

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 31st July, 2017

Broadcasting Petition No.22 of 2015

IndiaCast UTV Media Distribution
Pvt. Ltd., Mumbai

...Petitioner

Vs.

Dattatray Cable Networks, Maharashtra &Anr.
...Respondents

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. Kunal Tandon, Advocate
Mr. Shashank Sekhar, Advocate

For Respondents

: None

ORDER

By A. K. Bhargava, Member - The Petitioner is a broadcaster who entered into an agreement with the Respondent No. 1 who is a Multi System Operator (MSO). The respondent no. 1 re-transmitted signals of TV channels supplied by the petitioner but allegedly did not clear the dues. Aggrieved by this, the petitioner has filed this petition on 23-1-2015 against Respondent No. 1 and Respondent No. 2 praying for the following reliefs:

- (a) pass a decree to the tune of Rs. 1,15,731/- in favour of the petitioner and against the respondents.
- (b) interest @18% per annum on the sum due, till the realization of the amounts in favour of the petitioner and against the respondents, be awarded.
- (c) pass an order directing the respondents to pay costs to the petitioner.

Due to the non-appearance of the Respondent No. 1 (hereinafter referred to as respondent), the matter was allowed to be proceeded *ex-parte*.

Petitioner had signed a subscription agreement valid for the period 1-4-2012 to 31-3-2013, for an annual subscription fee of Rs. 1,92,000/- exclusive of taxes. Petitioner has however supplied the signals up to 19-12-2014. As per the demand notice dated 12-12-2014, the petitioner has claimed an outstanding of Rs. 1,15,731/- for the period 1-4-2012 till 17-7-2014. Claim of the petitioner has been filed within the limitation period.

In view of the legal position settled by orders of this Tribunal that no claim can be entertained or allowed for a period which is not covered by a written agreement, the claim of the petitioner has to be limited to the period during which the written agreement subsisted i.e. 1-4-2012 to 31-3-2013. We note that the petitioner has attached a statement of account (Annexure P-4) for the claimed account of Rs. 1,15,731/-. The statement shows entries on various dates from 10-12-2012 to 4-3-2013. As per these entries, invoice was raised for the period 1-12-2012 to 31-12-2012 along with debit entry for the period 1-4-2012 to 30-11-2012

on 10-12-2012. On the same date a credit entry for the payment made is also shown. Further, invoices for the month of January13, February 13 and March13 have been issued in the respective months. The net balance is shown as Rs 1,15,731.20/- which is for the period 1-4-2012 to 31-3-2013.

The statement of account is supported by the invoices which are as per the agreement. The amount claimed is for the period under written agreement. In view of this, we accept the claim of the petitioner for the sum of Rs. 1,15,731/-. The petitioner has also claimed interest @ 18% per annum for the entire period of delay. In our view, it would be reasonable and in the interest of justice to allow the claim of interest only @ 8% per annum on the sum allowed till the date of realization.

It is to be noted that the petitioner had also impleaded M/s Hotel Sofitel, Mumbai as respondent No. 2 since they were receiving channels of the petitioner through Respondent No. 2 as 'commercial subscriber'. We note that the respondent no. 2 has no privity of contract between him and the petitioner. The said subscription agreement which the petitioner so relies upon is between the petitioner and respondent no. 1 only. As a commercial subscriber, Respondent 2 had an arrangement with the respondent no. 1 for supply of signals and was responsible for making payment to the respondent no. 1 for the services rendered. We thus find no liability of Respondent No. 2 towards the petitioner in this case.

Prayers in the BP No. 22(C) /2015 are allowed only to the extent mentioned above and the petition is disposed of. 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