

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

**Dated 10 May, 2016**

**Broadcasting Petition No.317 of 2015**

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

Vs.

Srishti Cable TV Network Ltd. ... Respondent

**ALONG WITH**

**Broadcasting Petition No.309 of 2015**

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

Vs.

Shri Radhey Cable TV Network ... Respondent

**Broadcasting Petition No.311 of 2015**

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

Vs.

Sky TV Network, M.P. ... Respondent

**Broadcasting Petition No.312 of 2015**

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

Vs.

Mee Channel Network, A.P. ... Respondent

**BEFORE:**

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

For Petitioners : 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) and local cable operators (LCOs) for further distribution and re-transmission. It has filed this batch of 4 petitions, each against a cable operator from whom the petitioner seeks recovery of different sums of money as dues of monthly subscription fees.

None of the 4 cable operators, respondents in this batch of petitions, appeared despite service of notice. Hence, all the petitions in the batch were proceeded with *ex parte*.

As all the 4 cases are based on similar facts, with the exception of the amounts of money claimed and the dates of disconnection of signals, all the 4 petitions were heard together and are being disposed of by this common order.

For the sake of convenience, the relevant facts pertaining to the 4 petitions are arranged in a tabular form which is reproduced below:

S N	Pet. No.	Name of Respondent	Period of Agreement	Notice under 4.1/6.1	Public Notice under clause 4.3/6.5	Legal demand notice	Deactivation date	Outstanding amount till the date of agreement	Outstanding amount for the agreement period + 3 months thereafter	Outstanding Amount till date of deactivation	Name of the witness examined
1	2	3	4	5	6	7	8	9	10	11	12
1	317 of 2015	Sristi Cable TV Network	1.4.14 to 31.10.14	5.3.15	17.3.15	16.6.15	17.4.15	31,56,803/-	7,00,514/-	36,50,887/- till Nov. 2014	Mithun Chatterjee
2	309 of 2015	Shri Radhey Cable TV Network	1.4.14 to 31.12.14 @ Rs.53,140/-	1.3.15	22.3.15	16.6.15	15.4.15	3,07,103/-	NA	3,07,103/-	Vikalp Mishra
3	311 of 2015	Sky TV Network	1.4.14 to 31.12.14 @ Rs.44,408/- & 1.1.15 to 31.12.15 @ Rs.57,565/-	19.2.15	12.3.15	16.6.15	29.4.15	5,20,298/-	NA	5,20,298/-	Hemendra Makwana
4	312 of 2015	MEE Channel Network	1.4.14 to 31.12.14 @ Rs.51,625/-	16.2.15	14.3.15	16.6.15	14.4.15	As per the invoicing 2,38,233/-	1,74,018/-	4,27,720/-	A.K. Mahesh

Column no.2 gives the number of petition and column no.3, the name of the respondent, the local cable operator. From column no.4, it would appear that though all the agreements were executed on 1.4.2014, they came to end on different dates; column no.5 gives the dates on which demand notices were sent to the respondents and column no.7, the dates on which legal notices were sent to them; column no.8 gives the date of deactivation of signals to the respondents and column 9 states the amounts due against each of the 4 respondents till the date of

agreement; column no.10 gives the outstanding amounts against the respondents as on the date three months beyond the period of the agreements and column no.11 shows the outstanding amounts due against the respondents till the date of disconnection of signals to the respondents.

The petitioner has claimed the amounts due along with interest @ 18% from the dates the amounts became due till the date of the filing of the petition.

In each petition copies of the subscription agreements, copies of the monthly invoices along with proof of service, copies of the demand letter and the legal notices are enclosed as annexures.

It is to be noted here that according to its case, the petitioner continued the supply of signals to the respondents in Broadcasting Petitions Nos.309, 312 and 317 of 2015 even after the agreements had come to end. This is on the plea that the local cable operators in those cases were negotiating with the petitioner for arriving at the terms for fresh agreements. However, in Broadcasting Petition No.311 of 2015, the deactivation of signals was during the currency of the agreement between the parties.

It is interesting to note that in all the 4 cases, similar statements are made in paragraphs 8, 9 and 10 of the petition to the following effect:

“8. Further, the Petitioner No.1 had intimated to the Respondent about the expiry of the Subscription Agreement and had called upon the

Respondent to furnish the necessary information/data relevant for negotiating and finalizing the Affiliation Agreement/Subscription Agreement which had expired due to efflux of time on 31.10.2014. Despite the utmost effort put in by Petitioner No.1, the Respondent kept on dilly dallying the whole process and failed to execute the fresh Agreements and kept delaying the process in turn.

9. That all along the Respondent kept making false assurances to Petitioner No.1 to the effect that it intends to enter into a fresh Subscription Agreement for the period post expiry of the last Subscription Agreement and that it shall come forward to execute the same and also requested Petitioner No.1 to continue with the supply of the signals. Acting on such assurances, Petitioner No.1 provided to the Respondent uninterrupted supply of signals and these signals have been in turn put to profitable use by the Respondent by re-transmitting the same to its subscribers. Thus all along the Respondent has enriched itself by collecting subscription fees from its subscribers at the cost of the Broadcaster's content and has not cleared the lawful dues. However, even then the Respondent has not cooperated with the Petitioners by making payment of its admitted liability, with an intention to cause unjust enrichment for itself and heavy commercial losses to the Petitioners.

10. That the Petitioners have raised Invoices and Debit Notes on the Respondent for the services provided by the Petitioner No.1 and profitably availed of by the Respondent till the date of deactivation, however the Respondent has defaulted in payment of the lawful dues payable to the Petitioners despite being fully aware of its financial liability. The Petitioners have made several requests to the Respondent in this regard however the Respondent has been a persistent and regular defaulter in making payments.....”

The above statement also forms part of Broadcasting Petition No.311 of 2015 in which, as noted above, the deactivation of signals was effected before the terms of the agreement came to end. It is, thus, clear that the petitions are drafted without any proper application of mind to the facts of each case.

Similarly, the witnesses examined by the Petitioner made identical statements in all cases. Some extracts from the witness' deposition in one of the cases (Broadcasting Petition No.311 of 2015) are as under:

"11. I say that being aggrieved by the constant defaults of the Respondent in making payments of the subscription fees timely, the Petitioners herein were constrained to issue Disconnection notice dated 19.02.2015 upon the Respondent under clause 4.1 of the TRAI's Interconnect Regulations for reason of non-payment of outstanding dues followed by Public Notices dated 12.03.2015 under Clause 4.3 of the Interconnection Regulations. Copy of the Notice under Clause 4.1 of the TRAI Interconnection Regulation and copy of the Public Notices under Clause 4.3 of the Interconnection Regulation are exhibited herewith and marked as **EXHIBIT P-3 (Colly) (Page No.42-45)**.

12. 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 been deliberately failed and neglected to clear the outstanding subscription charges due and payable to the Petitioners.

13. The Petitioners were thus left with no other option but to deactivate signals of its channels to the Respondent's network on 29.04.2015. 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 29.04.2015 (which is the amount due and payable by the Respondent till date of deactivation) of Rs.5,20,298/- (Rupees Five Lac Twenty Thousand Two Hundred Ninety Eight 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....."

The above extract from the witness's deposition, as quoted above, is by way of sample and it may be stated here that the witnesses made identical statements in

all cases, of course, with variations in regard to the amounts due and other relevant specifics.

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.

**Broadcasting Petition No.317 of 2015**

In this case, the dues as on the date of expiry of the agreement amounted to Rs.31,56,803/- but after the expiry of the agreement and in course of negotiations for a fresh agreement, the LCO admittedly made substantial payments to the petitioner and as a result the petitioner's dues as on the date, falling three months after the expiry of the agreement came down to Rs.7,00,514/-.

**Broadcasting Petition No.309 of 2015**

In this case, the amount of dues at the time of the expiry of the agreement (and on the date of deactivation of signals) remains the same, i.e., Rs.3,07,103/-. The petitioner is, therefore, held entitled to the payment of this amount from the respondent.

**Broadcasting Petition No.311 of 2015**

In this case, as noted above, the deactivation of signals was effected during the terms of the agreement. Hence, the petitioner is entitled to recovery of dues as on that date, the amount being Rs.5,20,298/-.

**Broadcasting Petition No.312 of 2015**

The outstanding amount on the date falling three months after the expiry of the agreement came down from Rs.2,38,233/- to Rs.1,74,018/-. In this case too, therefore, like Broadcasting Petition No.317 of 2015, the petitioner would be entitled to the lower amount of Rs.1,74,018/-.

The office is directed to draw decrees against each of the respondents separately for the amounts as directed above.

The above decretal amounts will also carry interest @ 9% per annum from the date of filing of the petition till the date of actual payment.

Since the case has proceeded *ex parte*, there will be no order as to costs.

  
(Aitab Alam)  
Chairperson

  
(B. B. Srivastava)  
Member

sks

