

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 4 / May, 2017

Broadcasting Petition No. 522 of 2014
(M.A. No. 43 of 2014)

GTPL Hathway Pvt. Ltd.

...Petitioner

Vs.

Tirupati World Vision

...Respondent

BEFORE:

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

For Petitioner : Mr. Jayant K. Mehta, Advocate
Mr. Nasir Husain, Advocate

For Respondent : None.

ORDER

By S.K. Singh, Chairperson – The petitioner is a private limited company engaged in the business of distribution of television channels as a Multi-System

Operator (MSO). The respondent is a Local Cable Operator(LCO) engaged in the business of providing Cable TV signals to individual households.

On account of disinterest shown by the respondent, the matter has been heard *ex parte* from the evidence stage itself.

Learned counsel for the petitioner advanced submissions in support of the prayer of the petitioner i.e. "to direct the respondent to pay to the Petitioner a sum of Rs.39,58,766/-(Rupees Thirty Nine Lakhs Fifty Eight thousand Seven Hundred and Sixty Six only) due as on June 2014 inclusive of interest towards outstanding subscription charges and activation charges of Set Top Boxes".

The materials on record disclose that the claim of the petitioner is for dues during the period November 2006 to June 2014. This petition was filed on 5th December, 2014 and hence all claims prior to 5th December, 2011 are clearly barred by law of limitation governing such money claims. Hence, petitioner is entitled only for the dues on account of default in payment since 5th December, 2011.

The written agreement between the parties during the relevant period was valid and in existence between 20th July, 2009 to 19th July, 2013. Normally, as per

law settled on the subject, this Tribunal does not entertain or allow such claims as made by the petitioner for any period for which there was no written agreement. Even if three months' grace period is added to the period of agreement, the supply of signals could be chargeable only till 19th October, 2013. Hence, the claim of the petitioner after 19th October, 2013 is also not worthy of acceptance. It is accordingly disallowed.

On 25th April, 2017, the arguments were concluded. However, learned counsel for the petitioner, Mr. Nasir Husain, on account of observations made by the Tribunal during hearing, has submitted on 28th April, 2017, a Computation Sheet of outstanding dues payable by the respondent within the period of limitation discussed above and also the agreement period including the grace period which came to an end by 19th October, 2013. A perusal of the Computation Sheet, however, discloses that Mr. Nasir Husain has treated the recoverable outstanding since 1st January, 2011 instead of December, 2011. Hence, the outstanding for the period upto November 2011 shown as Rs.2,53,979/- (Rupees Two Lakhs Fifty Three Thousand Nine Hundred and Seventy Nine only) has to be excluded from the Computation Sheet of dues. Accordingly, the principal amount after such deduction would be only Rs.9,53,254/- (Rupees Nine Lakhs Fifty Three Thousand Two Hundred and Fifty Four only) and not Rs.12,07,233/- (Rupees Twelve Lakhs

Seven Thousand Two Hundred and Thirty Three only). He has also included interest calculated at the rate of 8% from the date of filing of the petition and outstanding towards Set Top Boxes activation charges as Rs.9,68,506/- (Rupees Nine Lakhs Sixty Eight Thousand Five Hundred and Six only).

Since the evidence adduced on behalf of petitioner has not been challenged by the respondent and no cross-examination has taken place due to default of the respondent, the outstanding claimed for Set Top Boxes activation charges is taken as proved and the same has rightly been shown as outstanding against the respondent. But the interest from the date of filing of the petition cannot be allowed in absence of there being any prayer for interest in the petition.

In the facts of the case, the amount of Rs.9,53,254/- (Rupees Nine Lakhs Fifty Three Thousand Two Hundred and Fifty Four only) accepted after scrutiny as principal amount is found payable by the respondent along with Rs.9,68,506/- (Rupees Nine Lakhs Sixty Eight Thousand Five Hundred and Six only) outstanding towards Set Top Boxes activation charges, the total being Rs.19,21,760/- (Rupees Nineteen Lakhs Twenty One Thousand Seven Hundred and Sixty only). We direct the respondent to pay this decretal amount to the petitioner within three months from today. In case it is not paid within this time,

after three months, the respondent would be liable to pay the amount with interest @ 8% per annum from the date of this judgment till the date of its realization.

The claim is allowed to the extent indicated above along with a consolidated 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

sks

