

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

Dated 10th December, 2015

Petition No. 60 (C) of 2014

Media Pro Enterprise India Pvt. Ltd., Mumbai ...Petitioner

Versus

Bhusawal Network, Maharashtra ...Respondent

Petition No. 61 (C) of 2014

Media Pro Enterprise India Pvt. Ltd., Mumbai ... Petitioner

Versus

S.M. Advertising Pvt. Ltd., Maharashtra ...Respondent

Petition No. 62 (C) of 2014

Media Pro Enterprise India Pvt. Ltd., Mumbai ...Petitioner

Versus

Narmada Cable Service, Gujarat ...Respondent

Petition No. 63 (C) of 2014

Media Pro Enterprise India Pvt. Ltd., Mumbai ...Petitioner

Versus

Rathore Network Pvt. Ltd., Rajasthan ...Respondent

Petition No. 76 (C) of 2014

Media Pro Enterprise India Pvt. Ltd., Mumbai ...Petitioner
Versus

Five Star Network, Gujarat ...Respondent

Petition No. 77 (C) of 2014

Media Pro Enterprise India Pvt. Ltd., Mumbai ... Petitioner
Versus

Nileshwar Cable TV Network, Kerala ...Respondent

Petition No. 78 (C) of 2014

Media Pro Enterprise India Pvt. Ltd., Mumbai ...Petitioner
Versus

Tara Cable Network, Maharashtra ...Respondent

Petition No. 91 (C) of 2014

Media Pro Enterprise India Pvt. Ltd., Mumbai ...Petitioner
Versus

H.R. Entertainment, Maharashtra ...Respondent

Petition No. 92 (C) of 2014

Media Pro Enterprise India Pvt. Ltd., Mumbai ...Petitioner
Versus

Star Marketing, Gujarat ...Respondent

Petition No. 94 (C) of 2014

Media Pro Enterprise India Pvt. Ltd., Mumbai ...Petitioner

Versus

Apna In Cable Broad Band Services Pvt. Ltd., A.P. ...Respondent

Petition No. 95 (C) of 2014

Media Pro Enterprise India Pvt. Ltd., Mumbai ...Petitioner

Versus

Anjali Cable Network, Gujarat ...Respondent

Petition No. 180 (C) of 2014

M/s Media Pro Enterprise India Pvt. Ltd., Mumbai ...Petitioner

Vs.

M/s Nandgaon Cable Network, Chhattisgarh ...Respondent

Petition No. 182 (C) of 2014

M/s Media Pro Enterprise India Pvt. Ltd. Mumbai ...Petitioner

Vs.

M/s Jai Santoshi Maa, Gujarat ...Respondent

Petition No. 200 (C) of 2014

M/s Media Pro Enterprise India Pvt. Ltd. Mumbai ...Petitioner

Vs.

Haridwar Cable Network ...Respondent

BEFORE:

HON'BLE MR. JUSTICE AFTAB ALAM, CHAIPERSON
HON'BLE DR. KULDIP SINGH, MEMBER

For Petitioner : Mr. Upender Thakur, Advocate

For Respondents : None

ORDER

M/s Media Pro Enterprise India Pvt. Ltd., the petitioner, at the material time, used to be the agent and intermediary of several broadcasters, including M/s Zee Turner Ltd. (Zee) and M/s Star DEN Media Services Pvt. Ltd. (Star DEN) on the basis of agreements executed with the broadcasters. According to the averment made in the petition, it started its operations as their agent in July 2011. Before that the channels of the aforesaid two broadcasters were given to the distributors on the basis of agreements executed by the broadcasters themselves.

It has filed this batch of 14 petitions, each against a cable operator from whom the petitioner seeks recovery of different sums of money as dues of monthly subscription fees.

According to the petitioner, the 14 respondents (local cable operators) were receiving the signals from Zee and Star Den on the basis of agreements executed with them on different dates, on payment of different sums of money as subscription fees in terms of their respective agreements.

It is further the case of the petitioner that on the basis of agreements executed with the broadcasters, it took over the control and distribution of their channels and was also authorized by its principals to collect their outstanding dues from all the distributors, including the present respondents.

According to the petitioner, after assuming the role of agent and intermediary, it raised invoices against the respondents for payment of monthly subscription fees as also the past dues of the principal broadcasters. The respondents, however, failed to make payments against the invoices and as a result dues accumulated against all the respondents and for recovery of those amounts this batch of petition is filed.

None of the 14 cable operators, respondents in this batch of petitions, appeared despite service of notice. Hence, all the petitions in the batch were proceeded with *ex parte*.

As all the 14 cases are based on similar facts, with the exception of the amounts of money claimed and the date of disconnection of signals, all the 14 petitions were heard together and are being disposed of by this common order.

For the sake of convenience, the relevant facts pertaining to the 14 petitions are arranged in a tabular form which is reproduced below:

S N	Pet. No.	Name of Respondent	Nature of dues	Date of Agreement	Period of the agreement	Amount due (Rs.)/As on	rate of interest on amount claimed	Date of disconnection of signals	Invoices and Statement of Account - PG no.	Witness deposition- Pg no.
1	2	3	4	5	6	7	8	9	10	11
1	60(C) of 2014	Bhusawal Network, Maharashtra	Subs. fee	20.05.10 (Zee Turner) and 26.06.09(Star Den)	01.04.2010-31.03.2011 (Zee Turner Page 9) 01.01.2009-31.12.2009 (Star Den, Pg. 20)	18,20,952.86/- As on 02/11/12	18%	23.05.12	52-55	Amiya Ranjan Pati (pg. no. 2, Para 5)
2	61 (C) of 2014	S.M Advertising, Pune.	Subs. fee	01.06.10 (Zee Turner) and 08.12.10(Star Den)	01.04.2010-31.03.2011 (Zee Turner Pg. 9) 01.01.2010-31.12.2010 (Star Den, Pg. 19)	15,76,952.64/- As on 02/11/12	18%	18.06.12	57 – 66	Amiya Ranjan Pati (pg. no. 2, Para 5)
3	62 (C) of 2014	Narmada Cable Service (Vadodra)	Subs. fee	01.06.09 (Star Den)	01.01.2009-31.12.2009 (Star Den, Pg. 10)	15,91,065.66/- As on 02/11/12	18%	17.04.12	41- 43	Amiya RanjanPati (pg. no. 2, Para 4)
4	63 (C) of 2014	Rathore Network Pvt. Ltd.	Subs. fee	15.04.11 (Star Den)	15.04.2011-31.12.2011 (Star Den, Pg. 10)	6,47,392.38/- As on 02/11/12	18%	17.04.12	35 – 38	Amiya RanjanPati (pg. no. 2, Para 4)
5	76 (C) of 2014	Five Star Network (Vadodra)	Subs. fee	09.04.11 (Star Den)	01.01.2011-31.12.2011 (Star Den, Pg.10)	5,68,407.73/- As on 02/11/12	18%	17.04.12	36-43	Amiya RanjanPati (pg. no. 2, Para 4)
6	77 (C) of 2014	Nileshwar Cable TV Network (Kasaragod)	Subs. fee	19.05.09 (Star Den)	01.01.2009-31.12.2009 (Star Den, Pg.10)	6,66,362.79/- As on 02/11/12	18%	23.05.12	42- 43	Amiya RanjanPati (pg. no. 2, Para 4)
7	78 (C) of 2014	Tara Cable Network, Satara	Subs. fee	10.08.10 (Star Den)	01.01.2010-31.12.2010 (Star Den, Pg.9)	6,24,762.63/- As on 02/11/12	18%	19.04.12	42 – 45	Amiya RanjanPati (pg. no. 2, Para 4)

8	91 (C) of 2014	H.R Entertainment, Satara	Subs. fee	18.08.10(Star Den)	01.01.2010-31.12.2010 (Star Den, Pg. 9)	6,10,377.30/- As on 02/11/12	18%	25.05.12	44 –47	Amiya RanjanPati (pg. no. 2 Para 4)
9	92 (C) of 2014	Star Marketing Gujarat	Subs. fee	19.07.10 (Zee Turner)	01.04.2010-31.03.2011 (Zee Turner Pg.9)	9,75,118.09/- As on 02/11/12	18%	21.05.12	31- 34	Amiya RanjanPati (pg. no. 2 Para 4)
10	94 (C) of 2014	Apna In Cable Broadband Nizamabad	Subs. fee	01.02.11(Zee Turner) 15.02.11 (Star Den)	01.02.2011-31.03.2011 (Zee Turner Pg.9) 01.01.2011-31.12.2011 (Star Den, Pg.21A)	47,83,930.39 As on 02/11/12	18%	21.05.12	47– 63	Amiya RanjanPati (pg. no. 2 Para 4)
11	95 (C) of 2014	Anjali Cable Network Kutch	Subs. fee	18.12.10 (Zee Turner) 11.06.10 (Star Den)	01.04.2011-31.03.2011 (Zee Turner Pg.10) 01.01.2010-31.12.2010 (Star Den, Pg. 22A)	9,35,820.88/- As on 02/11/12	18%	17.04.12	48– 58	Amiya RanjanPati (pg. no. 2 Para 4)
12	180 (C) of 2014	Nandgaon Cable Network	Subs. fee	16.04.11 (Star Den)	01.01.2011-31.12.2011 (Star Den, Pg.11)	19,96,226/- As on 18.12.12	18%	18.12.12	56 – 73	Amiya RanjanPati (pg. no. 2 Para 4)
13	182 (C) of 2014	Jai SantoshiMaa	Subs. fee	25.06.10 (Star Den) 29.04.10 (Zee Turner)	01.01.2010 to 31.12.2010 (Star Den,Pg.10) 01.04.2010-31.03.2011 (Zee Turner, Pg. 33)	31,38,666/- As on 30.09.11	18%	19.04.13	108–154	Amiya RanjanPati (pg. no. 2 Para 4)
14	200 (C) of 2014	Haridwar Cable Network	Subs. fee	11.05.11 (Star Den)	01.01.2011 to 31.12.2011 (Star Den, Pg. 11)	31,79,427/- As on 30.09.11	18%	31.10.12	51 – 53	Amiya RanjanPati (pg. no. 2 Para 4)

The petitioner has claimed the amounts due along with interest @ 18% from the date the amount became due till the date of the filing of the petition.

It may be seen from the above table that in all cases the subscription agreement had come to end before the petitioner Media Pro stepped into the shoes of the agent and the intermediary of the broadcasters. It may also be seen that

according to its case, the supply of signals to the respondents continued for many months even after the agreements had come to end. It is interesting to note that in all the 14 cases, similar statements are made in paragraphs 5 and 7 of the petition to the following effect:

“.....the petitioner continued to supply signals to the respondent till 17.04.2012 (in each case the date is mentioned as per the date of disconnection of signals). It is submitted that the respondent despite receiving the signals of TV Channels from the petitioner failed to clear all the outstanding dues.....”

Further

.....that the respondent even after receiving the aforesaid invoices has failed to clear outstanding due to the petitioner to the tune of(in each case the amount of the due claim is mentioned).....”

Similarly, the witness examined by the petitioner made the identical statement in all cases as under:

“I state that despite expiry of the aforesaid subscription agreement(s), the respondent continued to avail petitioner’s TV channel signals even thereafter up to May, 2012. The petitioner time and again requested the respondent to renew the aforesaid expired agreement(s) but however, respondent delayed the said execution on one pretext or other. In view of that, petitioner continued to raise invoices upon the respondent in terms of the earlier agreement(s) and the same was done only on the assurances of the respondent to abide therewith. I state that the Respondent enjoyed continuous and uninterrupted supply of the Petitioner’s TV Channel Signals till May 2012. The TV channel signals accordingly continued to be retransmitted by the respondent to its subscribers until May 2012. The said retransmission by the respondent to its subscribers has been duly verified and corroborated by the petitioner through ground verification conducted from time to time and as recent as on April/May 2012.”

In all the cases the petitioner has enclosed copies of some invoices and the statements of account. The first invoice in every case is for the period 1 July to 31 July 2011. It shows Nil previous outstanding but in the subsequent invoices, the amount in the previous invoice is shown as ‘previous period outstanding’. The statement of account also commences from August 2011. There is thus no material to show as to what, if any, were the dues against the respondents on the date their respective agreements came to end.

As to the case of the petitioner that it continued to supply signals to the respondents for many months even after the period of the agreement was long over, it is difficult to accept both on facts and in view of the mandate of the Regulations. It may be noted that clause 4A that was introduced in the Telecommunication (Broadcasting and Cable Services) Interconnect Regulations, 2004 with effect from 17 March 2009 provides as under:

“4A. Interconnection Agreements to be in writing.

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 headend 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 regulations 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 headend 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 of 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 headend 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 averment of the petitioner is thus directly in teeth of the clear directive of the Regulations.

As noted above, there is no material on record even to show what were the dues, if any, of the respondents on the date their respective agreements came to end.

Furthermore, in a number of cases in this batch [e.g. Petition No.61(C)/2015, 77(C)/2014 and 78(C)/2014], the petitioner’s claim is plainly barred by limitation.

For the reasons discussed above, we are satisfied that in none of the cases in the batch, the claim of the petitioner is fit to be allowed. All the petitions are

accordingly dismissed with costs @ Rs.5,000/- per petition payable to the TDSAT Employees' Welfare Society. A receipt showing payment of the cost should be filed in the Registry within a month from the date of the judgment.

.....
(Aftab Alam)
Chairperson

.....
(Kuldip Singh)
Member

sks