

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

DATED 11th FEBRUARY, 2010

Petition No. 154(C) of 2009

-

M/s. Mercara Multimedia Network Petitioner

Vs.

M/s. Pammi Cable Network Respondent

BEFORE :

-
HON'BLE MR. JUSTICE S.B. SINHA, CHAIRPERSON

HON'BLE MR. G.D. GAIHA, MEMBER

For Petitioner : Mr. Rohit Puri, Advocate

ORDER

1. The petitioner is a partner of a cable network operating under the name and style of M/s. Mercara Multimedia Network which offers the cable services in the city of Madikeri. The petitioner claims to be a Multi System Operator.

2. The respondent is a cable network operating under the name and style of Pammi Cable Network offering cable services.

3. An agreement has been indisputably signed between and by the parties on 2nd December, 2006 at Madikeri. The agreement envisages that the respondent intends to link his cable network with the cable network of the petitioner. The salient features of this agreement are as follows :-

- (i) The respondent has agreed to pay to petitioner a sum of Rs. 140000/- per month in two installments each month. The first installment shall be paid on or before 10th of every month and second installment on or before 20th of every month.
- (ii) The respondent shall surrender all the pay channel decoders immediately with effect from the date of signing of agreement and shall surrender all boxes to the concerned company.
- (iii) The respondent has also agreed to pay 1/3rd payment of pay channels paid by petitioner : Rs. 140000/- is agreed to be the one third payment of the pay channels initially. In the event of any increase or decrease takes place in the payment of pay channels, the same shall be passed on to the respondent in the same proportion.
- (iv) In the event of the surrender of the decoder boxes and viewing cards by the respondent, the petitioner will take away the package of Rs. 60/- and will introduce a uniform package for the whole city of Madikeri.

- (v) The respondent shall bear all the additional taxes and/or increase in existing taxes levied by various Govt. Departments except the entertainment tax which has to be borne by the respondent for his share of the amount.
- (vi) The respondent shall pay off all its liabilities towards pay channels of his network to the concerned company.

4. The petitioner would contend that despite agreeing to pay 1/3rd of total payment made by petitioner to various channels, the respondent was very erratic in making payment from the very beginning and made only part payments and, therefore, as on date the respondent is liable to make payment of Rs. 2437776.00.

5. In support of its claim the petitioner had annexed all the invoices raised by it on the respondent till 2009. The last invoice which has been placed with the petition is dated 5.6.2009 for the month of June, 2009 which shows an outstanding amount of Rs.2437776/-.

6. The petitioner would further contend that the respondent has been periodically been intimated vide letters dated 7th March, 2007, 7th July, 2007, 5th Oct, 2007, 5th June, 2008, 6th Oct, 2008 and 5th Jan, 2009 to clear outstanding which was due on these dates respectively.

7. The petitioner would further contend that besides the letters written to the respondent several reminders by way of telephonic conversations were also made by the petitioner to the respondent.

- 8.** The petitioner would also contend that sometimes in Jan, 2009 the respondent expressed its inability to pay the said amount and instead offered to sell his cable network to the petitioner in lieu thereof and the petitioner agreed to the same.
- 9.** The petitioner has finally written to respondent on 7th March, 2009 along with the statement of account, called upon to make a payment of Rs. 2228329/- which was due to the respondent upto that time. A photocopy of an acknowledgement of sending this letter by Indian Post has been placed with the letter of 7th March, 2009.
- 10.** The petitioner had further contended that it has written to M/s. MSM, ESPN, STAR Den, Zee Turner, Ushodaya on 21st Jan, 2009 not to accede to any request of the respondent for providing signals. The receipts of acknowledgement of sending these letters by courier as well as by Indian Post on 21.1.2009 have also been annexed with the petition.
- 11.** The petitioner has also given a public notice mentioning the default on the part of the respondent as per agreement which resulted in piling up of huge outstanding. It has also been mentioned in this public notice that respondent should not be given any parallel license to provide cable TV network which will be in violation of the subsisting agreement between and by the parties.

12. In support of filing the evidence by way of affidavit filed on 10.11.2009, a copy of the deed of Reconstitution of Partnership Firm dated 1st Jan, 2002 has also been annexed with the petition. A supplementary affidavit on behalf of the petitioner has also been filed on 23.11.2009 solemnly affirming the contents of the evidence by way of affidavit and also certifying that the exhibits PW 1/1 to PW1/41 are true copies of their respective originals.

13. This is an ex-parte matter. The petitioner has brought on record an agreement which is marked as PW 1/3. The payment is required to be made by the respondent only in terms thereof. In paragraph 4 of the affidavit the petitioner has proved raising of invoices followed by letter dated 7.3.2007 marked as Exhibit PW1/7. Further monthly invoices were said to have been raised as stated in para 5. A reminder has also been sent on 7.7.2007. Other invoices were also proved to have been raised. Most of the letters appear to have been sent through courier or speed post. The petitioner has also filed a statement of account, the correctness whereof is not in dispute. The statement of account shows that part payments had been made, which have been duly accounted for. The bills have been raised and payment have been made channelwise. The account shows the details as to the amount deposited with Channel Plus and had been adjusted. It is also evident that the petitioner has taken steps informing the channels that the respondent is a defaulter. According to Petitioner, the respondent has not entered into any correspondence despite the petitioner informing him so far as its attempts made with the assistance of third party to make arrangements to supply for parallel license to provider cable TV network is concerned.

14. The liabilities of the respondent arises under the agreement, and even demands, on the basis thereof, had been raised. Further in terms of Section 114 of the Indian Evidence Act, a presumption may be raised in regard to service of a letter which was handed over to an agent authorized therefore, namely, post office and courier services. The petitioner has, as noticed, has even before, proved letters of demand also.

15. Payments have also been made by cheque each month, the service of invoices would be presumed. In any event if a party to the agreement makes payment regularly even without service of invoices, for the purpose of considering as to whether he is a defaulter or not, the provisions of Regulations may not have the application.

16. The respondent has neither denied any of the statement of the petitioner nor disputed either by appearing before this Tribunal or by and, therefore, the petition is allowed. We are satisfied that the petitioner has made out a case for passing of a decree for a sum of Rs.2437776.00. However, as the petitioner has not been able to prove any agreement on record to levy interest payable on the outstanding amount, we are of the opinion that it is entitled to a reasonable amount by way of interest which we assess at 12% per annum. In the facts and circumstances of the case and in the interest of justice, interest should be allowed only at the rate of 12% per annum. We direct accordingly. The decree shall carry interest also at the same rate pendente lite and future.

.....**J**
(S.B. Sinha)
Chairperson

.....
(G.D. Gaiha)
Member