

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

**Dated 19<sup>TH</sup> November, 2014**

**Petition No. 368 (C) of 2010**

M/s. S.S. Cable Network, M.P.

...Petitioner

Versus

M/s. Hathway Bhaskar Multinet Pvt. Ltd., M.P.

....Respondent

**BEFORE:**

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

For Petitioner : Mr. Sujeet K. Mishra, Advocate

For Respondent : Mr. G.T. Rao, Advocate  
Mr.Anand Kumar, Advisor in respondent  
company.

**ORDER**

**By Aftab Alam, Chairperson** – Heard counsel for the parties on the  
Objections to the Advocate-Commissioner's reports filed by the  
respondent/judgment debtor.

The petitioner filed the instant petition, *inter alia*, seeking recovery of its dues in the sum of Rs.23,77,036/- as on 23 September 2010 along with interest.

According to the petitioner, on or about 24 April 2008, it executed a lease agreement in terms of which it assigned the management and control of its cable television network to the respondent's predecessor-in-interest. The lease was for a period of three years. At the time of the execution of the lease, the petitioner's network had 1230 subscribers and from each of them it realized Rs.50/- per month as subscription fee, aggregating to the sum of Rs.61,500/-. Under the lease agreement, the petitioner divested itself of all rights and control over its cable network for the period of the lease; full control of the system was handed over to the lease holder with the rights to collect the monthly subscription from all the subscribers and after meeting the overheads, to pay to the petitioner, 50% of the net receipts. The lease holder was also burdened with the obligation to upgrade the system and to bring about technological improvements by making investments of funds.

According to the petitioner, for the period 24.04.2008 to 23.03.2009, the respondent paid to it only the sum of Rs.2,98,214/- with the result that the amount claimed in the petition became due and realizable by the petitioner.

In the petition, *inter alia*, the following reliefs were prayed for:

- (a) "Pass an order directing the respondent to pay the sum of Rs. 23,77,036/- (Twenty three Lacs Seventy Seven thousand and thirty six Only) with pendentialite and further interest at the rate of 18 % per annum on the decretal amount from 23.09.2010 till realization be passed in favour of the petitioner and against the respondent;
- (b) Direct the respondent to handover the network in the area of Khazrana, Indore, Madhya Pradesh, to the petitioner forthwith in good working condition;
- (c) xxxxxxx
- (d) xxxxxxxx"

The respondent denied that it had not shared with the petitioner the amounts collected from the subscribers. According to the respondent, the accounts between the parties were drawn up and fully settled. It also took the plea that the petitioner itself had terminated the agreement and the parties had ceased to have any relationship since July 2009. In any case, the petitioner had come in control of its system and was receiving feed for its network from another MSO, namely, Digi Cable from February 2010.

The respondent's case in regard to the termination of the agreement was disputed by the petitioner. It was stated that after the filing of this petition, the respondent had sought to hand over the petitioner's system back to the petitioner but it had appropriated almost

all the petitioner's subscribers and the network was now a mere shell with no subscribers.

The Tribunal examined the respective cases of the parties in light of the evidences adduced by the two sides in great detail and in the judgment and order dated 12 September 2011, it found and held as under:

"30. The fact that a deed of lease was executed, being not in dispute, it appears that the same was to be under the control of the lessee only."

It further held in paragraphs 47, 48 and 49 as under:

"47. Why the said agreement has not been produced before this Tribunal to show that the details of the subscribers given by the petitioner in these proceedings is difficult to comprehend.

48. It (the respondent) should have produced the original agreement. It should have produced the documents in its power and possession to show that in fact it had been collecting subscription amount only from 700 or 800 or at a later stage only from 500 customers.

It could have in the process shown that the petitioner in violation and/or breach of the covenant of the agreement had been collecting the same amount from its subscribers directly.

An adverse inference, therefore, must be drawn against the respondent that had those documents been produced, the same would have run counter to its contentions.

49. Moreover so far as the stipulations contained in the said agreement dated 24.4.2008 are concerned, no contentions in deviation or departure therefrom can be permitted to be raised. The exceptions provided for in Sections 91 and 92 of the Indian Evidence Act should have been pleaded and proved by the respondent in this regard.

**We, therefore, are of the opinion that the respondent must be held to have been realizing subscriber fee from all the 1230 subscribers.”**

It also held in paragraphs 61, 66, 67 and 72 as under:

“61. According to the respondent the petitioner has been paid the entire amount as stipulated in the agreement. Receipt of payment of a sum of Rs.2,98,000/- is not in dispute. The petitioner also does not dispute that a sum of Rs.1,39,801/- has been paid to Sheikh Sehjad and a sum of Rs.1,45,987/- has been paid to Shri Amir upto February, 2009.

66. The petitioner in the petition has claimed a sum of Rs.23,77,036/-, inter alia, on the premise that the respondent must have realized a sum of Rs.150/- per month per subscriber from all the 1,230 subscribers for the period from 1.5.2008 to 31.4.2009 and 1.5.2009 to 22.2.2010 i.e. at the rate of about Rs.1,84,500/- per month minus the costs and, thus, the amount received by them would come to about Rs.2,98,240/-.

**67. There was absolutely no reason as to why the respondent did not file its books of accounts or other documents. Apart from the fact that it did not file any document along with its reply, it made only certain vague statements in that regard contending:**

“E&F. The contents of paras E & E are wrong and denied. It is denied that the Respondent did not share the details of the amounts collected with the Petitioner or delayed settling the accounts with the Petitioner. As a matter of fact, the accounts between the parties stand drawn and settled. There are no dues from the Respondent to the Petitioner. As a matter of fact, the Petitioner is already running his network by taking feed from a rival MSO. The migration of the Petitioner to the rival MSO was without settling the subscription amounts owed by it to the previous MSO and as such, it was in deliberate and intentional disregard of the provisions of the Interconnect Regulations. The petition does not establish any dues in favour of the Petitioner or any amount whatsoever. The petition is vexatious and filed after dismissal of another petition filed by M/. Raja Cable qua the Respondent. The reply

verily believes that there is a distinct identity between the Petitioner and M/s. Raja Cable and the present petition is a contrivance and the subterfuge adopted by M/s. Raja Cable in connivance with the Petitioner. In fact, the Petitioner and M/s. Raja Cable have engaged in collusive litigation so as to deny the dues to the Respondent and the previous MSO and to abuse the process of law. The Respondent craves leave to refer to and rely on all such documents.”

**72. We, therefore, are of the opinion that the respondent has withheld some vital documents. They are bound to render accounts particularly in view of the fact that they had been continuously collecting the amount from the subscribers.”**

Finally, in conclusion, it made the following directions as contained in paragraphs 80, 81 and 82:

“80. It is also not necessary that the petitioner was obligated to file the first information report so far as taking over its network is concerned. We, however, find some justification subject, of course to the verification thereof that as RW-1 had admitted that the respondent has 1500 subscribers and there are only two operators it is possible that the respondent has taken over all the subscribers of the petitioner which upon termination of the agreement was not permissible in absence of any evidence to show that the subscribers have opted to switch over to the network of the respondent voluntarily.

81. We, therefore, are of the opinion that in the interest of justice a preliminary decree should be passed directing the respondent to render accounts. For the said purpose a Commissioner may be appointed. The parties shall also produce before the learned Commissioner all the documents to show as to whether the respondent had continued to supply signals to the subscribers of the petitioner and if so to what extent.

82. In the event it is found that the subscribers have not voluntarily migrated to the network of the respondent upon termination of the agreement, the amounts which have been collected by the respondent from the said subscribers with reference to the rate of subscription fee should also be computed.”

Pursuant to the Tribunal's judgment, the District Judge, Indore appointed an Advocate-Commissioner who has submitted two reports to the Tribunal. In his first report dated 10 October 2012, it recorded that the respondent refused to produce any accounts or documents before him for his perusal. The relevant extract from the report is as under:

**“Upon discussions with advocate of respondent, Mr. Vikas Nigam relating to producing documents related to the case, if any, it was conveyed after discussing his client's representatives, Mr. Gupta and one other that they do not wish to produce any document.”**

He submitted yet another report after doing a door-to-door survey to ascertain the affiliation of the subscribers which is dated 21 October 2012. From the two reports, it is evident that almost all the petitioner's earlier subscribers are now affiliated with the respondent. Though there is no clear and pointed finding, the report of the Advocate-Commissioner suggests that a situation was created by the respondent where the individual subscribers were left with no option but to transfer their affiliation to the respondent which is clearly in breach of the terms of the lease agreement.

The respondent's refusal to produce any books of account or any other document before the Advocate-Commissioner completely defeated the object and purpose of the inquiry entrusted by the Tribunal to him.

Mr. G.T. Rao, counsel for the respondent/judgment debtor submitted that the Advocate-Commissioner's report was liable to be rejected as it failed to quantify the amount, if any, payable by the respondent. We see no substance in the submission. Having declined to produce any books of accounts or any document before the Advocate-Commissioner, it is no longer open to the respondent to criticize the report on the ground that it did not quantify the petitioner's dues against the respondent. Mr. Rao further submitted that the lease agreement between the parties was terminated and the petitioner was operating its network and was taking feed for its network from another MSO since February 2010. This issue has already been dealt with and the finding recorded against the petitioner in the main judgment dated 12 September 2011 and the respondent cannot be permitted to reopen this aspect of the matter all over again.

On hearing counsel for the parties, we find no merit in the Objections raised by the respondent against the Advocate-Commissioner's report and we hereby uphold and confirm the report submitted by the Advocate-Commissioner.

For the reasons discussed above we uphold the petitioner's claim that it had dues against the respondent amounting to Rs.23,77,036/- as on 23 September 2010.



If interest is to be added even at the modest rate of 10% per annum, the amount of interest from 24 September 2010 would amount to Rs.11,44,751/-. The petitioner is thus entitled to a sum of Rs.35,21,787/-.

The office is directed to prepare the final decree accordingly.

It will be open to the petitioner to withdraw the sum of Rs.35,21,787/- from the deposit made by the respondent in pursuance of the previous order. The balance amount may be refunded to the respondent.

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**(Aftab Alam)**  
**Chairperson**

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

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