

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

Dated 23rd May, 2017

**Broadcasting Petition No. 145 of 2014
(M.A. No. 488 of 2016)**

Sun Distribution Services Pvt. Ltd., Chennai ... Petitioner

Versus

Lifestyle Communications, Hyderabad, A.P. ... Respondent

BEFORE:

**HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON
HON'BLE MR. BIPIN BIHARI SRIVASTAVA, MEMBER
HON'BLE MR. A.K. BHARGAVA, MEMBER**

For Petitioner : Mr. Abhishek Malhotra, Advocate

For Respondent : Mr. Diggaj Pathak, Advocate

ORDER

By S.K, Singh, Chairperson – This petition has been detagged from Broadcasting Petition No.144 of 2014 and heard on merits on account of M.A. No.488 of 2016 filed on behalf of the respondent seeking dismissal of petition on the ground that it is not maintainable in view of judgment and order dated 10.05.2016 passed by this Tribunal in the case of UCN Cable Network India Pvt. Ltd. Vs. Raj Cable Network & Anr. (B.P. No.611 of 2015) and the

connected B.P. No.176 of 2015 (Manthan Broadband Services Pvt. Ltd. Vs. Rajarhat Cable Broadband Services & Anr.).

Both the aforesaid cases had been preferred by a Multi-System Operator (MSO) against a Local Cable Operator (LCO) for recovery of money claimed as dues of subscription charges. The Division Bench of this Tribunal headed by Justice Aftab Alam, Chairperson, at the outset noted the common issue of law requiring answer by the Tribunal in following terms:

“Is a proceeding for recovery of money due for supply of TV signals maintainable under Section 14A of the Telecom Regulatory Authority of India Act, 1997 in the absence of a written interconnect agreement between the parties?”

The Division Bench considered detailed submissions of the parties. After considering all the relevant materials including the Interconnection Regulations 2004 issued by TRAI and also clause 4A of the Regulations inserted through a notification dated 17th March, 2009, chose to differ with the earlier decision of the Tribunal dated 18th October, 2012 rendered singly by the then Chairperson in the case of S.R. Cable Pvt. Ltd. Vs. Gulabchand Panjre and answered the question of law by holding that in the absence of a written interconnect agreement a proceeding for recovery of money would not be entertained by the Tribunal. The Division Bench reminded itself that unlike a court established under the Code of Civil Procedure, this Tribunal set-up under the TRAI Act

cannot view the matter as purely a private dispute concerning the rights of two individuals. It was bound to examine whether the relationship between the parties was lawful as per provisions of the TRAI Act and the Regulations and its likely impact and consequences on the broadcasting sector as well.

It is not in dispute that Manthan Broadband Services challenged the aforesaid judgment of this Tribunal before the Hon'ble Supreme Court but without success and its Civil Appeal was dismissed.

The averments made in the petition, particularly, in paragraphs 1, 6 and 7 as well as the statement of account contained in Annexure P/3 leave no manner of doubt that the subscription agreement between the parties dated 16.09.2011 was valid only for the period 01.04.2011 to 31.03.2012. Petitioner has pleaded in paragraph 1 that thereafter the agreement continued "as per the oral arrangement between the parties". In paragraph 6 of the petition, it is further admitted that even after repeated requests the respondent did not renew the agreement after its expiry on 31.03.2012. The petitioner has claimed a right to recover subscription dues for the period 01.04.2012 to 19.02.2014. The entire period is not covered by any written agreement as per averments noted above in the petition and even as per oral evidence adduced on behalf of the petitioner wherein the witness has clearly admitted in cross-examination that there was no agreement during this period.

In course of arguments, learned counsel for the petitioner tried to make out a new case that a written agreement can be inferred on the basis of letters

exchanged between the parties. This argument has to be rejected as being contrary to specific pleadings and also the evidence on record.

We find no good reason to take a different view than what has been taken by the Division Bench in the case of UCN Cable Network India Pvt. Ltd. Following the said judgment, major part of the petitioner's claim has to be rejected and dismissed for the reason that there was no written interconnect agreement between the parties during the relevant period.

However, a part of the petitioner's claim has to be allowed on account of a legal proposition and an undisputed fact that the dues for the month of March shown as opening balance as on 01.04.2012 in the statement of account is Rs.13,93,527.43p. March 2012 was clearly covered by a written agreement, hence, the claim for the aforesaid amount cannot be rejected. Clause 8 of the Interconnect Regulations 2004 corresponds to Clause 5(16) of the DAS Interconnect Regulations 2012. It allows, after expiry of an agreement, three months' time to the parties to negotiate the terms of a fresh agreement. If executed, such fresh agreement would relate back to the date of expiry of the previous agreement. No doubt, such provision was misused but on behalf of the petitioner, it has been rightly claimed that at least for three months, the Regulations permitted the parties to continue with the terms of the old agreement even after its expiry.

In that view of the matter and considering the entire materials on record, the claim of the petitioner upto June 2012 shown in the statement of account

deserves to be accepted. Including the opening balance already noticed earlier, the outstanding balance on account of invoice upto June 2012 is Rs.51,64,950.39p. This amount alone is found due and payable in place of the claimed amount of Rs.1,33,31,336.32p. The petitioner has also claimed interest @ 18% per annum for the entire period of delay. In our view, it would be reasonable and in the interest of justice to allow the claim of interest only @ 8% per annum from 01.07.2012 till the date of realization.

Let a decree be passed for the principal dues upto June 2012 indicated earlier as well as for the interest accrued from July 2012 till date at the rate indicated above. The principal amount will carry further interest at the same rate of 8% per annum till the dues are realized.

The petition is allowed only to the extent indicated above along with a quantified cost of Rs.50,000/- payable by the respondent to the petitioner.

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(S.K. Singh, J)
Chairperson

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(B.B. Srivastava)
Member

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(A.K. Bhargava)
Member