

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

Dated 1st July, 2015

Petition No.146(C) of 2014

MSM Discovery Pvt. Ltd.

.....Petitioner

Versus

Baan Cable Network

.....Respondent

BEFORE:

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

For Petitioner : Mr. Nittin Bhatia, 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 filed this petition against Baan Cable Network, a proprietorship concern, operating as a multi-system operator,

seeking recovery of Rs.8,24,929/- 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*.

It is the case of the petitioner that it entered into a subscription agreement with the respondent on 11 July, 2011 for retransmission of its TV channels in the municipal limits of Tezpur Town on payment of an agreed lump sum amount of Rs.1,17,860/- (exclusive of taxes) as monthly subscription charges. The subscription agreement was for the period 01.01.2011 to 31.12.2011.

It is further 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, dues of subscription amounting to accumulated against 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 published public notices dated 29.09.2012 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, the

respondent chose not to respond to the said notice as well. The petitioner thereafter sent a legal notice dated 07.10.2012 to the respondent demanding its outstanding dues of Rs.8,24,929/- from it but to no avail. Finally, the petitioner issued a notice dated 09.10.2012 under clause 4.1 of the Interconnect Regulations. 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 05.11.2012. Hence, the petitioner was constrained to file this petition before the Tribunal.

The petitioner in support of its case, examined one Hrishikesh Goswami, 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 PW-1/1. He further identified and proved copies of the monthly invoices raised by the petitioner against the respondent, which are marked as Exhibit PW-1/2 (collectively). He identified and proved the notice dated 01.02.2013 issued under clause 4.1 of the Interconnect Regulations along with its postal

receipt, which is marked as Exhibit PW-1/3. He also identified and proved the public notices dated 12.03.2013 issued under clause 4.3 of the Interconnect Regulations, which are marked as Exhibit PW-1/4. Further, he identified and proved the legal notice dated 08.01.2014 sent to the respondent along with its proof of delivery, which is marked as Exhibit PW-1/5. Finally, he identified and proved the statement of account, which is marked as Exhibit PW-1/6.

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

“4.The Petitioner states that the present dispute relates to the Subscription Agreement, vide which the Petitioner authorized the Respondent to retransmit its signals in the municipal limits of Merta City, Nagaur. The Petitioner states that in terms of the said Subscription Agreement, the Respondent was liable to pay to the Petitioner an amount of Rs.47,320/- (Forty Seven Thousand Three Hundred and Twenty Only) and taxes, which totally amounts to Rs.53,168/- (Rupees Fifty Three Thousand One Hundred and Sixty Eight) per month, being the monthly subscription chares. A copy of the Subscription Agreement signed and executed by and between the parties hereto is exhibited hereto as **Exhibit-PW-1/1 (colly)**.

8. xxxxxxxxxxxxxxxx

9. I say that the Respondent has, since the commencement of the terms of the Agreement, continued to default on its obligations to pay to the Petitioner equated monthly installments of the agreed subscription fees on the respective due dates.

10. xxxxxxxxxxxxxxxx

11. xxxxxxxxxxxxxxxx

12. xxxxxxxxxxxxxxxx

13. xxxxxxxxxxxxxxxx

14. I say that in view of the fact that the Respondent had failed to clear the outstanding subscription fees due and payable to the Petitioner, the Petitioner left with no other alternative left but to give effect to the public notice and disconnect the signals being provided to the Respondent. This disconnection of signals was done on April 15, 2013.

15. xxxxxxxxxxxxxxxx

16. I say thatThe Petitioner states that the Respondent has till date not cleared the entire outstanding subscription charges due and payable to the Petitioner and accordingly was liable to clear the outstanding dues of Rs.4,47,212/- (Rupees Four Lakhs Forty Seven Thousand Two Hundred and Twelve Only), being the outstanding subscription charges, along with interest thereon @ 18% per annum. **That subsequent to the filing of the present Petition, the Respondent has deposited Rs.1,24,000/- (Rupees One Lakh Twenty Four Thousand only) and Rs.99,606/- (Rupees Ninety Nine Thousand Six Hundred only) i.e. a cumulative sum of Rs.2,23,606/- (Rupees Two Lakh Twenty Three Thousand Six Hundred Six only). An outstanding of Rs.2,23,606/-(Rupees Two Lakh Twenty Three Thousand Six Hundred Six only) is still due and payable by the Respondent.** The Statement of Accounts of the Petitioner maintained in relation to the Respondent Network, demonstrating that there was an outstanding amount of Rs.4,47,212/- (Rupees Four Lakhs Forty Seven Thousand Two Hundred and Twelve Only) due and payable by the Respondent to the Petitioner as on date of filing of the present Petition and an outstanding amount of Rs.2,23,206/- (Rupees Two Lakh Twenty Three Thousand Six Hundred Six only) as on date is exhibited hereto as **Exhibit-PW-1/6**.

17. xxxxxxxxxxxxxxxx

18. I say that the Petitioner also prays for a direction directing the Respondent to return the Integrated Receiver Decoder Boxes (IRD's) and Viewing Cards (VC's) provided to the Respondent by the Petitioner.

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 31.12.2011. Nonetheless, according to the petitioner, it continued the supply its signals to the petitioner till 04.11.2012 and it has claimed its dues upto that date. There is 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. 31.12.2011.

The petitioner is directed to file within two weeks from today a statement of account calculating its dues upto 31.12.2011 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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