

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

Dated 15th October, 2014

Petition No. 126(C) of 2014

Noida Software Technology Park, Ltd., New Delhi ...Petitioner

Vs.

Sindhi Kachchhi Entertainment Corporation Ltd., Gujarat ...Respondent

BEFORE:

HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON

HON'BLE MR. KULDIP SINGH, MEMBER

For Petitioner : Mr. Joby P. Verghese, Advocate

For Respondent : None

ORDER

Kuldip Singh : This is a recovery petition for a sum of Rs.31,66,395/- for dues towards up linking facilities and play out services provided by the petitioner for the respondent's channel "S.K. TV".

2. The petitioner is a company incorporated under the Companies Act, 1956 and is engaged in the business of providing up linking facility and transponder service to the broadcasters. The respondent is in the business of broadcasting TV channels. The respondent did not appear despite service of notice and hence the petition is proceeded against it ex-parte.

3. According to the petitioner, the respondent had entered into an agreement with it on 10.09.2010 vide which the petitioner was to provide up linking facility and transponder services on INSAT-4A satellite to the respondent's channel named as 'S.K. TV' from the petitioner's Earth station located at Greater Noida. For this, the respondent was to pay a sum of Rs.5.00 lakh per month in terms of the agreement. Further, for availing the play out services at the facility of the petitioner company, respondent was to pay an additional amount of Rs.3.00 lakhs per month plus taxes which amount was subsequently reduced to Rs.2.00 lakhs w.e.f. May, 2011 and further to Rs. 1.75 lakhs from June, 2011(exclusive of taxes) .

4. As per the petitioner, it had to remind the respondent on several occasions of his obligations to make the payments and despite reminders when the respondent failed to clear the outstanding amount, the petitioner issued notices dated 30.11.2012 and 23.03.2013 asking the respondent to clear the outstanding amount. Again vide letter dated 22.05.2013 another notice was issued. When the respondent failed to clear the outstanding amount due to the tune of Rs.31,66,395/-, the services to the respondent were disconnected on 07.06.2013.

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

6. The petitioner submitted evidence by way of affidavit of Mr. Rajeev Singh Rawat, Senior Executive – Scheduling and Billing. The witness

exhibited copy of the agreement as Exhibit PW-2, copy of letter dated 30.11.2012 as Exhibit PW-3 and letters dated 23.03.2013 and 22.05.2013 as Exhibit PW-4 (Colly). The witness also exhibited a copy of statement of account as Exhibit PW-8. The witness confirmed that on the failure of the respondent to clear the outstanding dues, the services were disconnected since 07.06.2013.

The statement of the witness in this regard is as under:-

“13. I say that despite requests and reminders when the Respondent company failed to clear the outstanding amounts due to the tune of Rs.31,66,395.00/- (Rupees Thirty One Lakhs Sixty Six Thousand Three Hundred Ninety Five Only), the petitioner company herein was constrained to disconnect the services since 07.06.2013.”

7. The agreement dated 10.09.2010 between the parties was for a term of three years. the agreement provided for the termination of the same in case the respondent failed to make payment of any amount under the same and such amount remained unpaid for a period of 15 days from the due date.

The relevant clauses are as under:-

“Clause 6.1 Term of Agreement

This Agreement shall become operative from the date of

this Agreement and shall continue for the period of three years, unless terminated by either party hereto in accordance with the provisions of this agreement hereof or extended through mutual agreement in writing. However, the effective date for services provided under this agreement by NSTPL and payment of service charges provided under this agreement by Broadcaster and payment of service charges thereof shall be as per Clause 3.4 and Annexure A of this Agreement.”

“Clause 6.2.4: NSTPL shall have the option of immediately terminating this Agreement in the event customer fails to make payment of any amount due under this Agreement within this stipulated time period remaining outstanding and unpaid for more than a period of fifteen days from the due date. In such event, the Customer shall immediately become liable to pay to NSTPL all outstanding dues besides charges for unexpired period of this agreement as provided in Clause 6.2 above.”

8. Appendix ‘A’ to the agreement provides the payment schedule as under:-

“Appendix A : Payment Schedule

This Appendix is made part of agreement dated 10th

September 2010, by and between NSTPL and Broadcaster.

- 1. The Security Deposit of one month shall be a form of DD/cheque in favour “Noida Software Technology Park Limited” payable at New Delhi equivalent of Rs.5,00,000/- (Rupees Five Lacs only) before one month of commencing/providing the MCPC uplink facility.*
- 2. The charges shall be Rs.5,00,000/- (Rupees Five Lacs Only) per month payable monthly in advance.*
- 3. Rs.2,00,000/- (Rupees Two Lakh Only) per channel will be paid as advance towards the uplink charges and will be adjusted in first month billing.*
- 4. Broadcasters have to pay Rs.3,00,000/- (Rupees Three lakhs Only) plus taxes per month for playout service at NSTPL teleport, Greater Noida.*
- 5. The Uplink facility from NSTPL will depend on the space segment availability on INSAT 4A at the time of launching of Channel.*
- 6. Broadcaster shall be responsible to pay License and Royalty fee as applicable (Radio Spectrum).*
- 7. Broadcaster shall be responsible to pay additional charges to NSTPL for:
 - a. Communication charges such as Telephone, Fax and E-mail, etc.”**

Clause 3.2 of the agreement provides for payment of interest @ 2 per cent per month on or due payments. The Clause is as under:-

“Clause 3.2- Notwithstanding anything to the contrary indicated in the bill or Invoice, any amount owned by the customer to NSTPL which is not paid on its due date or earlier shall bear interest at the rate of (2%) per month calculated on a daily basis from the date on which such amount was first due, till the amount is paid, besides intimating default in payment of any outstanding charges to Various concerned Government authorities.”

9. As per the statement of account (Exhibit PW-8) total amount outstanding as on 30.06.2013 is Rs.31,66,395/-. After adjusting the security deposit of Rs. 8.00 lakh, the net recoverable amount comes to Rs.23,66,395/-.

10. In view of the aforesaid facts and circumstance of the case, the petition is allowed for a sum of Rs. 31,66,395/-. The petitioner shall adjust security of Rs. 8,00,000/- available with it against this and the balance amount of Rs.23,66,395/- shall be paid by the respondent along with interest @ 24 per cent per annum (in terms of the agreement) from 01.07.2013 till the date of filing of the petition before the Tribunal.

The office is directed to make a decree for the same.

The decretal amount shall further carry an interest @ 9 per cent per annum from the date of filing of the petition till realization of the same.

There will be no order as to costs.

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(Aftab Alam)
Chairperson

.....
(Kuldip Singh)
Member

HKC/08.10.2014