

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

Dated 15th December, 2015

Petition No.349(C) of 2014

India Cast UTV Media Distribution 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**

For Petitioner : Mr. Kunal Tandon, Advocate

For Respondent : None

ORDER

By Aftab Alam, Chairperson – The petitioner, India Cast UTV Media Distribution Pvt. Ltd. (India Cast) is a distributor acting on behalf of a number of broadcasters. It has filed this petition for recovery of the alleged dues of subscription fees amounting to Rs.3,01,778.76p along with interest @ 18% till the realisation of the amount from the respondent, S.R. Cable TV Pvt. Ltd. which

is a multi-system operator, and which according to India Cast, retransmitted the signals of TV channels received from India Cast.

It is the case of India Cast that the respondent executed an interconnect agreement with it on 01.06.2011. The agreement was for the period 01.04.2011 to 31.03.2012. And in terms of the agreement India Cast was to supply to the respondent, the TV channels controlled by it on behalf of its principal broadcasters on payment of Rs.21,00,008/- as the monthly subscription fee. It is further the case of India Cast 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 01.08.2014 India Cast discontinued the supply of its signals to the respondent. India Cast 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 (05.08.2014).

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 31.03.2012. Nonetheless, the claim of India Cast for supply of signals to the respondent goes upto 01.08.2014 on which date, according to its case, it discontinued the supply of signals to the respondent.

Perhaps realising this gap and the lacuna an application was filed (M.A.No.54 of 2015) for amendment of the petition which was allowed by order dated 23.02.2015. By the amendment application, India Cast prayed for making some additions in paragraphs 5 and 12 of the original petition.

Paragraph 5 of the original petition was as follows:

“That pursuant to the Subscription Agreement for the year 2011-2012, the Respondent was required to pay an amount of Rs.25,20,096/- exclusive of taxes annually towards the subscription fee calculated on the basis of the said Subscription Agreement for 12 months. It is stated that all invoices were raised by the Petitioner in accordance with the Interconnect Regulations, and were duly received by the Respondent at its office at the address mentioned hereinabove. Copies of the invoices raised by the Petitioner are annexed herewith and attached as **ANNEXURE P-2(Colly).**”

To which the following addition was made:

“That the Respondent on several occasions requested the Petitioner to continue to provide the signals even after the expiry of the previous agreement and gave the oral assurances that the fresh agreements will be executed between the parties. The parties were negotiating for the renewal of the agreement and basis the negotiation process, the Petitioner continued to provide the signals.”

Similarly, paragraph 12 of the original petition was as follows:

“That the illegal and unlawful acts of the Respondent of deliberately not paying the outstanding dues as per the terms of the Subscription Agreement have caused immense loss to the Petitioner. The Petitioner is legally entitled to the aforementioned outstanding amount for the signals supplied and the Respondent may be ordered accordingly.”

To which the following addition was made:

“That even otherwise the Respondents are also bound by law and is liable under Section 73 of the Indian Contract Act, 1872 to restitute and compensate the Petitioner for receiving the services from the Petitioner, continuously and uninterrupted. Hence, the payment at the market rate is also payable in terms hereof by the Respondent No.1.”

In support of its case, India Cast has examined one Ms. Prakriti Sharma who was the Manager (Legal) in the company. In her deposition, she said what is stated in the petition. She 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. Kunal Tandon, counsel for India Cast and on going through the pleadings and the evidence adduced by India Cast, we are unable to see how the amendment introduced in the pleadings and the deposition of its witness can help its case. India Cast would indeed be entitled to recover any dues pertaining to the period of the agreement that came to end on 31.03.2012 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 support of the claim, it is stated that the respondent on several occasions requested India Cast to continue to provide signals even after the expiry of the previous agreement and gave oral assurances that the fresh agreements will be executed between the parties. Further that the parties were negotiating for the renewal of agreement and while the negotiation process was going on India Cast continued to provide signals to the respondent.

In this regard, it needs to be noted that clause 8 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulations, 2004 (Regulations) provides for the maximum period of three months for negotiations for renewal of existing agreements and clause 4A (introduced in the Regulations with effect from 17.03.2009) 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.”

Mr. Tandon relied upon sections 70 and 73 of the Contract Act. In our view, the reliance is quite misconceived in view of the second part of section 10 of the Contract Act.

The alleged supply of signals by India Cast 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 India Cast 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