

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

Dated 10th October, 2014

Petition No. 14(C) of 2014

MSM Discovery Pvt. Ltd., Gurgaon, Haryana ... Petitioner
Versus
So Lucky Cable Network, Khambha, Gujarat ... Respondent

BEFORE:

HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON

HON'BLE MR. KULDIP SINGH, MEMBER

For Petitioner : Mr. Azmat Amanullah, Advocate

For Respondents : None

O R D E R

Kuldip Singh :

The petitioner, M/s MSM Discovery Pvt. Ltd., is a Distributor of channels. It has filed this petition against the respondent, So Lucky Cable Network- Khambha, who is a Multi System Operator (MSO) as contemplated under the TRAI Regulations, for recovery of Rs. 4,76,266/- as dues of monthly subscription fees as on 25 September, 2013. The respondent did not appear despite service of notice and hence, the petition has proceeded against it *ex parte*.

2. According to the petitioner, the respondent had entered into a subscription agreement with it on 08.10.2012 for the period 1.1.2012 to 31.12.2012 vide which the petitioner was to retransmit the signals of the petitioner's channels in the areas as defined in the agreement. For this, the respondent was to pay it a monthly subscription of Rs. 42,500/-(exclusive of taxes). The subscription fees were to be paid in advance by the 15th of every month and for overdue payments beyond 10 days from the due date, interest @ 18% was to be paid. Petitioner has been raising timely invoices on the respondent in terms of the agreement but the respondent has been continuously defaulting in paying the dues.

As per the petitioner, when even after several requests made to the respondent its dues were not cleared, it served a notice on the respondent under clause 4.1 of the interconnect regulations on 1.9.2013 and finally deactivated its signals on 25.9.2013 as it received no response from the respondent.

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

4. The petitioner submitted evidence by way of affidavit of Mr. Farid F Koradia, ASM of the petitioner company, and produced the witness for examination. The witness identified the affiliation agreement executed between the parties as Exhibit P-1 (colly), copies of the invoices raised by the petitioner as Exhibit P-2, copies of notices issued under clause 4.3 and 4.1 of the regulations as Exhibits P-3 and P-4, copy of the statement of account as Exhibit P-5, and the copy of legal notice dated 14.10.2013 as exhibit P-6.

5. Though the agreement between the parties came to an end on 31.12.2012, the petitioner kept raising invoices on the respondent till September, 2013. There is nothing in the pleadings to show that the supply of signals to the respondent beyond the expiry of the agreement was on

the request of the respondent or it was retransmitting the signals of the petitioner. The amount for which invoices were raised on the respondent beyond 31.12.2012 comes to Rs. 4,20,226/- as per SOA (1.1.2013 to 24.9.2013 @ Rs. 47753/- per month). After accounting for this, the balance outstanding as per the SOA is Rs. 56,040/-

6. As per clause 2.5 of the agreement between the parties, for overdue payments beyond 10 days of the due date, an interest @ 18 % is to be paid. The clause is as under:

"2.5 The time within which Affiliate shall be required to make payments in accordance with the terms hereof is of essence of this Agreement and any failure to do so on the part of Affiliate shall constitute a Material Breach hereunder. In addition to any other rights Distributor may have in the event of such a default, Affiliate agrees to pay interest to distributor on any sums which remain unpaid after 10 days following the date on which they are due and payable. Such interest shall accrue from said due date and shall be payable at a rate 18 % per annum for the entire period during which the default continues. Affiliate shall be liable for all reasonable legal costs and expenses incurred by Distributor in collecting any past due amounts."

7. The petition is allowed for a sum of Rs. 56,040/- The office is directed to make a decree for the same. The amount will be receivable by the petitioner along with interest @ 18% per annum (as provided in the agreement) from 25.9.2013 till 16 January 2014, the date of filing the petition before the Tribunal. The decretal amount shall further carry interest

@ 9% per annum from the date of filing of the petition till realization of the decretal amount.

There will be no order as to costs.

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(Aftab Alam)
Chairperson

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(Kuldip Singh)
Member

