

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

Dated 10 May, 2016

Broadcasting Petition No.319 of 2015

MSM Discovery Pvt. Ltd. (MSMD) & Anr. ... Petitioners

Vs.

Dream Entertainment, Bihar ... Respondent

BEFORE:

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

For Petitioner : Ms. Payal Kakra, Advocate
Ms. Ritwik Sneha, Advocate

For Respondent : None

ORDER

By Aftab Alam, Chairperson – MSM Discovery Pvt. Ltd., the petitioner, is a broadcaster. It supplies its TV channels, for consideration, to multisystem operators (MSOs) for further distribution and re-transmission. It

has filed this petition against Dream Entertainment, a proprietorship concern, operating as a MSO, seeking recovery of Rs.1,15,009/- as dues of monthly subscription fees.

The respondent did not appear despite repeated notices and hence, the petition was proceeded with *ex parte*.

According to the petitioner, it had entered into a subscription agreement with the respondent on 03.06.2014 for retransmission of its TV channels in the town of Begusarai on payment of the fixed amount of Rs.78,320/-(exclusive of taxes) as monthly subscription charges. The subscription agreement was for the period 01.01.2014 to 31.12.2014. Further, it had entered into another subscription agreement with the respondent on 10.10.2014 for retransmission of its TV channels in the town of Begusarai on payment of the fixed amount of Rs.64,670/-(exclusive of taxes) as monthly subscription charges. The subscription agreement was for the period 01.04.2014 to 30.04.2015.

It is the case of the petitioner that the respondent was irregular in payment of its monthly subscription fee, it defaulted on the monthly payments and as a result arrears of subscription fees amounting to Rs.5,42,009/- became due from it as on 16.04.2015. It is further the case of the petitioner that the respondent did not pay its dues despite repeated reminders and thus, left with no option, the petitioner issued a notice dated 23.01.2015 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 on 08.03.2015 under clause 4.3 of the Regulations in two leading local newspapers, viz., (i) The Hindustan Times (English) and (ii) Rashtriya Sahara. 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 16.04.2015. The petitioner thereafter sent a legal notice dated 16.06.2015 to the respondent demanding its outstanding dues amounting to Rs.5,42,009/- 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 Amit Kumar, authorised representative of the petitioner company. In his deposition, he fully supported the petitioner's claim against the respondent. He identified and proved the subscription agreements executed by the respondent, which are marked as **Exhibit P-1(Colly)**. He also identified and proved copies of the monthly invoices raised by the petitioner against the respondent, which are marked as **Exhibit P-2(Colly)**. He identified and proved the notice dated 23.01.2015 issued under clause 4.1 of the Interconnect Regulations as also the public notices dated 08.03.2015 issued under clause 4.3 of the Interconnect Regulations, which are marked as **Exhibit P-5 (Colly)**. Finally, he identified and proved the legal notice dated 16.06.2015 sent to the respondent along with its postal receipt, which is marked as **Exhibit P-6(Colly)**.

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

"7. I say that a Subscription Agreement bearing number AGR/2014/CATV/K/151 for the period of 01.01.2014 – 31.12.2014 as executed between the Respondent and the Broadcasters through Petitioner No.1 and then pursuant to TRAI Amendment dated 10.02.2014 Subscription Agreement bearing number MSM/SPL/AGR/2014/K/52 for the period 01.04.2014 – 31.12.2014 was executed by the Respondent with the Broadcaster (MSM) through Petitioner No.1 as its duly authorised agent, under the terms whereof the Respondent was granted the permission to retransmit the signals of the Channels of the Broadcaster to their subscribers in the agreed Territory. I say that pursuant to the aforesaid Agreements the Respondent was liable to pay the monthly Subscription Fees as set forth below:

- a. For the Period 01.01.2014 – 31.12.2014 : Rs.78,320/- (Rupees Seventy Eight Thousand Three Hundred Twenty Only) per month exclusive of all taxes.
- b. For MSM Channels from 01.04.2014 – 30.04.2015 : Rs.64,670/- (Rupees Sixty Four Thousand Six Hundred Seventy Only) per month exclusive all taxes.

in lieu of the services availed by the Respondent, on the due date, without any default and on time. Copy of the subscription agreements between the parties is exhibited herewith and marked as **EXHIBIT P-1 (Colly) (Page No.18-61)**.

8. xxxxxxxx

9. I say that the Respondent has persistently defaulted in making payment of the Subscription Fees on the due dates and wilfully committed default in the said payments with a malafide intention to adversely affect the commercial interests of the Petitioners.

10. xxxxxxxx

11. xxxxxxxx

12. xxxxxxxx

13. xxxxxxxx

14. I say that pursuant thereto, the Petitioners had been continuously following up with the Respondent for the payment of its legitimate dues. However, despite repeated requests made by the Petitioners in this regard, the Respondent has deliberately failed and neglected to

clear the outstanding subscription charges due and payable to the Petitioners.

15. The Petitioners were thus left with no other option but to deactivate signals of its channels to the Respondent's network on 16.04.2015. I say that the Petitioners also issued a Legal Demand Notice dated 16.06.2015, through its Advocate to the Respondent calling upon the Respondent to clear the total outstanding amount due and payable by the Respondent as on 16.04.2015 (which the amount due and payable by the Respondent till date of deactivation) of Rs.5,42,400/- (Rupees Five Lac Forty Two Thousand Four Hundred Only), as detailed below:

a. Upto 31.03.2014: Rs.1,31,399/- (Rupees One Lac Thirty One Thousand Three Hundred Ninety Nine Only)

b. For MSM channels from 01.04.2014 – 16.04.2015: Rs.4,11,001/- (Rupees Four Lac Eleven Thousand One Only)

along with interest @ 18% per annum. The legal notice to the Respondent was sent at the address of the Respondent which was furnished/notified by the Respondent to the Petitioner at the time of entering into the Subscription Agreement with the Petitioner and has been furnished by the Respondent to the Petitioner. Copy of the legal notice along with proof of despatch and copy of tracking report are exhibited herewith as **EXHIBIT P-6 (Colly.) (Page No.83-89).**”

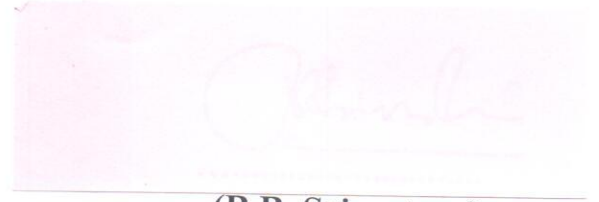
The case of the petitioner is fully supported by oral and documentary evidences that remain completely unchallenged and uncontroverted before the Tribunal. There is, therefore, no reason not to accept the petitioner's claim.

We accordingly allow the petitioner's claim and hold the petitioner entitled to decrees for the sum of Rs.1,31,399/- and Rs.4,11,001/- respectively, along with interest @ 18% from 01.01.2014 to 16.04.2015, the date of deactivation of signals and @ 9% from 17.07.2015, the date filing of the petition before the Tribunal, till the date of realization.

Since the petition has proceeded ex parte, there shall be no order as to costs.



(Aftab Alam)
Chairperson



(B.B. Srivastava)
Member

sks

