

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

Dated 10 March, 2016

Petition No. 269 (c) of 2015

MSM Discovery Pvt. Ltd & Anr
Vs.
Moruti Charita Cable Network

... Petitioner
... Respondent

Petition No. 271 (c) of 2015

MSM Discovery Pvt. Ltd & Anr
Vs.
Jai Maa Kali Cable Network

... Petitioner
... Respondent

Petition No. 272 (c) of 2015

MSM Discovery Pvt. Ltd & Anr
Vs.
Rathore Media Network

... Petitioner
... Respondents

Petition No. 273(c) of 2015

MSM Discovery Pvt. Ltd & Anr
Vs.
Peptech Cable, Chatarpur

... Petitioner
... Respondents

Petition No. 275 (c) of 2015

MSM Discovery Pvt. Ltd & Anr
Vs.
Manoranjan Cable Network

... Petitioner
... Respondent

Petition No. 277 (c) of 2015

MSM Discovery Pvt. Ltd & Anr
Vs.
Irani Cable Pvt. Ltd.

... Petitioner
... Respondents

Petition No. 278 (c) of 2015

MSM Discovery Pvt. Ltd & Anr
Vs.
Skyline Network

... Petitioner
... Respondents

Petition No.288 (C) of 2015

MSM Discovery Pvt. Ltd.
Vs.
Site Entertainment Pvt. Ltd.

... Petitioner
... Respondent

Petition No.299 (C) of 2015

MSM Discovery Pvt. Ltd. & Ors.
Vs.

Bareilly City Cable Network

... Petitioners
... Respondent

Petition No. 165(C) of 2015

M/s MSM Discovery Pvt. Ltd.
Versus

Gurgaon Digital Network Pvt. Ltd.

...Petitioner
...Respondent

BEFORE:

HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON
HON'BLE DR. KULDIP SINGH, MEMBER
HON'BLE MR. BIPIN BIHARI SRIVASTAVA, MEMBER

For Petitioner : Mr. Kunal Tandon, Advocate
Mr. Shashank Shekhar, Advocate

For Respondent : None

ORDER

By Aftab Alam, Chairperson – The petitioner, MSM Discovery Pvt. Ltd. (MSM) is a broadcaster and also a distributor of TV channels, acting on

behalf of a number of other broadcasters. It has filed this batch of 10 petitions against MSOs/LCOs for recovery of its dues of subscription fees.

None of the respondents in the 10 cases appeared despite service of notice. Hence, all the petitions in the batch have proceeded *ex parte*.

As all the 10 cases are based on similar facts, all these petitions were heard together and are being disposed of by this common order.

For the sake of convenience the relevant facts pertaining to the 10 petitions are arranged in a tabular form which is reproduced below:

S.No.	Petition No.	Respdt. name	Details of agreement	Invoices	Legal Notice	Statement of account	Disconnection date	Outstanding amount till disconnection date	Outstanding amount till the date of agreement	Outstanding amount for the agreement period + three months thereafter
1	2	4	5	6	7	8	9	10	11	12
1	165(C)/2015	Gurgaon Digital Network Pvt. Ltd.	Period – 1.1.13-31.12.13 @ pg.15 Monthly Subscription Fee Rs.21,86.563/- @ pg.29	@ Pages 36-48	@ Pages 49-50 & 51-78	@ Pages 79-82	12.1.15 Disconnection notice & public notice @ pages 32-35	Rs.1,99,53,935/- @ pg.6	Rs.1,30,30,850/-	Rs.80,49,062/-
2	269(C)/2015	Maruti Charita Cable Network Jaipur	Period – 1.1.14-31.12.14 @ pg.13 Monthly Subscription Fee Rs.53400/- @ pg.27	@ Pages 32-42	@ Pages 43-45	@ Pages 46-48	30.12.14	Rs.7,48,127/- @ pg.4-5	Rs.5,18,147/-	Rs.6,78,347/-
3	271(C)/2015	Jai Maa Kali Cable Network	Period – 1.1.13-31.12.13 @ pg.13 Monthly Subscription Fee Rs.1,30,000/- for the	@ Pages 42-50	@ Pages 54-62	@ Pages 63-64	16.4.14	Rs.9,58,743/- @ pg.6	NIL	Rs.8,80,064/-

			period 1.1.13- 30.3.13 @ pg.29 Rs.1,66,34 0/- for the period 1.4.13- 31.12.13 due to change execution of Suppment ary validation Form @ pg.39-40							
4	272(C)/ 2015	Rathore Media Network	Period – 1.1.14- 31.12.14 @ pg.13 Monthly Subscripti on Fee Rs.44000/ - @ pg.27	@ Pages 31-39	@ Pages 40-42	@ Pages 43-44	30.12.14	Rs.3,67,372/- @ pg.4-5	Rs.3,67,372/ -	Rs.3,67,372/-
5	273(C)/ 2015	Peptech Cable, Chatarp ur	Period – 1.1.13- 31.12.13 @ pg.13 Monthly Subscripti on Fee Rs.98415/ -- @ pg.27	@ Pages 32-37	@ Pages 38-40	@ Pages 41	11.11.14	Rs.4,10,130/- @ pg.4-5	NIL	NIL
6	275(C)/ 2015	Manora njan Cable Network	Period – 1.1.13- 31.12.13 @ pg.13 Monthly Subscripti on Fee Rs.23,398 /- @ pg.27	@ Pages 41-47	@ Pages 48-49	@ Pages 51-52	30.12.14	Rs.3,03,843/- @ pg.4-5	Rs.1,08,646/ -	Rs.1,79,385/-
7	277(C)/ 2015	Irani Cable Pvt. Ltd.	Prior to Content Aggregat or Regulatio n Period – 1.1.14- 31.12.14 @ pg.12 Monthly Subscripti on Fee Rs.1,26,50	Till 31.3.14 @ pages 28-35 1.4.14- 12.12.14 @ Pages 76-78	@ Pages 68-75	@ Pages 76-78	12.12.14	Rs.25,66,746/ - @ pg.6	Rs.25,66,74 6/-	Rs.25,66,746/-

			0/- @ pg.26 Post Implemen- tation of Content Aggregato- r Regulatio- n Period - 1.4.14- 31.12.14 @ pg.37 Monthly Subscripti- on Fee Rs.1,04,45 4/- @ pg.45								
8	278(C)/ 2015	Skyline Network	Period - 1.1.14- 31.3.14 @ pg.14 Monthly Subscripti- on Fee Rs.26,700 /- @ pg.28	@ Pages 33-44	@ Pages 45-47	@ Pages 48-49	22.12.14	Rs.3,19,891/- @ pg.4-5	Rs.86,613/-	Rs.1,65,636/-	
9	288(C)/ 2015	Site Entertai- nment Network	Period - 1.4.13- 31.3.14 @ pg.14 Monthly Subscripti- on Fee Rs.6,25,00 0/- @ pg.61	@ Pages 67-72	@ Pages 73-76	@ Pages 77	9.2.15	Rs.32,23,485/ - @ pg.7	Rs.41,05,63 5/-	Rs.32,23,485/-	
10	299(C)/ 2015	Bareilly City Cable Network	Period - 1.12.13- 31.12.14 @ pg.14 Monthly Subscripti- on Fee Rs.11,12,4 96/- @ pg.28	@ Pages 34-48	@ Pages 49-52	@ Pages 53-55	19.4.15	Rs.1,69,00,26 1/- @ pg.6	Rs.1,13,76,7 23/-	1,51,68,963/-	

Petitions nos.272(C)/2015 and 277(C)/2015:

At serial 4 in the above table is petition no.272(C)/2015. In this case, the interconnect agreement between the parties was for the period 1.1.2014 to

31.12.2014. It is the case of the petitioner that in terms of the agreement it supplied signals to the respondent Rathore Media Network on a monthly subscription fee of Rs.44,000/-. The supply of signals was disconnected on 30.12.2014 for non-payment of the subscription fee dues. The disconnection of the supply of signals thus took place before the expiry of the agreement. On the date of the disconnection, the petitioner's dues against the respondent amounted to Rs.3,67,372/-. The petitioner, in support of its case, has examined one Arvind Isharwal who is the authorised representative of the petitioner company. The witness fully supported the case of the petitioner and he formally proved the relevant documents, namely, the affiliation agreement between the parties, invoices raised by the petitioner, the legal notice dated 2.3.2015 issued by the petitioner to the respondent and its proof of delivery and the statement of account that were marked as exhibits. Evidences, both oral and documentary, adduced by the petitioner fully support its case. As noted above there is no rebuttal of the petitioner's evidence. There is, therefore, no reason why the case of the petitioner be not accepted. The claim of the petitioner against Rathore Media Network is, therefore, allowed and a decree for the sum of Rs.3,67,372/- is granted in its favour. The decretal amount will also carry interest @ rate of 11% from the date of the disconnection till the date of actual payment.

At serial 7 in the above table is petition no.277(C)/2015. In this case the interconnect agreement between the parties was for the period 1.1.2014 to

31.12.2014. In terms of the agreement, the respondent Irani Cable Pvt. Ltd. received signals from the petitioner on a monthly subscription fee of Rs.1,26,500/- upto 31.3.2014 and Rs.1,04,454/- from 1.4.2014. The supply of signals to Irani Cable was disconnected on 12.12.2014 for non-payment of dues of subscription fee. The disconnection of supply in this case too took place a few days before the expiry of the agreement. On the date of disconnection, the petitioner's dues against the respondent amounted to Rs.25,66,746/-. The petitioner in support of its case has examined one Murlidhar G. Dorairaj who is the authorised representative of the petitioner company. The witness fully supported the case of the petitioner and formally proved the relevant documents, namely, the affiliation agreements between the parties, invoices raised by the petitioner, the legal notice dated 23.2.2015, demand notice dated 9.3.2015 and the proofs of delivery, and the statement of account that were marked as exhibits. The petitioner's evidences both oral and documentary fully support its case. As noted above there is no rebuttal of the petitioner's evidence. There is, therefore, no reason why the case of the petitioner be not accepted. The claim of the petitioner against Irani Cable Pvt. Ltd. is, therefore, allowed and a decree in the sum of Rs.25,66,746/- is granted in its favour. The decretal amount will also carry interest @ rate of 11% from the date of the disconnection till the date of actual payment.

In the rest of the 8 cases, as may be seen from the above table, the position is materially different in that in those cases the disconnection of supply of signals took place not only after the expiry of the interconnect agreement but even beyond the three months' period from the respective dates of expiry of the agreements. In a number of cases, the Tribunal has held that in view of Regulation 4A, it is not permissible to supply signals of any pay channels to any distributor of TV channels in the absence an interconnect agreement in writing. And, therefore, any claim of subscription fee beyond the period of the agreement cannot be upheld by the Tribunal. However, at the material time Regulation 8 allowed three months' time to the parties for negotiations for renewal of the agreement. Hence, depending upon the facts of the case, the period for which the claim of recovery of dues may be lawfully lodged before the Tribunal may be extended by three months from the date of expiry of the interconnect agreement.

Keeping the above legal position in mind, we advert to the facts of the cases in hand. On behalf of the petitioner, it is stated in the petition as also in the evidence affidavits submitted on its behalf, in all these cases, that after the expiry of the agreements, the parties were negotiating for the terms on which the agreements may be renewed and in those circumstances, it was on the request of the respondents that the petitioner continued to supply signals to them. By way of sample, the statements made in paragraphs 8 and 12 of the

evidence affidavit submitted by the petitioner's witness in petition no.165(C)/2015 are reproduced below:

“8. I state that post expiry of the said Affiliation Agreement, the Respondent has failed to execute fresh agreements for the renewed period despite Petitioner's best efforts to have the same executed in accordance with law. The negotiations in respect of renewal have gone through between the Petitioner and the Respondent for a long time and during the period of negotiation, it was agreed between the Petitioner and Respondent that the Petitioner shall continue to provide the signals and in case of renewal, the payment would be made as per the renewed agreement. However, despite best efforts of the Petitioners, the agreements could not be renewed.

12. I state that the Respondent has enjoyed continuous and uninterrupted supply of signals of the Petitioner's channels and even after expiry of the agreement, the signals were continued on its specific request, which was agreed by the Petitioner, keeping its relationship in mind. Hence, the Petitioner is entitled to recover the amounts due and payable even post the period of expiry of the interconnection agreements. Despite several repeated requests and reminders, both verbal and by letters, the Respondent has deliberately failed and avoided to pay in terms of the said Affiliation Agreement resulting in accumulation of substantial outstanding.”

The petitioner has thus made out a case for considering its claim for recovery of its dues against the respondents upto the period of three months from the respective dates of expiry of the agreements.

Having thus clarified the legal position, we turn to the table above. In petition no.273(C)/2015 against Peptech Cable, Chatarpur (at serial no.5), it is shown that though on the date of disconnection, the petitioner had dues amounting to Rs.4,10,130/-, on the date of expiry of the agreement as also on the date three months beyond the expiry of the agreement it has Nil dues against the respondent.

In light of the legal position stated above the petitioner cannot recover its alleged dues against the respondent Peptech Cable, Chatarpur. This petition is accordingly dismissed.

In rest of the 7 cases, the petitioner has duly proved its case by leading cogent oral and documentary evidences that remain un rebutted. There is, therefore, no reason not to accept its case in those cases. It is accordingly held that in the 7 cases, i.e., (i) petition no.165(C)/2015, (ii) petition no.269(C)/2015, (iii) petition no.271(C)/2015, (iv) petition no.275(C)/2015, (v) petition no.278(C)/2015, (vi) petition no.288(C)/2015 and (vii) petition no.299(C)/2015, the petitioner is entitled to decrees for the amounts shown in the last column of the table (under the heading, "Outstanding Amount for the agreement period + three months thereafter") against the respective respondents. The decretal amounts will carry interest @ 11% from the dates the amounts became due till the dates of actual payment.



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 (Aftab Alam)
 Chairperson

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 (Kuldip Singh)
 Member

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 (B.B. Srivastava)
 Member