

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

Dated 29th January, 2015

Petition No.117(C) of 2014

MSM Discovery Pvt. Ltd.Petitioner

Versus

Maa Bhawani Cable NetworkRespondent

BEFORE:

**HON'BLE MR.JUSTICE AFTAB ALAM, CHAIRPERSON
HON'BLE MR. KULDIP SINGH, MEMBER**

For Petitioner : Mr. Azmat H. Amanullah, Advocate

For Respondent : None.

ORDER

By Aftab Alam, Chairperson - MSM Discovery Pvt. Ltd., the petitioner, is a broadcaster and it supplies its TV channels, for consideration, to MSOs for further distribution and re-transmission. It has filed this petition against, Maa Bhawani Cables Network, a sole proprietorship concern, operating as a multi-system operator, from whom the petitioner seeks recovery of Rs.1,09,346/- as dues of monthly subscription fees.

The respondent did not appear despite repeated notices served to it and hence, the petition was proceeded *ex parte*.

According to the petitioner, it had entered into a subscription agreement with the respondent on 20 April, 2012 for retransmission of its TV channels in the area of Sadar Bazar within Merta Road Town in District Nagaur on payment of an agreed lump sum amount of Rs.10,000/-(exclusive of taxes) as monthly subscription charges. The subscription agreement was for the period 01.01.2012 to 31.12.2012. Later, by a supplementary validation deed dated 30 April 2012, the monthly subscription charges were revised to Rs.12,000/- (exclusive of taxes) effective from 15.03.2012 till 31.12.2012.

It is the case of the petitioner that the respondent was irregular in payment of its monthly subscription fee and defaulted in the monthly payments and as a result arrears of subscription fees amounting to Rs.1,09,346/- became due from it. It is further the case of the petitioner that the respondent did not pay its dues despite repeated reminders and hence, left with no other option, the petitioner issued a notice dated 01.03.2013 under clause 4.1 of the Interconnect Regulations. However, the respondent chose not to respond to the said notice as well. The petitioner thereafter published public notices dated 02.03.2013 under clause 4.3 of the Regulations in the two leading local newspapers; viz (i) The Times of India (English) and (ii) Pratahkal (Regional). However, according to the petitioner, neither any payment nor any response was

received from the respondent and therefore, the petitioner deactivated its signals to the respondent on 15.04.2013. The petitioner thereafter sent a legal notice dated 08.01.2014 to the respondent demanding its outstanding dues but to no avail. Hence, the petitioner was constrained to file this petition before the Tribunal.

The petitioner in support of its case, examined one Arvind Isharwal, who is serving as Area Sales Manager with the petitioner company. In his deposition, he fully supported the petitioner's claim against the respondent. He identified and proved the subscription agreement executed by the respondent, which is marked as Exhibit P-1. He further identified and proved the supplementary validation form executed between the parties modifying the subscription agreement for the period 15.03.2012 to 31.12.2012, which is marked as Exhibit P-2. He also identified and proved copies of the monthly invoices raised by the petitioner against the respondent, which are marked as Exhibit P-3. He identified and proved the notice dated 01.03.2013 issued under clause 4.1 of the Interconnect Regulations along with its postal receipt, which is marked as Exhibit P-4. He also identified and proved the public notices dated 02.03.2013 issued under clause 4.3 of the Interconnect Regulations, which are marked as Exhibit P-5. Further, he identified and proved the statement of account, which is marked as Exhibit P-6.

Finally, he identified and proved the legal notice dated 08.01.2014 sent to the respondent along with its postal receipt, which is marked as Exhibit P-7.

Some extracts from the witness's deposition in the case are as under:

“4. I say that the Petitioner and Respondent duly entered into an Affiliation Agreement for the year 2012, vide which the Respondent was authorized to retransmit signals of the Petitioner's channels only within the limits of Sadar Bazar within Merta Town in District Nagaur, Rajasthan at a monthly subscription fee of Rs.10,000/- (Rupees Ten Thousand only), exclusive of taxes, for this period. True copy of the affiliation agreement executed between the parties for the period between 01.01.2012 to 31.12.2012 is exhibited herewith and marked as **Exhibit P-1** (at page 14 to 31 of the paper book).

5. I say that subsequently on 30.04.2012, a supplementary validation form (SVF) was executed between the parties modifying the subscription agreement as per the terms mentioned therein whereby the subscription fees was also increased to Rs.12,000/- for the period between 15.03.2012 to 31.12.2012. True copy of the SVF executed between the parties is exhibited herewith and marked as **Exhibit P-2** (at pages 32 to 33 of the paper book).

6. xxxxxxxxxxxxxxxx

7. xxxxxxxxxxxxxxxx

8. xxxxxxxxxxxxxxxx

9. I say that the Petitioner finally deactivated its signals to the Respondent on 15.04.2013 as the Respondent failed to make the requisite payment.

10. I say that the outstanding balance of the Respondent to the Petitioner as on 15.04.2012 is Rs.1,09,346/- (Rupees One Lakh Nine Thousand Three Hundred and Forty Six Only). The Respondent has failed to disburse the subscription fees which is an admitted debt and has been duly intimated to and acknowledged by the respondent. A copy of the system generated statement of account maintained by the Petitioner qua the

Respondent is exhibited herewith and marked as **Exhibit P-6**(at page 50 of the paper book).

11. xxxxxxxxxxxxxxxx

12. I say that the petitioner has been supplying continuous and uninterrupted signals of its channels to the Respondent prior to 15.04.2013.”

The deposition of the witness remains unchallenged and there is no reason not to accept its veracity.

It is, however, to be noted that the interconnect agreement between the two sides came to end on 31.12.2012. Nonetheless, according to the petitioner, it continued the supply its signals to the petitioner till 15.04.2013 and it has claimed its dues upto that date. There is, however, no averment or any evidence to show that the supply of signals to the respondent beyond the period of the agreement was on the basis of any mutual agreement or understanding or with the consent of the respondent. We are, therefore, of the view that the petitioner should be entitled to its dues only for the period of the agreement and not for any period beyond the agreement.

We, accordingly, allow the claim of the petitioner till the period of the agreement i.e. 31.12.2012.

The petitioner is directed to file within two weeks from today a statement of account calculating its dues upto 31.12.2012 for the office to draw a decree on that basis. The decretal amount will carry interest @

9% per annum from the date of filing of the petition to the date of actual payment.

Since the case has proceeded *ex parte*, there will be no order as to costs.

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(Aftab Alam)
Chairperson

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(Kuldip Singh)
Member

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