

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**

**NEW DELHI**

**Dated 23<sup>rd</sup> May, 2017**

**Broadcasting Petition No.516 of 2012**

M/s Den Kashi Cable Network Pvt. Ltd.

...Petitioner

Vs.

Singh 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. Vibhav Srivastava, Advocate,

For Respondent : None

**ORDER**

**By S.K. Singh, Chairperson** - This petition, filed under section 14 read with 14A of the TRAI Act, 1997 for recovery of money under various heads from the respondent, has a dubious feature in the sense that the respondent has not only adopted delaying tactics but has also disregarded directions for deposit of costs that were levied only to accommodate prayers made on behalf of the respondent for producing witnesses for cross-examination. Such conduct is evident from order dated 3.11.2016 in which the Tribunal has also extracted two earlier orders and then foreclosed the right of the respondent to lead evidence, after recording that it had neither deposited cost imposed nor produced its witness for examination and cross-examination. On 1.5.2017, respondent's counsel appeared and prayed for one week accommodation to get fully ready for arguing the matter. The accommodation was granted

and on 8.5.2017, the matter was adjourned in presence of counsel for both the parties for hearing on 9.5.2017. On that date counsel for the respondent did not appear but sent a message that he had no instructions to appear. The matter was heard in part and posted for further hearing on 15.5.2017. On that date also nobody appeared for the respondent. Hearing was concluded and order reserved.

The petitioner is a Multi Systems Operator (MSO) whereas the respondent is a Local Cable Operator(LCO) at Varanasi. Both the parties entered into an affiliation agreement dated 4.10.2010 valid for a period of 60 months.

The petitioner has claimed that pursuant to the agreement the respondent began receiving signals from the petitioner and provided cable services to the subscribers. But instead of paying the subscriber charges as per invoices raised by the petitioner, the respondent made only some part payments which were duly accounted for but still respondent became liable to pay an outstanding balance of Rs.5,74,015/- . Copies of the agreement and statement of running accounts are on record as Annexure P-1 & P-2. It is further case of the petitioner that in spite of notice dated 29.10.2011 the respondent did not send any reply nor made payments. Another notice dated 5.12.2011 was replied by the respondent through letter dated 10.12.2011 wherein he admitted dues of only Rs.3,06,150/-.

It is the case of the petitioner that after availing signals of the petitioner till October, 2011, the respondent migrated to another service provider without giving any notice to the petitioner and in violation of Interconnect Regulations of TRAI. The respondent had allegedly taken 252 Set Top Boxes (STBs) from the petitioner which it failed to return without making any payment therefor.

The reply filed on behalf of the respondent alleges that there was no written agreement between the parties. According to the respondent, he was required to pay the monthly subscription charge @ Rs.5000/- per month which was paid by the respondent. In September, 2011, there arose differences and allegedly petitioner disconnected the signals soon thereafter. In support of his stand, the respondent placed reliance upon his own letter dated 2.11.2011 in which he protested the bill of October, 2010 for Rs.38,605/- and requested for disconnecting the signals from 2.11.2011.

Besides, the claim of Rs.5,74,015/-, the petitioner has also prayed for a direction to the respondent to return the 252 STBs in good working condition or else to pay by way of its selling price, Rs.5,03,748/-. Petitioner has also claimed damages of Rs.1,93,025/- as loss of subscription fee till March, 2012 from November, 2011. It has also claimed a decree for interest @ 18% per annum or at any appropriate rate.

Learned counsel for the petitioner has submitted that the records of the case sheet show that the respondent has not come forward to depose as a witness to support his own case nor any further witness has been examined and cross-examined in his favour. In such circumstances, this Tribunal must draw a presumption that the case set up by the respondent is not correct. In support of this proposition, reliance has been placed upon a judgment of Hon'ble Supreme Court in the case of Vidyadhar Vs Manikrao & Anr. Reported in (1999) 3SCC 573.

The order sheet dated 5.12.2012 discloses that 5 issues were framed for trial and adjudication in this case. The issues are as follows:

1. Whether the affiliation agreement, as annexed with the petition was ever executed between the parties?
2. Whether the petitioner has served invoices, if any, upon the respondent?
3. Whether the respondent has complied with the provision of the Interconnect Regulations before migrating to the other MSO, if the answer to Issue No.1 is in negative, what is the extent of damages to which the petitioner is entitled to?
4. Whether the respondent is liable to pay to the petitioner any dues towards subscription and Set Top Boxes, if any?
5. What relief, if any, the petitioner is entitled to?

On behalf of the petitioner affidavit of evidence of one Dharmendra Kumar Singh, Director was filed along with copy of the agreement. He tendered the said affidavit as his Evidence-in-Chief and was cross-examined at length. On going through the evidence of the petitioner, it has to be held that there is no effective challenge to the agreement between the parties nor to the service of invoices by the petitioner upon the respondent. Hence, Issue No.1 & 2, particularly when respondent has lead no evidence to support his case, are decided in favour of the petitioner.

The respondent has not led any evidence to support its stand that it had complied with the Interconnect Regulations before migrating to other MSO. Hence, Issue No.3 also is decided in favour of the petitioner.

Now, the only issue is whether the respondent is liable to pay towards dues of subscription, cost of STBs and damages and, if so, what should be the amount. So far as dues of subscription are concerned, the period is covered by the agreement proved by the petitioner's witness. The statement of account brought on record supports the claim for dues from

4.10.2010 to 31.10.2011 but the amount of Rs.5,74,015/- includes an amount of Rs.1,07,150/- which is outstanding balance shown as opening balance for the month of October, 2010. Hence, this amount must be treated as dues of subscription for the period earlier to the agreement dated 4.10.2010.

In the light of judgment of this Tribunal dated 10.5.2016 in the case of UCN Cable Network India Pvt Ltd Vs. Raj Cable Network and analogous mater, the claim for a period when there was no interconnect agreement cannot be entertained by this Tribunal. Hence, against subscription charges, only an amount of Rs.4,66,865/- can be allowed against the claim of Rs.5,74,015/-.

We order accordingly.

So far as STBs are concerned, it is found that there is no mention of any claim on account of STBs in the notice dated 29.11.2011 available on record as Annexure P-3 nor in any subsequent letters issued by the petitioner after disconnection of signals in October, 2011. Two letters, which are part of Annexure P-6, dated 14.1.2012 and 8.2.2012 relate to dispute between the parties and were sent by the petitioner, respectively to the respondent and to an authority at Varanasi. Therein also no mention has been made that besides the outstanding dues of money the respondent was also liable to return STBs. On the other hand, the respondent has raised a claim that it had returned 100 STBs to the petitioner against acknowledgement contained in Annexure R-8 but he was not given back security deposits provided by him for these STBs. No doubt, the respondent has not come forward with evidence to support its case but the documents upon which the petitioner has placed reliance, they themselves create a doubt regarding the genuineness and correctness of the claim for

Rs.5,03,748/- on account of STBs. It is trite law that documentary evidence has superior reliability than oral evidence.

In view of aforesaid discussion, the claim for Rs.5,03,748/- is not found acceptable. So far as claim for damages for loss of subscription fee from November, 2011 to March, 2012 is concerned, the period of notice for disconnection under the Interconnect Regulations was only three weeks and, therefore, loss of subscription fee can be claimed as damages only for that period even if it is accepted that respondent migrated without notice. On a rough calculation, the proportionate amount of damage in the light of claim of the petitioner is assessed only as Rs.30,000/- because in the agreement the subscription charge for a month is indicated as Rs.35,000/- plus Sales Tax. Although the petitioner has claimed interest @18% per annum, in our considered view it would be just and proper to award interest on the principal amount of Rs. 4,66,865/- as well as on the amount of damage assessed at Rs.30,000/- only @8% per annum. The interest shall accrue from the date of filing of this petition till the date the amounts are realized.

The petition is allowed to the aforesaid extent along with cost of Rs.50,000/-. Let a decree be drawn up accordingly.

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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**

pkb/



