

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 02 June, 2016

Broadcasting Petition No. 521 of 2015

MSM Media Distribution Pvt. Ltd., Mumbai

...Petitioner

Versus

Sat Guru Sai Cable Network, Bihar
(Through its Proprietor Ms. Neha Ramesh Kumar)

...Respondent

BEFORE:

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

For Petitioner : Mr. Azmat Amanullah, Advocate

For Respondent : None

ORDER

By B.B. Srivastava, Member - The extant petition has been filed by MSM Media Distribution Pvt. Ltd. against Sat Guru Sai Cable Network for issuance of a decree in favour of the petitioner and against the respondent for recovery of a sum of Rs. 10,30,435/- along with *Pendente lite* and future interest on this amount at 18% per annum from the date of deactivation of signals to the respondent network and till the date of last payment.

MSM Discovery Pvt. Ltd. (MSMD), a company incorporated under the Companies Act, 1956 was earlier engaged in the distribution of the channels of various broadcasters including Multi Screen Media Pvt. Ltd. (MSM) and TV Today Network Limited (TVT) prior to the Content Aggregator Regulations; until March 31, 2014. Pursuant to the Content Aggregator Regulations, MSMD was appointed as the exclusive authorized agent of the

broadcasters (i.e. MSM and TVT) for the distribution for their respective channels from 1.4.2014 to 31.3.2015. With effect, however, from April 1, 2015, the petitioner i.e. MSM Media Distribution Pvt. Ltd. (MSM Media) was appointed as a sole and exclusive authorized agent of the broadcasters (i.e. MSM and TVT) for distribution of the channels as well as to recover subscription dues from affiliates/operators for the period commencing from 1.4.2014.

The respondent is a Multi System Operator and a sole proprietary firm and is in the business of retransmission of signals of TV channels; received from broadcasters.

It is the case of the petitioner that it entered into two separate agreements on 19.11.2014 whereby the respondent was authorized to retransmit signals of the channels of the broadcasters received from MSMD or MSM Media to its subscribers and LCOs, if applicable, in the area of Muzaffarpur (Bihar). The period of agreement is 1.4.2014 to 31.12.2014 in both the cases. The monthly subscription fee for MSM channels was Rs. 82,572/-; and for TVT channels Rs.1700/- excluding applicable taxes. The subscription agreement, according to the petitioner's averments, also stipulated payments of interest @ 18% per annum for any late payment of the subscription fee.

The petitioner has averred that in terms of the subscription agreement, the respondent was duly supplied the signals of the channels as mentioned in the respective agreements and which was duly utilized and transmitted by the respondent to its consumers/subscribers and LCOs. It has been stated that prior to the expiry of the subscription agreement, the respondent was requested by the petitioner on several occasions to negotiate fresh subscription agreement as well as to clear the outstanding dues. It has been further stated that the respondent, although failing to negotiate and renew the subscription agreement, requested the petitioner (and MSMD then) to continue

to supply the signals of the broadcasters; while undertaking to execute fresh subscription agreement as well as to make payments. The petitioner has stated that, on the basis of this request, signals were supplied to the respondent even after expiry of the impugned subscription agreements till the date of disconnection notwithstanding non execution of fresh agreement. It has been averred that invoices for realization of the subscription fee, debit and credit notes were raised on the respondent on monthly basis till the date of deactivation. However, the respondent continued to default in paying the due subscription fees besides not heeding to several requests of the petitioner to clear the outstanding dues. Consequently the petitioner issued notices dated 1.3.2015 under Clause 4.1 of the Interconnect Regulations on behalf of MSM and TVT indicating clearly about disconnection of signals to the respondent after complying with the relevant provisions of the Interconnect Regulations on account of willful and deliberate act of the respondent in not paying the subscription fees. It has been averred by the petitioner that consequent to the notice under Clause 4.1 of the Interconnect Regulations, the petitioner also published notices for general public in leading local newspapers about impending disconnection of the signals of MSM and TVT to the respondent's networks in accordance with Clause 4.3 of Interconnect Regulations. Having failed to persuade the respondent to clear outstanding dues of subscription fees, the petitioner finally disconnected the signals of TVT channels to the respondent on 29.4.2015 and MSM channels on 11.5.2015. In view of the fact that respondent continued to receive signals till the date of disconnection, the petitioner has calculated its outstanding till the date of disconnection; and the total amount according to the petitioner is Rs. 10,30,435/-. It has also annexed statement of account in support of this claim. Finally a legal notice dated 30.7.2015 was also served in this regard upon the

respondent. The aforesaid documents have been annexed as Annexure P2 (colly), P3 (colly), P4 (colly), P5 (colly) and P6 (colly).

The respondent inspite of service of notice did not appear before the Tribunal to plead its case and vide order dated 2.12.2015 the petition was directed to proceed *ex-parte*. In pursuance thereof the petitioner filed its evidence on affidavit and the petitioner's witness was examined. The petitioner witness tended his evidence and identified the documents annexed with the petition.

in view of foregoing facts, now we examine the facts stated in the pleadings, documents annexed in support thereof as well as evidences tendered by the petitioner's witness.

It is clearly evident that two subscription agreements were executed between the petitioner and the respondent and facts mentioned in the pleadings are borne-out by the subscription agreements. It is also correct that invoices were raised on the respondent in accordance with the commercial terms mentioned in the respective subscription agreements. In addition, the statement of account annexed corroborates two payments each by the respondent in case of both agreements; besides entry regarding bouncing of one cheque each in case of both agreements. The petitioner has also issued notices in accordance with Clause 4.1 of the Interconnect Regulations in respect of two subscription agreements besides sending legal demand notice, through speed post to the respondent for clearing the outstanding dues of subscription fee.

However, there are certain critical gaps also in the averments of the petitioner. First of all the averment made in para 11.X of the petitioner, regarding publication of public notice in connection with disconnection of signals to the respondent's network in leading local newspapers published in the area/territory of operation of respondent in accordance

with Clause 4.3 of the Regulation, is not supported by any documentary evidence. Secondly there is nothing on record to indicate and support that petitioner ever requested the respondent for negotiation and execution of new agreement post 31.12.2014. Nor there is any document to substantiate the fact that the respondent ever requested the petitioner to continue with supply of signals pending execution of fresh agreement post 31.12.2014. In view of these facts it is difficult to accept the contention of the petitioner about continuation of supply of signals after completion of period of the two impugned subscription agreements. Hence the amount of subscription fee that can be allowed to the petitioner by way of outstanding dues has to be limited to the period of agreement only. In view of the invoices annexed with the petition in this regard this amount would be Rs.5,23,459/- for supply of MSM signals and Rs. 12,714/- for supply of TVT signals adding upto Rs. 5,36,173/- only. The learned counsel for the petitioner cited decision of Supreme Court in (Civil Appeal No. 393 of 1965¹) and submitted that the activities for the period beyond 31.12.2014 are covered by Section 70 of the Contract Act and the decision of the Supreme Court. However, in view of facts and/or absence thereof, regarding lack of documentary evidence, clearly indicate non applicability of the Section 70 of the Contract Act itself.

We, therefore, find that the petitioner is entitled to payment of an amount of Rs.5,36,173/- only by way of subscription dues from the respondent. Besides he is also entitled to interest @8% from the date of filing of the petition till the date of payment of the amount. Accordingly it is ordered that a decree in favour of the petitioner and against the respondent be issued in consonance with aforesaid terms.

¹ 1968 B.L.J.R – Mulamchand Vs. State of Madhya Pradesh

There will be no order as to costs.

(Aftab Alam)
Chairperson

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(B.B. Srivastava)
Member

/NS/