advocate
Mr. Vikram Mehta, Advocate

For Respondent : Mr. K. Vijay Kumar, Advocate
Mr. S. Saravanan, Respondent in person.

ORDER

Kuldip Singh: This batch of petitions has been filed u/s 14 A (1) of the TRAI Act, 1997 for recovery of subscription fees amounting to Rs. 39,65,069/- along with interest.

of Rs.14,67,106/- on delayed payments in respect of various interconnection agreements between the parties.

2. The petitioner is a broadcaster of TV channels under the provisions of the TRAI Act, 1997. The respondent is a sole proprietorship of Mr. S. Saravanan, S/o K. Sreenivasan and is a Multi System Operator in the territory of Tamil Nadu. The parties entered into 12 Interconnect Agreements for different territories in Tamil Nadu whereby the respondent was authorized by the petitioner to retransmit two of the petitioner's channels, namely, Neo Cricket and Neo Sports in accordance with the terms and conditions of the agreement. The details of the subscriber base and the subscription amount as per the agreements are given in the table as under:-

| S. No. | Agreement Date | Agreement Area | Subscriber base | Subscriber amount | Upgraded w.e.f. 21.4.2008 | |
|--------|----------------|--------------------|-----------------|-------------------|---------------------------|---------------------|
| | | | | | Subscriber base | Subscription Amount |
| 1 | 22.11.2007 | Bodi | 150 | 5588 | 250 | 9313 |
| 2 | 16.04.2011 | Thuckalai Town | 250 | 9313 | nil | nil |
| 3 | 14.12.2007 | Thovalai | 53 | 1974 | 150 | 5588 |
| 4 | 01.12.2007 | Theni Town | 200 | 7450 | 400 | 14900 |
| 5 | 22.11.2007 | Ramnad Town | 150 | 5588 | 200 | 7450 |
| 6 | 27.11.2007 | Cholavanthan Town | 53 | 1974 | nil | nil |
| 7 | 27.03.2007 | Uttamapalayam Town | 50 | 1862.5 | nil | nil |
| 8 | 22.11.2007 | Cumbum Town | 150 | 5588 | 250 | 9313 |
| 9 | 27.11.2007 | Andipatti | 75 | 2794 | nil | nil |
| 10 | 22.11.2007 | Panaikulam | 53 | 1974 | nil | nil |
| 11 | 22.11.2007 | Nagercoil Town | 275 | 10244 | 1250 | 46563 |
| 12 | 27.03.2007 | Dindigul | 2000 | 74500 | nil | nil |

3. Since the facts in all these petitions are similar, they are being disposed of by this common judgment. However, unless mentioned otherwise, the facts in the following paragraphs are taken from petition no. 285(C) of 2011.

4. The dispute between the parties pertains to the period from 31.8.2009 to 28.6.2010. It is the contention of the respondent that the agreement expired after one year and it stopped taking signals of the petitioner w.e.f 31.8.2009 and also returned the IRD (Integrated Receiver Decoder) boxes. We may note here that the TV channels of the broadcasters are encrypted and though the signals from the satellite may be available, these can be received and decoded only with the help of these IRD boxes.

5. Though the written agreements between the parties were for one year and the terms of the same expired by efflux of time, it is the contention of the petitioner that the relationship between the parties was continuing even after the expiry of term of the agreements. As per the petitioner, some of the agreements were also modified with regard to the number of subscribers and the subscription fees, the details of which are given in the table in para 2. Further, it is the contention of the petitioner in Petition No. 419 (C) of 2011, which is different to this extent, that there was an interchange of the subscriber base and subscription amount for the areas of Thuckalai town and Dindigul town in as much as the subscriber base and the subscription amount for these two areas were swapped with each other.

6. The petitioner in support of its case, has led the evidence by way of affidavit of Mr. Srinivasan, S/o Mr. Sampangi, Assistant Manager- Affiliate Accounts of the petitioner's company. The witness, appearing in petition no. 235(C) of 2011, has exhibited the

agreement for Nagerkoil as Exhibit PW1/1 and stated that the same provides that if signals are continued beyond the initial term of the said agreement, the same would be deemed to have been provided on monthly basis on the same terms and conditions as are contained in the agreement. The witness has exhibited a log report as Exhibit PW1/2 as per which the signals were activated on 22.11.2007 and deactivated on 29.6.2010. With regard to the log report, the witness has stated as under:-

"9. The Petitioner has continuously and without any interruption supplied to the respondent signals of its two channels under the above mentioned Interconnection Agreements from 22.11.2007 to 28.6.2010. This is reflected from the log Report, which is attached alongwith the rejoinder to Petition No. 235 (C) of 2011. The said Log Report is a computer generated report, originating out of a computer software which is tamper-proof and secure and in which no manipulation/fudging is possible."

Further, as per the witness, the invoices for the months of April, 2008 to April, 2009 and December, 2009 to March, 2010 were served upon the respondent vide e-mails. The invoices have been exhibited as Exhibit PW1/3 (Colly) and the e-mails as Exhibit PW1/4 (Colly). The witness has further stated that invoices for the months of April, 2009 to June, 2010 were personally delivered to the respondent. The statement of the witness is as under:-

"The invoices for the month of from April, 2009 to June, 2010 was personally delivered to the Respondent vide by our executives

namely S Kanan & Vasantha Kumar A which was also accepted by the respondent without any protest or demur."

The witness has further exhibited a print out of ledger accounts of the respondent maintained by the petitioner company as Exhibit PW1/5 and the notices dated 21.04.2010 and 06.05.2010 to the respondent calling upon it to clear the outstanding as Exhibits PW1/6 and PW1/7. The witness stated that the petitioner received a letter dated 01.06.2010 from the respondent on 28.06.2010 requesting the petitioner to deactivate its signals on the respondent's network which was done immediately, w.e.f. 28.06.2010. The witness also exhibited two letters dated 01.6.2010 and 28.06.2010 written to the respondent to clear its dues as Exhibits PW1/8 and PW1/9.

Though the documents exhibited as above pertain to petition No. 235 (C) of 2011, the documents exhibited for other petitions are similar.

7. Mr. Vasantha Kumar A., son of Mr. V Anandan, appearing as petitioner's witness PW-2, confirmed that he was employed with the petitioner company during the period from January, 2010 to October, 2010 and stated that till June, 2010 he personally hand delivered the invoices of the petitioner company including the invoices for the months of January, 2010 to June, 2010. He also stated that he had also hand delivered the invoices for the period April, 2009 to December, 2009 on the request of the respondent which were already delivered to the respondent in the respective months.

8. Mr. Vijay Kumar, learned counsel appearing for the respondent stated that the agreement was only for one year and the term of the same expired on 21.11.2008 and after that there was no agreement. He further referred to the letter of the respondent dated 01.06.2009 as per which the respondent asked the petitioner to deactivate its services from 01.06.2009. He referred to another letter from the respondent dated 01.06.2010 as per which the petitioner handed over the decoder boxes to the distributor office at Madurai. Since the letter dated 01.06.2010 has an important bearing on the case, the same is reproduced below:-

"June 01,2010

To

Neo Sports Broadcast Pvt. Ltd.

Bangalore

Sub:- Deactivation of Aakash Cables Network - Reg.

Dear Sir,

This is to inform you that we would like to deactivate the services of Neo Sports & Neo Cricket for Aakash Cables Network (Dindugal, Ramand, Kanyakumari, Theni, Madurai). We have requested you to deactivate the signals of entire network of Aakash Cables and kindly stop the billing. Further we have handed over the decoder boxes of our network to the distributor office at Madurai.

Kindly deactivate the services for the Networks mentioned below:-

Kindly deactivate the services for the Networks mentioned below:-

| <i>Network Name</i> | <i>Place</i> | <i>District</i> |
|----------------------|-----------------|-----------------|
| <i>Aakash Cables</i> | <i>Dindugal</i> | <i>Dindugal</i> |

| | | |
|----------------------|---------------------|--------------------|
| <i>Aakash Cables</i> | <i>Nagercoil</i> | <i>Kanyakumari</i> |
| <i>Aakash Cables</i> | <i>Thuckalay</i> | <i>Kanyakumai</i> |
| <i>Aakash Cables</i> | <i>Thovalai</i> | <i>Kanyakumari</i> |
| <i>Aakash Cables</i> | <i>Sholavandhan</i> | <i>Madurai</i> |
| <i>Aakash Cables</i> | <i>Panaikulam</i> | <i>Ramnad</i> |
| <i>Aakash Cables</i> | <i>Ramnad</i> | <i>Ramnad</i> |
| <i>Aakash Cables</i> | <i>Bodi</i> | <i>Theni</i> |
| <i>Aakash Cables</i> | <i>Cumbum</i> | <i>Theni</i> |
| <i>Aakash Cables</i> | <i>Devaram</i> | <i>Theni</i> |
| <i>Aakash Cables</i> | <i>Gudalur</i> | <i>Theni</i> |
| <i>Aakash Cables</i> | <i>Theni</i> | <i>Theni</i> |

For Aakash Cables

Sd/-

S. Saravanan

*Copy to: M/s Aakash Enterprises, Madurai (Distributor, Neo Sports)
: Mr. Vasanth (Sales Executives, Neo Sports)**

10. It is the case of the respondent that it had asked the petitioner on 01.06.2009 for deactivation of the services and that despite receipt and knowledge of the aforesaid request for deactivation of services to respondent, the petitioner has continued to raise the false invoices vide letters dated 21.04.2010 and 06.05.2010 and it is only with respect to the above letters, calling for payments of the dues, that respondent wrote letter dated 01.06.2010 reiterating its request for deactivation of its services. Mr. Vijay Kumar argued that log report exhibited by the petitioner, as per which the

signals were deactivated on 28.06.2010, is not admissible under the Indian Evidence Act. He referred to the cross examination of the petitioner's witness in this regard where petitioner's witness admitted that the same does not bear name and signatures of the petitioner's company.

11. It is a fact that the term of the agreement between the parties was to expire on 21.11.2008. However, the Clause regarding the term had a sub-Clause as per which if no new agreement was executed between the parties after the expiry of the same, and the signals of the channels/services were continued, the same will be deemed to be provided on monthly/ad-hoc basis. Though the receipt of letter dated 01.06.2009 in which the respondent requested the petitioner to deactivate its signals, is not denied by the petitioner, we note from the statement of accounts filed by the petitioner that payments against invoices were being made regularly till as late as April, 2010. The same is also admitted by the respondent's witness Mr. S. Sarvanan, who is the sole proprietor of the respondent company, during cross-examination.

As per the statements of the respondent's witness, the respondent had requested the petitioner for deactivation of its signals as early as September, 2008. Still letters were written on 1.6.2009 and again on 1.6.2010 to deactivate the signals. The respondent's witness admitted during cross examination that it was receiving signals up to 31-8-2009. It is apparent that though the respondent had been asking for deactivation of its signals, the parties had been reaching some understanding from time to time based on

which the respondent continued with the signals till June 2010, otherwise why would it ask again for deactivation of its signals and why would it continue to pay the petitioner till as late as April 2010.

12. Mr. Vijay Kumar argued that there is no proof of delivery of the invoices and submitted that the claim for arrears must be with proof of delivery of invoices. He referred to the cross examination of petitioner's witness PW1 where the witness admitted that no acknowledgement of having the invoices hand delivered was produced.

We are unable to agree with the submission regarding non-delivery of invoices for the reasons; (i) payments against these invoices have been made till as late as April, 2010; (ii) respondent itself admitted receipt of the invoices in its reply as under:-

"6. Moreover, it is my respectful submission that even after the expiry of the afore-said Agreements, the petitioner has continued to issue invoices for huge amounts to the respondent with respect to subscription fee. That the said action on part of the petitioner is baseless and with an intention to extract huge amounts by making false claims."

13. We now come to the issue of IRD boxes. It is the contention of the respondent that it could not receive the signals as it had returned the IRD boxes. In this regard, it referred to letter dated 01.06.2010 as per which the

decoder boxes were handed over to the distributor office at Madurai. Though the Respondent's witness stated that the respondent returned the decoder boxes on 31.08.2009 to one Mr. Kannan working with the petitioner company, during cross examination, he admitted that the respondent had no receipt to show that same were returned. The reply in this regard is as under:-

"I do not have any receipt to show that the IRD boxes and the viewing cards were returned by the respondent to the petitioner on 31.8.2009."

14. In the additional evidence by way of affidavit filed by the petitioner, Mr. Srinivasan, Assistant Manager stated as under:-

"I say that on 28.06.2010, I received an e-mail from Aakash Cable for deactivation of its signals. I further say that the signals of Aakash Cable were being provided by the petitioner till 28.06.2010 and the IRD Boxes had not been returned by the respondent till then. Annexed herewith and marked as Exhibit PW1/10 is copy of email dated 28.06.2010. I further say that I received another email dated 29.07.2010 from the respondent wherein the respondent requested for invoices for the period 01.04.2009-30.06.2010. I further say that the said request was made even though all the invoices had been duly served upon the respondent as mentioned in the earlier part of this affidavit

and in my previous affidavit. Annexed herewith and marked as Exhibit PW1/11 is email dated 29.07.2010."

From the email exhibited as EX. PW1/10, it is seen that the deactivation of signals was requested on 28.06.2010 by one Mr. V.S. Velmurugan and from e-mail dated 29.07.2010, Exhibit PW1/11, that invoices for the period 01.04.2009 to 03.06.2010 were requested by the same person. Though the respondent denies that there is any such person working with the respondent, it does not deny that the e-mails were sent from the e-mail ID of the respondent and it is unable to explain how this was done.

15. In view of the facts of these cases and the evidence on record, we are convinced that the respondent had been receiving the signals of the petitioner till June 2010 on the basis of an understanding reached between them. It must, therefore, pay the subscription amount as per the agreements. We also note from clause "E" of the agreement regarding subscription fee and other payments, that an interest at the rate of 24 % is to be paid for delayed payments. The clause is as under:

" In case the above payment is not paid by the Affiliate on or before the due date, NSB shall be entitled to charge the interest at the rate of 24% from the due date till the said amount is paid....."

As per the statement of account¹ the outstanding as on 15th April 2011 is Rs. 39,65,069/- and interest on overdue payments is Rs. 14,67,106/-.

16. We accordingly allow all these petitions and direct the respondent to pay the amount of Rs.39,65,069/- along with interest of Rs.14,67,106/- on delayed payments in respect of various interconnection agreements between the parties. The petitioner shall also pay interest @ 10% from the date of filing of the petition and till the payment is made. A decree shall be drawn accordingly.

Cost of litigation assessed as Rs. 25,000/-



.....
// (Aftab Alam)
Chairperson

.....
/ (Kuldip Singh)
Member

/hkc/

¹ [Annexure P-3 (copy) page 452 to 460] of paper book in petition no. 235 (S) of 2011]