

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

Dated 10th December, 2015

Petition No. 636(C) of 2015

Manthan Broadband Services Pvt. Ltd. ... Petitioner

Versus

MSM Media Distribution Pvt. Ltd. & Ors. ... Respondents

BEFORE:

HON'BLE DR. KULDIP SINGH, MEMBER

HON'BLE MR.B.B.SRIVASTAVA, MEMBER

For Petitioner : Mr. Navin Chawla, Advocate
Ms. Nidhi Mohan Parashar, Advocate
Mr. Anurup Narula, Advocate

For Respondent : Mr. Ramji Srinivasan, Senior Advocate
Mr. Abhishek Malhotra, Advocate
Mr. Angad Singh Duggal, Advocate

ORDER

Heard Mr. Navin Chawla, learned counsel for the petitioner and Mr. Ramji Srinivasan, learned senior counsel appearing for the respondent on the issue of interim prayer.

In terms of the notices issued under regulation 6(i) of DAS Regulations, 2012, the petitioner has to pay the respondent for subscription fees as under :

MSM O/s for Kolkata as per notice dated 29.10.2015	Rs. 4,04,53,536/-
MSM O/s for Ranchi as per notice dated 5.11.2015	Rs. 55,60,609/-

TV Today o/s for Ranchi as per notice dated 5.11.2015	Rs. 1,12,395/-
TV Today o/s for Kolkata as per invoice dated 1.10.2015	Rs. 8,20,680/-

Mr. Chawla submitted that as per understanding between the parties, the petitioner was getting a credit period of two months for payment of subscription dues. He further submitted that as per the invoices issued by the petitioner, the respondent owes a sum of Rs. 4.73 crores as on October 2015 towards placement charges of the channels of the respondent. As per him, after netting off the placement charges, it is the respondent who has to pay an amount of Rs. 1.58 crores to the petitioner.

Mr. Chawla referred to minutes of meeting between the parties held on 11/13 August as per which the respondent admitted placement charges of Rs. 2.97 crores till July, 2015.

Mr. Srinivasan, learned senior counsel, however, submitted that there is no netting off clause in the subscription agreement for adjusting subscription fees against placement charges and in any case the agreement for placement had expired on 31.3.2015 and therefore, the petitioner cannot claim any placement charges in the absence of any such agreement. He further submitted that the minutes of meeting dated 11/13 August 2015 were part of a negotiation process and cannot be relied upon in the absence of a concluded agreement.

We may note that the subscription agreement between the parties expired on 31.3.2015 by efflux of time and no fresh agreement has been signed till date.

In terms of the regulations, three months period after expiry of the existing agreement is permitted to enable the parties to negotiate and arrive at a fresh agreement. During this period, the terms of the old agreement are applicable but when the fresh agreement is signed, the same have to abide by the terms of the new agreement.

Clause 5.16 of the said regulation in this regard is as under :

“(16) Every service provider shall enter into a new agreement before the expiry of the existing agreement and in case the service provider fails to enter into the new agreement before the expiry of the said agreement, the provisions of the existing agreement shall continue to apply till the new agreement is entered into between the service providers or for the next three months from the date of expiry of existing agreement, whichever is earlier and if the service providers are able to enter into an agreement before the expiry of the said three months, the new agreement shall apply from the date of expiry of earlier agreement:

Provided that if service providers are not able to enter into a new agreement, they may be entitled to disconnect the signals of TV Channels by giving three weeks notice published in two local newspapers, out of which one shall be published in the newspaper of the regional language of the area for which the said agreement is applicable.”

Since the parties have not been able to come to any agreement even after three months, in our view, if the petitioner wishes to continue with the signals of the respondent, it must clear the outstanding amount of

subscription dues as per old agreement. With regard to the credit period, we note that not only the agreement is not in subsistence but dues have also accumulated over a period of time.

Further, since the subscription fee and placement charges are governed by two separate agreements, which are not even subsisting as on date, in our view, the petitioner cannot insist on adjustment of placement fees against the dues of license fee.

In view of the above and in the facts of the present case, we direct that the respondent shall not give effect to the impugned notices provided that the petitioner makes the payment to the respondent for the outstanding dues as under :

- (a) Rs. 1.5 crores by 25.12.2015.
- (b) Rs.1.5 crores – 15 days thereafter.
- (c) The balance amount after adjusting TDS amount by 31.1.2016.

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(Kuldip Singh)
Member

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(B.B. Srivastava)
Member

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