

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated: 8th July, 2015

Petition No. 127 (C) of 2014

MSM Discovery Pvt. Ltd., Haryana

... Petitioner

Versus

Ambala Communication Pvt. Ltd., Haryana .Respondent **BEFORE:**
HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON HON'BLE
MR. KULDIP SINGH, MEMBER

For Petitioner : M r . Azm a t A m an ullah, Advocate

For Respondent : No n e

ORDER

Kuldip Singh:

The petitioner is seeking recovery of an amount of Rs.71,60,165/- from the respondent which, as per it, is outstanding dues on account of subscription fees .

The petitioner is a broadcaster in terms of the Interconnect Regulations 2004 (as amended from time to time). The respondent is a Multi System Operator (MSO) under the regulations operating in the town of Ambala.

The parties entered into a subscription agreement dated 7.7.2010 for a period from 1.4.2010 to 31.12.2010. As per the agreement, the agreement

shall be automatically renewed on the same terms and conditions provided therein for successive years starting from 01st January and ending on 31st December of the following year unless terminated. Clause 4 pertaining to the term, is as under :

"4. Term : Subject to the standard terms, the term of this Agreement shall begin on the Start Date set forth on page 1 hereto and end on the immediately following December 31(the "Initial Term"). This agreement shall be automatically renewed on the same terms and conditions provided herein for successive years starting on January 1 and ending on December 31 of the following year unless written notice of termination is provided by the distributor to Affiliate no later than 1st November of that year. As used herein, "Term" shall mean the Initial Term together with any renewal thereof."

The agreement between the parties was on a subscriber base of 3523, for which subscription fees of Rs. 5,55,357/- (exclusive of taxes, Rs. 6,12,498/- with taxes) was to be paid.

On 27th January 2011, the respondent herein filed a petition being Petition No. 61(c) of 2011 (Ambala Communication Network Pvt. Ltd. Vs. MSM Discovery Pvt. Ltd.) in this Tribunal praying, *inter-alia*, for the following reliefs :

"(a) Direct the Respondent to enter into a subscription agreement for the year 2011-12 with the Petitioner on such negotiated terms and conditions as per the Regulations after giving due reduction for the channels which have already left the bouquet of the Respondent.

(b) Direct the Respondent to reconcile the accounts of the Petitioner and give due credit for the channels which have already left the

bouquet of the Respondent.

(c) Direct the Respondent to stop imposing channels more particularly the NEO Sports bouquet of channels on the Petitioner which the Petitioner does not require.

(d) Declare the invoice dated 07.12.2010 as unreasonable and not due from the Petitioner.

(e) Restrain the Respondent from in any manner interfering/disrupting or disconnecting the signal services being provided to the area of operation of the Petitioner until disposal of this petition.

(f) Pass an ad-interim ex-parte order in terms of prayer (e) made above."

The Tribunal vide its judgement dated 12.4.2012 came to the conclusion that end of justice will be sub-served if the subscriber base of the Petitioner is determined as 6000. The relevant part of the judgment is as under :

"46. We, keeping in view the facts and circumstances of the case and keeping in view the fact that the Petitioner had entered into an agreement with the Star group of channels at a subscriber base of 10000, we feel that end of justice will be sub-served if we determine the subscriber base of Petitioner at 6000.

The parties may reconcile their accounts on the aforementioned basis.

This petition is disposed of on the above terms without any order as to costs."

The present petition has been filed on 4.3.2014. The petitioner is claiming outstanding dues from the respondent to the tune of Rs.71,60,165/- along with interest. It is the contention of the petitioner that in accordance with the directions of the Tribunal, vide its order dated 12.4.2012, it duly raised invoices on the respondent at a reduced monthly subscription fees of

Rs. 3,72,599/- (exclusive of taxes, Rs. 4,18,652/- with taxes). The respondent continuously defaulted in paying the due subscription fees despite numerous reminders and requests from the petitioner. Left with no option, the petitioner served a notice dated 13.3.2013 under clause 4.1 of the interconnect regulations. The notice clearly specified that the petitioner would disconnect its signals to the respondent after complying with the provisions of the interconnect regulations. Subsequently, as the respondent had deliberately and willfully chosen not to remit the outstanding sum, due and payable by it, public notices under clause 4.3 of the regulation were also issued on 20.3.2013.

As per the petitioner, it finally deactivated the signals of the respondent on 17.5.2013.

Further, the petitioner also served a legal demand notice dated 3.2.2014 and on the failure of the respondent to clear the outstanding dues, the present petition was filed.

The respondent did not appear in spite of due notice. The petition, therefore, proceeded *ex-parte*.

In support of its averments, the petitioner adduced evidence of Mr. Amit Singh Chauhan, Assistant Manager Legal with the petitioner company. The witness identified the agreement as Exhibit P-1, copies of the invoices

raised by the petitioner as Exhibit P-3, copy of the notice under clause 4.1 along with its postal receipt as Exhibit P-4, copies of the public notices as Exhibit P-5 ,statement of account maintained by the petitioner qua the respondent as Exhibit P-6 and copy of the legal notice dated 3.2.2014 as Exhibit P-7. Some of the statements of the petitioner's witness are as under :

"2. I say that the present Petition has been filed by the Petitioner seeking recovery of a sum of Rs. 71,60,165/- along with interest thereon from the Respondent as arrears of subscription fees. The respondent has defaulted in paying the said subscription fees in terms of the affiliation agreement duly entered into between the parties despite receiving and retransmitting the signals of the Petitioner's channels to its (the Respondent's) subscribers till the date of its deactivation (i.e., till 17.05.2013).

3. I say that the Respondent was a Multi System Operator and was an affiliate of the Petitioner, retransmitting the signals of the Petitioner to its subscribers/LCOs.

4. I say that the Petitioner and Respondent duly entered into an Affiliation Agreement dated 07.07.2010, vide which the Respondent was authorized to retransmit the signals of the Petitioner's channels within the municipal limits of Ambala City at a monthly subscription fees of Rs. 555,357/- (Rupees Five Lakh Fifty Five Thousand Three Hundred and Fifty Seven Only), exclusive of taxes. In the absence of conclusive negotiations for another subsequent agreement, this Agreement dated 07.07.2010 was automatically renewed as per the terms stipulated therein until the final disconnection of the Respondent by the Petitioner on 17.05.2013. A true copy of the affiliation agreement executed between the parties is exhibited herewith and marked as Exhibit P-1 (at pages 16 to 27 of the paper book).

5. I say that certain disputes arose between the parties and the Respondent herein filed Petition No. 61 (C) of 2011 before this Hon'ble Tribunal on 21.01.2011. During the pendency of this petition, besides the period between 30.01.2011 to 02.02.2011, the Respondent continued to receive and retransmit the Petitioner's signals to its subscribers in terms of interim directions of this Hon'ble Tribunal.

6. I say that vide its final Order dated 12.04.2012 passed in Petition No. 61 (C) of 2011, this Hon'ble Tribunal was pleased to fix the Respondent's subscriber base at 6000 subscribers. The Respondent continued to receive and retransmit the Petitioner's signals to its subscribers and operators till

disconnection of the Respondent by the Petitioner on 17.05.2013. It is necessary to mention that as per the rate (per subscriber) mentioned in the subscription agreement dated 07.07.2010, the Respondent was liable to pay a monthly sum of Rs. 9,45,720/- (exclusive of taxes) to the Petitioner. However, since the Respondent did not come forward to reconcile its accounts with the Petitioner post this Order, the Petitioner continued to bill the Respondent at the reduced sum of Rs. 3,72,599/- (Rs. 4,18,652/- with taxes), till the disconnection of the Respondent by the Petitioner. A copy of the final Order dated 12.04.2012 passed in Petition No. 61 (C) of 2011 is exhibited herewith and marked as Exhibit P-2 (at pages 28 to 52 of the paper book).

7. I say that despite receiving and retransmitting the Petitioner's signals till 17.05.2013 (except for the period mentioned above), the Respondent continuously defaulted in paying the due subscription fees despite receiving numerous reminders and requests from the Petitioner and failed to make the requisite payments of the subscription fees to the Petitioner. Copies of the invoices raised by the Petitioner are exhibited herewith and marked as Exhibit P-3 (at pages 53 to 60 of the paper book).

8. I say that due to the non-payment of the due subscription fees by the Respondent, the Petitioner issued a notice dated 13.03.2013 under clause 4.1 of the Interconnection Regulations, 2004 (as amended) upon the respondent for non-payment of dues amounting to the (then) sum of Rs. 65,25,435/- (among other reasons). A copy of the 4.1 notice dated 13.03.2013 along with its postal receipt is exhibited herewith and marked as Exhibit P-4 (at pages 61 to 63 of the paper book).

9. I say that since the Respondent failed to make the requisite payment, the Petitioner had to issue public notices on 20.03.2013 under clause 4.3 of the Interconnection Regulations, 2004 in two newspapers, i.e., The Tribune, and Haribhumi, which are in circulation in the territories where the Respondent was authorized to transmit the Petitioner's signals. Copies of the said public notices and the translated versions of the notices in vernacular are exhibited herewith and marked as Exhibit P-5 (at pages 64 to 68 of the paper book).

10. I say that the Petitioner finally deactivated the signals of the Respondent on 17.05.2013 as the Respondent failed to make the requisite payment despite having utilized and retransmitted the signals of the Petitioner to its subscribers for gain.

11. I say that the outstanding balance of the Respondent to the Petitioner as on 17.05.2013 is Rs. 71,60,165/- (Rupees Seventy One Lacs Sixty Thousand One Hundred and Sixty Five only). The Respondent has failed to disburse the subscription fees which is an admitted debt and has been duly

intimated to 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 69 of the paper book).

12. I say that since the Respondent failed to make the requisite payment, the Petitioner, through its advocate, sent a legal notice dated 03.02.2014 to the Respondent which was duly received by the Respondent. A copy of the legal notice dated 03.02.2014 along with its postal receipt is exhibited herein and marked as Exhibit P- 7 (at pages 70 to 72 of the paper book)."

No one appeared on behalf of the respondent to controvert the averments of the petitioner and the statements made by its witness.

The petition is, accordingly, allowed and the office is directed to draw a decree for a sum of Rs. 71,60,165/- along with interest @ 8% from the date of filing of the petition till the time the same is paid.

Since the petition proceeded *ex-parte*, there shall be no order as to costs.

(Aftab Alam)
Chairperson

(Kuldip Singh)
Member

/NC/