

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL  
NEW DELHI

Dated 14<sup>th</sup> June, 2016

Broadcasting Petition No. 187 of 2014  
(with M.A.Nos.195 of 2015 & 32 of 2016)

Hathway SS Cable & Data Com LLP, M.P. ... Petitioner  
Vs.  
MSM Discovery Pvt. Ltd. Gurgaon ... Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON**  
**HON'BLE MR. B.B. SRIVASTAVA, MEMBER**

For Petitioner : None

Respondent : Mr. Azmat H. Amanullah, Advocate

**ORDER**

**By B.B. Srivastava, Member -** The issue to be decided in M.A. No. 32 of 2016, filed by MSM Discovery Pvt. Ltd. (hereinafter called respondent), is whether order/decreed of restitution can be passed against Hathway SS Cable & Data Com LLP (hereinafter called petitioner) and in favour of the respondent directing the petitioner to pay the outstanding amount of Rs.36,29,888/- to the respondent along with interest @ 18% per annum from 24.4.2015 till the date of payment. The incidental issue to be decided relates

to awarding litigation cost amounting to Rs. 5 lakhs to the respondent for being forced to pursue and defend its claim before the Tribunal.

1.1 The background of the matter is that the petitioner filed the Petition No. 187 (C) of 2014 against the respondent for under mentioned reliefs:-

- (i) Declaration of the Notice of Disconnection of signals of the respondent dated 06.03.2014 issued under Clause 4.1 of the Interconnect Regulation; and Public Notice dated 08.03.2014 as illegal and null and void.
- (ii) Direction to the Respondent to renew the Subscription Agreement with the Petitioner on reasonable terms and conditions and on non-discriminatory basis after taking into account the down gradation suffered by the Petitioner due to the entry of the new MSO who has become rival MSO in the area by encroaching upon the areas of the Petitioner and by poaching the customers of the Petitioner;
- (iii) Direction to the Respondent to reconcile the accounts with the Petitioner.

1.2 When the case was initially taken up on 28.3.2014, the respondent was restrained from disconnecting its signals to the petitioner. Subsequently on 31.3.2014, after hearing both parties, the petitioner was directed to pay Rs. 5 lakhs to the respondent by April 04, 2014 subject to which the respondent was directed not to disconnect the supply of its signals to the petitioner. The petitioner was also directed to pay the monthly subscription fee in accordance with law. Both, the petitioner and the respondent, were further directed to appear before the Mediation Centre of the Tribunal for resolution of their disputes. However, the two sides failed to arrive at any settlement in the Mediation Centre and the whole matter was put up before the Tribunal

for consideration and further adjudication. Thereafter, although the respondent filed its reply, no rejoinder was filed by the petitioner in spite of repeated opportunities provided in this regard. Rather, first before the Assistant Registrar of the Tribunal and thereafter before the bench of the Tribunal, two counsels, representing the petitioner, sought discharge from the case on the ground of not getting any instruction from the petitioner. In view of these facts as also because there was no response from the petitioner in spite of service of notices, while discharging the petitioner's counsels from the case, the petition was dismissed for non-prosecution on April 17, 2015.

1.3 Subsequently, the respondent filed M.A. No. 195 of 2015 alleging inter alia nonpayment of subscription fee in spite of enjoying the supply of signals pursuant to Tribunal's order dated 31.3.2014. It would be pertinent to mention that pursuant to Tribunal's order dated 17.4.2015; the respondent disconnected the supply of signals to the petitioner on 23.4.2015. It was also alleged by the respondent that the petitioner arbitrarily as well as in violation of the spirit of Tribunal's order dated 31.3.2014 illegally and unilaterally returned 6 of the 19 IRDs supplied by the respondent to the petitioner in terms of the previous agreement between the parties. The respondent, accordingly, sought the under mentioned reliefs in M.A. No. 195 of 2015: -

- A. Strict and suitable action against the Petitioner in terms of section 20 of the TRAI Act for the Petitioner's wilful failure to comply with the Order and

directions of this Hon'ble Tribunal dated 31.03.2014 and the Petitioner's wilful defiance of the spirit of the Order dated 31.03.2014; and

- B. Direction to the Petitioner to immediately pay the Respondent a sum of Rs.36,29,888/- (Rupees Thirty Six Lakh Twenty Nine Thousand Eight Hundred and Eighty Eight only) being the total amount of outstanding due to the Respondent.

1.4 In view of continued non-appearance of the petitioner, pursuant to notice in connection with M.A. No.195 of 2015, the matter was directed to proceed *ex-parte*. The respondent also requested further to file an additional affidavit in the matter; wherein it alleged as follows: -

- i. The Petitioner, i.e., Hathway SS Cable & Data Com LLP is currently still operating from the same address as mentioned in the memo of parties and on which notices have been constantly been sent to it., i.e., 209-12, 2<sup>nd</sup> Floor, 8/3, Shanku Marg, Near Mani Trade Centre, Free Gang, Ujjain, MP-456001.
- ii. The Petitioner is currently broadcasting the channels of various broadcasters including Star, Zee, India Cast and Sony (MSM channels).
- iii. The channels of Star, Zee and India Cast are being received by the Petitioner in an authorised manner ( as per the information available with the Respondent)
- iv. The Petitioner runs local channels on its network in the name 'Hathway SR' and its local channels bear this logo. However, its agreements with all the broadcasters (and its earlier agreement with the Respondent) were signed under the name of Hathway SS Cable and Datacom LLP.
- v. The channels of Multi Screen Media Private Limited, i.e. Sony channels (of which the Respondent was the erstwhile distributor) are being pirated by the Petitioner by illegally taking the signals received using a DTH (Direct to Home) device (i.e., TATA SKY).

The respondent also annexed video recording, apropos the above mentioned allegations. The three broadcasters viz. Star, Zee and India Cast were accordingly impleaded; and they appeared before the Tribunal.

1.5 However, the respondent prayed for filing an application for restitution under Section 16 of the TRAI Act read with Sections 144 and 151 of the Code of Civil Procedure 1908. The said restitution application was filed as M.A. No. 32 of 2016; the subject matter of current adjudication. There being no appearance on behalf of the petitioner in spite of service of notice in respect of the restitution application, it was directed to proceed *ex-parte* and respondent was directed to file its evidences on affidavit in support of its claim for restitution and produce the deponent for examination. The respondent, accordingly, filed its evidence on affidavit; and produced the deponent for examination in chief before the learned Advocate Commissioner appointed for the purpose. The witness on behalf of the respondent has affirmed the contention of the respondent in the restitution application and formally identified the documents in support of the contentions.

2. Now, we proceed to examine the contentions and prayer of the respondent in M.A. No. 32 of 2016. It is evident from the chronology of the proceedings of the Petition No. 187 (C) of 2014 as well as other M.As. filed by the respondent, that the petitioner, Hathway SS Cable & Data Com LLP, has been acting in a truant, willful and irresponsible manner with regard to fulfillment of its obligation in its commercial dealing with respondent as well as in complying with the orders of the Tribunal. After having secured interim relief from the Tribunal in respect of continued supply of signals of the

respondent on 31.3.2014, it complied only partially with the order of the Tribunal. The petitioner, after paying the amount of Rs. 5 lakhs as directed by the Tribunal, did not pay the monthly subscription fee in accordance with the other direction of the Tribunal; and continued to enjoy supply of signals till disconnection of the signals on 23.4.2015 pursuant to Tribunal's order dated 17.4.2015. In view of this fact, the conduct of the petitioner is not only brazenly and blatantly illegal but also in complete violation of the orders of the Tribunal. In fact, non-prosecution of the matter by the petitioner before the Tribunal twice i.e. in pursuing Petition No. 187 (C) of 2014 as well as M.A. No. 32 of 2016, is also clearly indicative of its irresponsible behavior and conduct; besides its scant regard and respect for the rule of law. In view of the fact that the respondent continue to supply the signals to the petitioner in accordance with the directions of the Tribunal on 31.3.2014; it is entitled to the amount prayed for in the restitution application.

3. Accordingly, we allow the prayer for restitution in M.A. No. 32 of 2016; and direct issuance of decree in favour of the respondent, i.e. MSM Discovery Pvt. Ltd. and against the petitioner i.e. Hathway SS Cable & Data Com LLP and direct the petitioner to pay an amount of Rs. 36,29,888/- along with interest @ 10% w.e.f. 24.4.2015 (the date after disconnection) till the date of final payment.

There will be no order as to costs.

(Aftab Alam)  
Chairperson

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(B.B. Srivastava)  
Member

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