

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

Dated 18th September, 2014

**Petition No. 417(C) of 2013
(M.A. Nos. 25 & 78 of 2014)**

SCOD 18 Networking Pvt. Ltd. ...Petitioner

Vs.

Vijay Cable Network ...Respondent

BEFORE:

**HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON
HON'BLE MR. KULDIP SINGH, MEMBER**

For Petitioner : Mr. Sharath Sampath, Advocate

For Respondent : None

ORDER

Kuldip Singh : This is a recovery petition for subscription amount for the channels of the petitioner subscribed by the respondent as well as the cost of STBs provided by the petitioner.

2. The petitioner is a Multi System Operator operating in various parts of Maharashtra. It receives signals of various free to air and pay channels from the broadcasters at its headend and thereafter retransmits the same to the franchise cable operators affiliated to it for onward transmission of the signals to their respective subscribers.

3. The respondent is a franchise cable operator affiliated to the petitioner. The parties entered into an agreement dated 09.04.2008 for supply of signals of the petitioner to the respondent. A copy of the agreement is available in the paperbook (Annexure P-1, page 12). As per the term of the agreement, the same was valid for a period of 5 years commencing from 09.04.2008. The respondent was to pay a sum of Rs. 130/- per subscriber per month as a subscription fees for the channels of the petitioner.

4. It is the contention of the petitioner that it raised regular monthly invoices on the respondent for the monthly subscription amount. These were hand delivered to the respondent but as it is a common practice, no acknowledgement for the same was given by the respondent. As per the petitioner, the respondent also submitted customer requisition forms of its subscribers for activation of the Set Top Boxes (STBs). The copies of the invoices and sample customer requisition form are annexed with the petition as Annexure 'P-2' and Annexure 'P-3' respectively. As per the petitioner, these STBs were taken by the respondent on lease basis and the same were liable to be returned once the respondent moved to the network of some other MSO.

The petitioner raised invoices for the activation of these STBs @Rs.889.11/- exclusive of taxes for Standard Definition Boxes and @Rs.2670/- exclusive of taxes for High Definition Boxes, as and when

requested by the respondent. The respondent, however, was totally irregular in making payment of the monthly subscription amount as well as STB activation charges resulting in building up of an arrear of Rs.9,74,995/- (towards subscription charges) as on date and Rs.1,93,054.91/- (towards STB activation charges) as on April, 2013. The petitioner has annexed the statement of account towards subscription charges as Annexure 'P-5' with the petition and towards STB activation charges as Annexure 'P-6'.

Petitioner further contends that the respondent had issued three cheques dated 13.08.2013, 17.08.2013 and 21.08.2013 amounting to a total of Rs.75,000/- towards partial discharge of its liabilities but all the three cheques were returned on 23.08.2013 by the bank with the remarks 'Insufficient Funds'. Copies of cheques are annexed as Annexure 'P-7' (Colly).

5. The respondent failed to appear before the Tribunal in spite of notice duly served upon it and no reply was filed to controvert the averments made above and the petition proceeded ex-parte.

6. In support of its contentions, petitioner has submitted affidavit of Mr. Johnwin Manavalan by way of evidence on behalf of the petitioner.

The witness stated that the respondent is the sole proprietorship concern of Mr. Vijay Mishra and confirmed the averments made in the

petition. The witness also identified the copy of agreement dated 09.04.2008 as Exhibit PW1/1, copy of invoices raised on respondent as Exhibit PW1/2 (Colly), sample Customer Requisition Form as Exhibit-PW1/3, copies of invoices raised towards STB activation as Exhibit PW1/4 (Colly), Statement of account towards subscription charges for the period 01.11.2012 till date of filing of the petition as Exhibit 1/5 and a statement of account towards STB Activation charges for the period 01.04.2008 till date of filing of the petition as Exhibit PW1/6.

The witness also stated that the respondent is liable to return 973 STBs issued to it by the petitioner alongwith Sim Cards in proper working condition or in the alternative pay an amount of Rs.2,000/- per STB.

7. During the course of hearing, Mr. Sharath Sampath, learned counsel appearing for the petitioner stated that the petitioner does not want to press the claim raised in respect of activation of STBs.

8. Though the agreement between the parties was for five years w.e.f 09.04.2008, as per the petitioner (para 3 of the petition) the respondent was receiving signals from the petitioner and retransmitting them till September, 2013. The petitioner's witness also affirmed the same as under:-

"5. I state that the respondent is the sole proprietorship concern of Mr. Vijay Mishra who was a Franchise Cable Operator affiliated to the petitioner herein till September 2013

and was retransmitting the signals to its subscribers after obtaining them from the petitioner.”

9. In view of the aforesaid facts and circumstances of the case, the petition is allowed for a sum of Rs.9,74,995.60/-. The petitioner will also be entitled to an interest @ 9% w.e.f. 01.10.2013 on the above amount and till the time the amount is paid in full.

It is directed that a decree shall be drawn accordingly.

The respondent is also directed to return the 973 STBs alongwith the Sim Cards in proper working condition to the petitioner within one month from the date a copy of this order is served upon it.

.....
(Aftab Alam)
Chairperson

.....
(Kuldip Singh)
Member

HKC/15.09.2014