

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

Dated 25th March, 2015

Petition No.122(C) of 2014

MSM Discovery Pvt. Ltd., HaryanaPetitioner

Versus

Bhagwati Cable Network, RajasthanRespondent

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, Bhagwati Cable Network, a sole proprietorship concern, operating as a multi-system operator, from whom the petitioner seeks recovery of Rs.1,55,882/- 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 23 April 2013 for retransmission of its TV channels at Putli Road, Laxmi Nagar in Kotputli town on payment of an agreed lump sum amount of Rs.27,600/-(exclusive of taxes) as monthly subscription charges. The subscription agreement was for the period 01.01.2013 to 31.12.2013. Later, by a supplementary validation deed dated 30 May 2013, the monthly subscription charges were revised to Rs.33,396/- (exclusive of taxes) effective from 01.03.2013 till 31.12.2013.

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.1,55,882/- became due from it. The petitioner thereafter published public notices dated 23.02.2013 under clause 4.3 of the Regulations in the two leading local newspapers; viz (i) The Times of India(English) and (ii) Seema Sandesh (Regional). 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 1 October 2013 under clause 4.1 of the Interconnect Regulations. However, the respondent chose not to respond to the said notice as well. 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 19.11.2013. The petitioner thereafter sent a legal notice dated 28.10.2013 to the respondent demanding its outstanding dues but the legal notice too failed to yield the desired result. 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 dated 23.04.2013 as also the supplementary validation form executed between the parties modifying the subscription agreement for the period 01.03.2013 to 31.12.2013, which are marked as Exhibit P-1 collectively. He also identified and proved copies of the monthly invoices raised by the petitioner against the respondent, which are marked as Exhibit P-2. He identified and proved the notice dated 01.10.2013 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 23.02.2013 issued under clause 4.3 of the Interconnect Regulations, which are marked as Exhibit P-3, collectively. Further, he identified and proved the statement of account, which is marked as

Exhibit P-5. 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-6.

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 2013, vide which the Respondent was authorized to retransmit signals of the Petitioner's channels within the area of Putli Road, Laxmi Nagar in Kotputli Town in Rajasthan at a monthly subscription fee of Rs.27,600/- (Rupees Twenty Seven Thousand Six Hundred only), exclusive of taxes, for the period from 01.01.2013 to 31.12.2013. Thereafter, the parties also executed a Supplementary Validation Form (SVF) which modified the terms of the Affiliation Agreement to the extent that the monthly subscription fees from 01.03.2013 to 31.12.2013 payable by the Respondent was increased to Rs.33,396/- (exclusive of taxes). True copies of the Affiliation Agreement as well as the SVF executed between the parties for the year 2013 is exhibited herewith and marked as **Exhibit P-1(Colly)** (at page 15 to 34 of the paper book).

5. I say that in terms of the subscription agreement, the Petitioner supplied quality signals of its channels to the Respondent which the Respondent continued to retransmit to its subscribers. However, despite the 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 market as **Exhibit P-2** (at pages 35 to 40 of the paper book).

6. xxxxxxxxxxxxxxxx

7. xxxxxxxxxxxxxxxx

8. I say that since no payment of the outstanding sum as mentioned in the notice was received by the Petitioner, the Petitioner finally deactivated its signals to the Respondent on 28.10.2013 as the Respondent failed to make the requisite payment.

9. I say that the outstanding balance of the Respondent to the Petitioner as on 28.10.2013 was Rs.1,73,582/-. However, thereafter, the Respondent made a payment of Rs.17,700/- to the Petitioner. Therefore, as on date, the outstanding amount due and payable by the Respondent to the Petitioner is Rs.1,55,882/- (Rupees One Lakh Fifty Five Thousand Eight Hundred and Eighty Two 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 which has re-transmitted the signals of the Petitioner till the date of its deactivation. A copy of the system generated statement of account maintained by the Petitioner qua the Respondent is exhibited herewith and marked as **Exhibit P-5**(at pages 47 and 48 of the paper book).

11. xxxxxxxxxxxxxxx

12. I say that the petitioner has been supplying continuous and uninterrupted signals of its channels to the Respondent prior to 28.10.2013 which the Respondent had been duly retransmitting to its subscribers.”

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

Though the public notice for disconnection in this case was given on 23 February 2013 long before the actual date of disconnection, it does not in any way detracts from the claims of the petitioner which is otherwise proved by material evidences.

The case of the petitioner is fully supported by oral and documentary evidences that remain completely unchallenged and uncontroverted. There is no reason not to accept the petitioner’s claim.

We accordingly allow the petitioner’s claim and hold the petitioner entitled to a decree for the sum of Rs.1,55,582/- along with interest @ 18% from the date of deactivation of signals i.e. 28.10.2013 till the expiry of the agreement and @ 9%

from the date of filing of the petition before the Tribunal till the date of realization.

The office is directed to prepare the decree accordingly.

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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