

Respondent to clear its legal dues of Rs.1,48,64,185/- within three days from the date of the said notice with an interest of 18% per annum. This amount of Rs.1,48,64,185/- was as calculated till 31/3/2005. In para-21 of the petition, a tabular statement has been given for the period October 2003 to 10/4/2005 which brings out that the outstanding dues as on 10/4/2005 were Rs.1,55,34,985/-. This calculation is based on a subscriber base of 24,000. However, in the petition, the Petitioner has claimed additional amounts and has calculated these as per a table given on page 29 of the petition which brings out a liability of Rs.1,94,74,384/- as on 11/4/2005 i.e. immediately after the disconnection of signals. An additional amount of Rs.33,98,280/- has been added by way of interest @ 18% from 11/4/2005 until 31/3/2006. According to the Petitioner it is entitled to recover an amount of Rs.2,28,72,664/- as on 31/3/2006 as stated in para-30 of the petition. The Petitioner has stated that as per the information received by it from the market as well as the inquiries/surveys made by it, the Respondent had more than 33,200 subscribers.

3. The following prayer has been made:

(a) Direct the respondent to pay the petitioner the outstanding amount of dues of the respondent is Rs.2,28,72,664/- along with interest at the rate of 18% per annum till date of payment, in terms of the details given above in this petition including in para-30.

(b) Pass such other and further order(s) as this Hon'ble Tribunal deem fit and proper on the facts and in the circumstances of the case.

4. As per the facts stated in the petition the respondent after taking over the business of M/s Spectra Net with whom the petitioner had an agreement dated 1/2/2002, executed a fresh subscription agreement dated 1/10/2003 with the Petitioner. As per terms of this agreement the Respondent had agreed to pay subscription fee of Rs.55/- per month per subscriber for 24,000 subscribers for Bouquet-I of the TV Channels of the Petitioner and was thus obliged to pay an amount of Rs.13,20,000/- per month as subscription fee (Rs.55 x 24,000 subscribers) w.e.f. 01/10/2003. The Petitioner submits that the signals were continued to be supplied to the Respondent in terms of the said agreement dated 01/10/2003 and the respondent was under an obligation/liability to pay monthly subscription fee of Rs.13,20,000/- per month to the Petitioner.

As stated by the Petitioner, with effect from 1/1/2005 the rate of Zee Turner bouquet was enhanced to Rs.58.85/- per subscriber per month in accordance with the TRAI notification dated 1/12/2004 permitting 7% increase in the price of subscription charges existing for the channels on that date. After such increase in subscription fee, the respondent was liable to pay Rs.14,12,400/- per month (Rs.58.85 x 24,000). Also, according to the Petitioner the Respondent approached the Petitioner for securing the signals of TV Channels of its Bouquet-II. It was

agreed between the Petitioner and the Respondent that the Petitioner will provide the said signals to the Respondent at subscription fee of Rs.25/- per subscriber per month. The Respondent started receiving signals of both the Bouquets and was therefore liable to pay a sum of Rs.20,12,400/- per subscriber per month w.e.f. 1/1/2005 for the receipt of signals of both the aforesaid bouquets. However, according to the Petitioner the Respondent was a habitual defaulter. One instance has been given wherein four cheques, all dated 30/11/2004, for a sum of Rs.4,64,125/-, details of which have been given in para-14 of the petition were dishonored as a result of which the Petitioner was constrained to initiate proceedings under Section 138 of the Negotiable Instruments Act.

5. The Respondent is stated to have filed Petition 38(C) of 2005 before this Tribunal, (A.M. Trinity Platco Ltd. vs Zee Turner Ltd.) copy of which has been annexed with the petition impugning the notice of disconnection dated 8/4/2005. The said petition was withdrawn by the Respondent and was dismissed on 25/4/2005 by the following order:

“Mr Agarwal, learned counsel for petitioner states that he would like to withdraw the petition as there is a possibility of compromise being arrived at.

The petition is dismissed as withdrawn.”

However, it is quite apparent that no settlement could be reached between the parties, the signals continued to remain disconnected and the Petitioner has now filed this petition for claiming the outstanding amounts from the Respondent.

6. The Respondent has refuted the claims of the Petitioner. In its reply the Respondent has stated that all amounts collected by the Respondent from the MSO's/subscribers after deduction of its basic expenses etc. have been paid over by the Respondent to the Petitioner. According to the Respondent there are no amounts that have been collected by the Respondent and not paid over to the Petitioner. In fact, in the bargain, the Respondent has suffered huge loss and damage in as much as it has not been able to recover its expenses incurred for distribution of the Petitioner's network. The Respondent has admitted that it took over the business of Spectranet Limited. It is also admitted that it was agreed between the Respondent and the Petitioner that the Respondent will pay a subscription fee of Rs.55/- per month per subscriber. It is however denied by the Respondent that it ever agreed that its subscriber base is 24,000 subscribers for the Bouquet-I, on the other hand it is stated that the Respondent told the Petitioner that an amount of Rs.13,20,000 per month as subscription fee was highly excessive and exorbitant. The Respondent is stated to have written a letter to the Petitioner on 3/1/2005 informing him about the exorbitant and highly excessive rate charged by the Petitioner. The Respondent is also stated to have reminded the Petitioner that a sum of Rs.7,00,000/- per month was agreed to between the Petitioner and the Respondent. According to Respondent even this amount was ad hoc and the Respondent had agreed to make payment as per actual audit of Subscriber Members.

Accordingly in this approach, after calculating the amount of actual total collection, the Respondent was entitled to retain certain amounts towards expenses and margin for distributing claimant's channels. The Respondent claims to have time and again requested the Petitioner to supply a fresh copy of the Agreement but the Petitioner failed to do so. The Respondent is stated to have written letters to the Petitioner on 22/1/05, 25/2/05 and again on 28/2/05 insisting on the execution of the new Agreement. According to the Respondent on 5/1/2005 a meeting was held between the Petitioner and the Respondent and after discussions an interim rate was agreed upon between the parties which was Rs.83.85 per subscriber per month. However, the Respondent is stated to have requested the Petitioner to stream line the subscriber base like dual feed MSOs etc. so that the final figure on the number of subscribers could be arrived at. This was because it was not feasible to have two MSOs working/operating in the same territory. The Respondent is also stated to have repeatedly informed the Petitioner that its subscriber base was 9006 and not 24,000 as alleged by the Petitioner. It is also submitted by the Respondent that the Petitioner with malafide intentions sent a demand notice to the Respondent on 15/4/2005 asking the Respondent to clear Rs.1,48,64,185/- The Respondent has stated that it withdrew its Petition No.38(C) of 2005 as the talks were going between the Respondent and Petitioner and the Respondent was hopeful that a compromise will be reached between the parties. The advocate for the Respondent accordingly made a statement in this Tribunal stating that there was a likelihood that a compromise may be reached among the parties. The Respondent has denied that it ever had a subscriber base of 33,200 as alleged by the Petitioner in the petition and it was not liable to pay to the Petitioner the difference of Rs.5,06,000 per month, calculated on the assumed additional subscribers over the figure of 24,000. The Respondent has also denied its liabilities as claimed by the Petitioner and has stated that it was not liable to pay interest @ 18% on the amounts claimed to be due from the Respondent.

7. The dispute in this case is clearly related to the number of subscribers. The subscriber agreement dated 1/10/2003 is for a subscriber base of 24,000. During the course of arguments the learned counsel for the Respondent accepted the position that there was no dispute regarding the signing of the above agreement. There is also proof of concurrence by the respondent to the enhancement of the rates in 2005. The Respondent also accepts receiving signals of both the bouquets till the date of disconnection. Learned counsel for the Respondent however chose to rely on audited balance sheets to show that the actual subscriber base was much lower. He drew attention to the Auditor's report and the Profit and Loss Account Statement which indicated subscription charges of Rs.2.86 crores in a year which translated to Rs.23.00 lacs per month whereas the Petitioner was asking for Rs.20.00 lacs per month. In the end he agreed that if the figure stated by the Respondent of 9600 regarding the subscription base is not acceptable to the Petitioner, there was no basis also for accepting the figure of 33,200 being claimed by the Petitioner.

8. On the basis of these facts and arguments, it appears that in the light of the widely differing positions taken by the opposing sides reliance would have to be placed on the written agreement of 1/10/2003 in which the subscription figure of 24000 has been clearly recorded and this document is signed by both the parties. There is also no dispute in regard to this agreement having been executed. The Respondent has also accepted receipt of Bouquet-II and also the enhancement of rates carried out in January 2005. In these circumstances the Petitioner is justified in making the claim on the basis of subscriber base of 24,000 and for bouquets I and II as has been done in para-21 of the petition which indicates a liability of Rs.1,55,34,985/- as on 10/4/2005. During the hearing of arguments learned counsel for the Respondent agreed that his client had no dispute in regard to the correctness of the arithmetical calculation by which this amount had been computed. In my opinion, the argument advanced on behalf of the Respondent that the Petitioner had been overcharging the predecessor company, namely, M/s Spectranet Ltd. and that the Respondent continued to pay the higher amounts even after taking over from M/s Spectranet in the hope that Conditional Access System (CAS) would come into force soon, does not carry much weight in the face of the clear written agreement on 1/10/2003 which has been signed by both the parties. In view of this clear contractual agreement between the parties, the other argument advanced on behalf of the Respondent that the audited Profit and Loss account of the Respondent be taken as the basis for determining the monthly subscription amount payable deserves to be rejected outright. However, taking into account the fact that the financial condition of the company was reported to be extremely weak, as was brought out during the time of hearing, I consider it sufficient and appropriate in the interest of justice that on the liability of Rs.1,55,34,985/- interest amount @ 10% per annum be added w.e.f. 1/4/2005 until the date of payment, instead of @ 18% per annum as claimed by the Petitioner and the Respondent is directed to pay this amount immediately to the Petitioner.

9. At the time of hearing of arguments learned counsel for the Respondent pointed out that the Registrar of Companies had taken action under Section 560 of the Companies Act 1956 whereby the name of the Company had been struck off the register and the company had been dissolved. According to the learned counsel since the respondent company was no longer in existence the petition has abated. Learned counsel for the Petitioner pointed out that there was nothing on record to substantiate the contention being made on behalf of the Respondent. He also stated that the liabilities of a juristic company would remain.

In this regard the relevant provision in Section 560 of the Companies Act 1956 is extracted below:

“560. Power of Registrar to strike defunct company off register - (1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) *If the Registrar does not within one month of sending the letter receive any answer thereto, he shall, within fourteen days after the expiry of the month, send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received and that, if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Official Gazette with a view to striking the name of the company off the register.*

(3) *If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Official Gazette, and send to the company by registered post, a notice that, all the expiration of three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.*

(4) *If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either than no liquidator is acting, or that the affairs of the company have been completely wound up, and any returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in the Official Gazette and send to the company or the liquidator, if any, a like notice as is provided in sub-section(3)*

(5) *At the expiry of the time mentioned in the notice referred to in sub section (3) or (4), the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Official Gazette of this notice, the company shall stand dissolved:*

Provided that –

(a) *the liability, if any, of every director, manager or other officer who was exercising any power of management and or every member of the company, shall continue and may be enforced as if the company had not been dissolved; and*

(b) *nothing in this sub-section shall affect the power of the Court to wind up a company the name of which has been struck off the register.*

(6) *If a company, or any member or creditor thereof, feels aggrieved by the company having been struck off the register, the (Tribunal) on an application made by the company, member or creditor before the expiry of twenty years from the publication in the Official Gazette of the notice aforesaid, may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register; and the (Tribunal) may, by the order, given such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.”*

Taking into account Clause 5 above, in my view, it would be very much in order for the liability to be determined by this Tribunal as has been done in the preceding para, leaving it to the Petitioner to take such further appropriate legal measures, as become necessary, to recover the said amount from the Respondent.

The Petition is allowed accordingly.

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(Vinod Vaish)
Member