

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

Dated 6th October, 2015

Petition No.150(C) of 2014

MSM Discovery Pvt. Ltd., Mumbai

.....Petitioner

Versus

Bongaigaon Cable, Assam

.....Respondent

BEFORE:

**HON'BLE MR.JUSTICE AFTAB ALAM, CHAIRPERSON
HON'BLE MR. KULDIP SINGH, MEMBER
HON'BLE MR. BIPIN BIHARI SRIVASTAVA, 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 has filed this petition against, Bongaigaon Cable, who is operating as a

multi-system operator and from whom the petitioner seeks recovery of Rs.6,61,812/- 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 28 August, 2012 for retransmission of its TV channels in the area of Sadar Bazar within the municipal limits of Bongaigaon Town on payment of an agreed lump sum amount of Rs.97,008/-(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, the monthly subscription charges were revised to Rs.1,04,866/- (exclusive of taxes) effective from 01.04.2012 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.6,61,812/- 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

30.11.2012 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 15.12.2012 under clause 4.3 of the Regulations in the two leading local newspapers; viz (i) The Times of India (English) and (ii) Ajib Dainik Vatari (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 28.01.2013. The petitioner thereafter sent a legal notice dated 03.10.2013 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 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 for the period 01.01.2012 to 31.12.2012 and the supplementary validation form executed between the parties by which the monthly subscription was increased with effect 01.04.2012, which is marked as Exhibit PW-1/1(colly). 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(colly). He identified and proved the notice dated 30.11.2012 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 15.12.2012 issued under clause 4.3 of the Interconnect Regulations, which are marked as Exhibit PW-1/4. Further, he identified and proved the statement of account, which is marked as Exhibit PW-1/6. Finally, he identified and proved the legal notice dated 03.10.2013 sent to the respondent along with its postal receipt, which is marked as Exhibit P-1/5(colly).

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

“7.The Petitioner states that the present dispute relates to the Subscription Agreement bearing reference no.092421 vide which the Petitioner authorized the Respondent to re-transmit its signals in the Municipal limits of Bongaigaon Town. The Petitioner states that in terms of the said Subscription Agreement, the Respondent was liable to pay to the Petitioner an amount of Rs.97,008 (Rupees Ninety Seven Thousand and Eight Only) per month, being the monthly subscription charges and taxes which totally amounted to Rs.1,08,998 which was later increased to Rs.1,17,828 (Rupees One Lakh Seventeen Thousand Eight Hundred and Twenty Eight) from October 1, 2012 as a result a signing of a validation form between the parties effective from October 1, 2012. A copy of the Subscription Agreement signed and executed by and between the parties is exhibited hereto as **Exhibit – PW-1/1(colly)**.

8. xxxxxxxxxxxxxxxx

9. I say that the Respondent has, since the commencement of the term 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. I say that the Petitioner states that it has continuously followed up with the Respondent for the payment of its legitimate dues, however, despite repeated requests made by the Petitioner in this regard, the Respondent has deliberately failed and neglected to clear the outstanding subscription charges due and payable to the Petitioner. The Petitioner states that what is even more shocking is the fact that the Respondent has failed to clear the outstanding subscription charges despite giving categorical assurances to the Petitioner on several occasions that the outstanding amounts shall be cleared.

11. xxxxxxxxxxxx

12. xxxxxxxxxxxx

13. xxxxxxxxxxxx

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 January 28, 2013.

15. xxxxxxxxxxxxxxxx

16.The Petitioner states that the Respondent has till date not cleared the outstanding subscription charges due and payable to the Petitioner and accordingly is liable to clear the outstanding dues of Rs.6,61,812/- (Rupees Six Lakhs Sixty One Thousand Eight Hundred and Twelve), being the outstanding subscription charges, along with interest thereon @18% per annum. The Statement of Accounts of the Petitioner maintained in relation to the Respondent Network, demonstrating that there is an outstanding amount of Rs.6,61,812/- (Rupees Six Lakhs Sixty One Thousand Eight Hundred and Twelve) due and payable by the Respondent to the Petitioner is exhibited hereto as Exhibit-PW-1/6(colly).”

As may be noted in Para 7 of his deposition, the witness gives 01.10.2012 as the date from which increase in the monthly subscription

fee was made effective; that, however, is clearly an error as in the Supplementary Validation Form the date is clearly written as 01.04.2012.

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 28.01.2013 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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(B.B. Srivastava)
Member

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