

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

Dated 15th December, 2015

Petition No22(C) of 2014

MSM Discovery Pvt. Ltd.Petitioner

Versus

S.R. Cable TV Pvt. Ltd.Respondent

BEFORE:

HON'BLE MR.JUSTICE AFTAB ALAM, CHAIRPERSON

HON'BLE MR. KULDIP SINGH, MEMBER

HON'BLE MR. BIPIN BIHARI SRIVASTAVA, MEMBER

For Petitioner : Mr. Nittin Bhatia, Advocate

For Respondent : None

ORDER

By Aftab Alam, Chairperson – The petitioner, MSM Discovery Pvt. Ltd. (MSM) is a broadcaster of TV channels and also a distributor acting on behalf of a number of other broadcasters. It has filed this petition for recovery of the alleged dues of subscription fees amounting to Rs.8,24,142/- along with interest @ 18% per annum till the date of payment from the respondent, S.R. Cable TV Pvt. Ltd. which is a multi-system operator, and which according to MSM, retransmitted the signals of TV channels received from MSM.

It is the case of MSM that the respondent executed an interconnect agreement with it on 28.11.2011. The agreement was for the period 01.01.2011

to 31.12.2011. And in terms of the agreement MSM was to supply to the respondent, the TV channels controlled by it on behalf of its principal broadcasters on payment of Rs.1,25,589/- as the monthly subscription fee. It is further the case of MSM that it supplied the TV channels to the respondent in terms of the agreement and regularly raised invoices for payment of the monthly subscription fee. The respondent, however, defaulted in payments as a result of which dues accumulated. Finally, on 17.12.2012 MSM discontinued the supply of its signals to the respondent. MSM sent reminders and legal notice demanding the payment of its dues but as no payment was made by the respondent, it finally filed the present petition for recovery of its dues as on the date of filing of the petition (27.01.2014).

Despite service of notice, the respondent did not appear and consequently the petition has proceeded *ex parte*.

The first thing to notice in the case is that the interconnect agreement between the parties came to end on 31.12.2011. Nonetheless, the claim of MSM for supply of signals to the respondent goes up to 17.12.2012 on which date, according to its case, it discontinued the supply of signals to the respondent.

In support of its case, MSM has examined one Mr. Sameer Kukreja who was the Senior Manager in the company. In his deposition, he said what is stated in the petition. He also formally proved the agreement, the invoices, the demand notices, the legal notice and the statement of account which were marked as exhibits.

On hearing Mr. Nittin Bhatia, counsel for MSM and on going through the pleadings and the evidence adduced by MSM, we are unable to see how the claim of MSM can be upheld. MSM would indeed be entitled to recover any dues pertaining to the period of the agreement that came to end on 31.12.2011 but it is not the case that the dues pertain to that period, nor from the statement of account it is discernable whether or not there were any dues on the date the agreement came to end. The dues clearly pertain to the period beyond the agreement.

In this regard, it needs to be noted that clause 4A (introduced with effect from 17.03.2009) of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulations, 2004 (Regulations) prohibits a broadcaster or a distributor of TV channels to make available signals of TV channels to any distributor without entering into a written interconnect agreement. Clause 4A of the Regulations is as under:

“4A.1 It shall be mandatory for the broadcasters of pay channels and distributors of TV channels to reduce the terms and conditions of all their interconnection agreements to writing.

4A.2 No broadcaster of pay channels or distributor of TV channels, such as multi system operator or head/end in the sky operator, shall make available signals of TV channels to any distributor of TV channels without entering into a written interconnection agreement.

4A.3 Nothing contained in Regulation 4A.1 or 4A.2 shall apply to any supply of signals or continuance of supply of signals of TV channels by a broadcaster or distributor of TV channels, such as multi system operator or head/end in the sky operator, in pursuance of or in compliance with any order or direction or judgment of any court or tribunal, including any order or direction or judgment of any court or tribunal on any proceeding pending before such court or tribunal.

4A.4 It shall be the responsibility of every broadcaster of pay channels who enters into an interconnection agreement with a distributor of TV channels to hand over a copy a signed interconnection agreement to such distributor of TV channels and obtain an acknowledgement in this regard within a period of 15 days from the date of execution of the agreement and, similarly, it shall be the responsibility of every multi system operator or head/end in the sky operator, as the case may be, who enters into an interconnection agreement with a cable operator to hand over a copy of signed interconnection agreement to such cable operator and obtain an acknowledgement in this regard within a period of 15 days from the date of execution of the agreement.”

The alleged supply of signals by MSM to the respondent after the expiry of the interconnect agreement was plainly in contravention of the statutory Regulations. Having acted in breach of the Regulations, it cannot seek the help of the judicial process and realise its dues through the process of court.

In view of the discussions made above, we come to the conclusion that MSM is not entitled to the relief claimed by it. The petition is dismissed with cost of Rs.5,000/- payable to the TDSAT Employees Welfare Society. A receipt showing the payment shall be filed within one month from the date of this order.

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(Aftab Alam)
Chairperson

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(Kuldip Singh)
Member

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(B.B. Srivastava)
Member