

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated 12th March, 2015

Petition No. 370(C) of 2012

MSM Discovery Pvt. Ltd. ... Petitioner

Vs.

Palani Taluk Cable TV Operators & Owners Association ... Respondent

BEFORE:

HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON

HON'BLE MR. KULDIP SINGH, MEMBER

For Petitioner ... Mr. Azmat H. Amanullah, Advocate
for Mr. Amitesh C. Mishra, Advocate

For Respondent ... Ms. Promila, Advocate

ORDER

The Petitioner is a broadcaster in terms of the Telecom (Broadcasting and Cable Services) Interconnection Regulations, 2004. It has filed the present petition seeking recovery of outstanding dues to the tune of Rs.4,61,020/-. The Respondent is a Multi System Operator (MSO).

2. An agreement for the supply of the petitioner's signals was executed between the parties on 11.07.2011. The period of this agreement was from 01.01.2011 to 31.12.2011. The agreement was for three bouquets of channels for a total subscription fee of Rs.58,023/- per month exclusive of taxes.

3. It is the case of petitioner that respondent was a prior affiliate of the petitioner but its signals were deactivated on 13.01.2011 due to non-renewal of agreement. The signals were re-activated on 21.05.2011 after negotiations were concluded for the agreement dated 11.07.2011.

4. As per the petitioner, the respondent was continuously defaulting in paying the due subscription fees and the petitioner was constrained to issue notices under clause 4.3 of the Regulations on 06.08.2011 and clause 4.1 of the Regulations on 19.09.2011. The signals of the respondent were finally deactivated on 25.10.2011. As per the petitioner, the respondent owes it an amount of Rs.4,61,020/- as on 25.10.2011, the date of disconnection of signals. The petitioner served legal Notices dated 07.01.2012 and 02.03.2012 to the respondent and subsequently filed the present petition.

5. During arguments, it was submitted on behalf of the petitioner that it had an earlier agreement dated 17.08.2011 with the respondent for the period 01.04.2010 to 31.12.2010. In terms of this agreement, the petitioner

was required to pay a subscription amount as specified in Schedule 'C' to this agreement (A copy of this agreement is available from page 62 to 74 of the paper book. Schedule 'C' is at page 73). The respondent, however, denies that it owes any amount to the petitioner. As per the respondent, neither the notices issued to it nor the petition gives any details of how the figure of Rs.4,61,020/- has been arrived at. Further, no specific claim is made for arrears prior to the year 2011 in the petition. The respondent denies that it had any affiliation agreement with the petitioner for the year 2010. As per the respondent, since its signals were activated only on 21.05.2011, it does not have any liability to pay for the signals prior to that. As per it, it had paid for the period 21.05.2011, the date of activation of signals, to 25.10.2011, the date its signals were disconnected.

6. It was argued on behalf of the petitioner that though the agreement dated 17.08.2011 is with M/s United Cable System, both these are proprietorship firms whose proprietor is the same person, namely, Mr. N. Palani Kumar. It was further submitted that even the operator code (S12444) appearing on both the agreements is the same.

7. The petitioner has attached seven (07) invoices with the petition. The first of these is an invoice dated 01.12.2010 for the subscription fees for the period 01.12.2010 to 31.12.2010. The invoice is for subscription fees of Rs.94,763/- and also shows an adjustment of Rs.14,655/-. The total amount due as per this invoice is Rs.1,09,418/-.

The next invoice, dated 01.02.2011, is for the period 01.01.2011 to 12.01.2011. In this invoice, the subscription fees is shown as Rs.36,682/- along with a brought forward balance of Rs.4,15,735/-. The total amount claimed in this invoice is Rs.4, 52,417/-. No explanation is available in the pleadings or statement of accounts (SOA) as to how this balance amount of Rs.4,15,735/- has arisen between the two invoices.

The third invoice ,dated 15.06.2011, is for subscription fees for the period 21.05.2011 to 30.06.2011. In this invoice, balance brought forward is mentioned as zero. After accounting for a payment of Rs.1,06,650/- and an adjustment of Rs.11,801/-, the net amount due is mentioned as Rs.25,449/-. In the subsequent invoice dated 01.07.2011,this balance of Rs.25,449/- is shown as brought forward balance. The invoice also shows subscription fees for the period 01.07.2011 to 31.07.2011 as Rs.53,165/- and a payment of Rs.90,000/- However, an adjustment of Rs.3,50,418/- is shown in this invoice and the net amount due is shown as Rs.3,39,032/- . Again, no reason is given in the pleadings or the Statement of Account¹ as to the basis for this amount of Rs.3,50,418/-. The Statement of Accounts shows a credit note entry of Rs.4,15,733/- for the month of March, 2011 and a debit note entry of the same amount for the month of June, 2011. Again no explanation for these entries is available.

8. During the arguments, a calculation was shown by Mr. Azmat H. Ammanullah, learned counsel appearing on behalf of the petitioner. As per

¹ SOA is at page 44 of the paperbook.

this calculation, total subscription fee for the period June, 2010 to December, 2010 and January, 2011 to October, 2011 (periods for which the petitioner claims to have supplied signals to the respondent) is shown as Rs.10,82,867/-. It was submitted that as per the Statement of Accounts, total payments made were to the tune of Rs.2,61,650/- resulting in an outstanding of Rs.8,21,017/- . It was explained that as the demand notice was for an amount of Rs.4,61,020/-, the claim in the petition is restricted to that amount.

8. Though the respondent denies agreement dated 17.08.2011, even if the submission of the petitioner with regard to his agreement was to be accepted, we fail to understand as to how the petitioner signed the fresh agreement dated 11.7.2011 with the respondent when it was in default of payment of the subscription fees as per the previous agreement. We further note that the invoice dated 01.06.2011, which is the first invoice issued after the activation of signals on 21.05.2011, does not show any brought forward balance. As per this invoice, the net amount due is Rs.25,449/-. In the subsequent invoice dated 01.7.2011, an amount of Rs.3,50,418/- is shown under the column of adjustments. We fail to understand the basis for this amount and no explanation is available in the pleadings or the SoA.

9. Here, we may note the cross examination of Mr. D.C. Dhilip Raj who appeared as witness for the petitioner, as under:-

“Q9. Have you filed any invoice pertaining to the year 2010?”

A: Yes. Witness points out at page 31 of the paperbook, i.e, invoice dated 1.12.2010 to 31.12.2010.

Q10. You have not mentioned about this invoice in your petition and there is no agreement for the year 2010. The invoice is, therefore, not valid, is it true?

A: I am not sure on this.

(Attention of the witness is drawn to Para 8 (i) and (ii) of this petition)

Q11. In your petition, you have admitted that agreement was for the year 2011, the signals of the respondent's network was deactivated on 13.1.2011 and the respondent's network was reactivated by the petitioner on 21.5.2011 , it is true and correct?

A: Yes.

(Attention of the witness is drawn to Affiliation Agreement of the year 2011 at page 14 and 17 of the paper book)

Q12. What is the period for said Agreement?

A. From 1.1.2011 to 31.12.2011.

Q13. When was this Agreement signed?

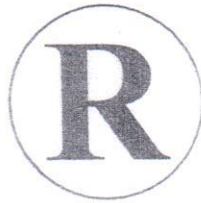
A: On 11.7.2011.

Q14: You have not provided any transmission to the respondent and the invoice dated 1.6.2011 and the summary statement for the period from 2.2.2011 to 1.6.2011 reflects no balance against the respondent. Is it true and correct?

A: I am not sure.” (emphasis supplied)

We note from the above that the witness is not sure about the validity of the invoice for the period 1.12.2010 to 31.12.2010. He is also not able to explain why the invoice dated 01.06.2011 shows no brought forward balance.

10. In view of the foregoing, we do not find that the petitioner has made out any convincing claim for the outstanding against the respondent. The petition is accordingly rejected with no order as to costs.



.....
(Aftab Alam)
Chairperson

.....
(Kuldip Singh)
Member

HKC/9.3.2015

Certified to be
a true Copy

D. P. Chamoli
Desk Officer
T.D.S.A.T.
New Delhi