

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 14th November, 2017

M.A. No. 392 of 2016

In

Broadcasting Petition No.239 of 2015

Vishal Cable Network

...Petitioner

Vs.

Indiacast UTV Media Distribution Pvt. Ltd.

... Respondent

BEFORE:

HON'BLE MR. B.B. SRIVASTAVA, MEMBER

HON'BLE MR. A.K. BHARGAVA, MEMBER

For Petitioner : Mr. Vikram Singh, Advocate

For Respondent : Mr. Kunal Tandon, Advocate.

ORDER

This petition was filed on 14-08-2015 by the petitioner seeking directions from this Tribunal to, inter-alia, direct the respondent to immediately reconnect the signals of the petitioner and to direct the respondent to enter into the subscription agreement with the petitioner. After hearing the parties, we passed the following order on 19-08-2015

"Heard Mr. Vikram Singh, counsel for the petitioner and Mr. Kunal Tandon, counsel appearing on behalf of the respondent.

The petitioner is a MSO operating in Kanpur. It was receiving its signals from the respondent. On 14.4.2015, the respondent gave a disconnection notice to the petitioner for nonpayment of dues of subscription fee amounting to Rs. 5,37,985/-. The amount mentioned in the disconnection notice related to dues up to the date of the notice.

The petitioner was unable to make full payment but it is not denied that it made payment of Rs. 4 Lakhs to the respondent. However, for failure to clear the entire dues, the supply of signals to the petitioner was disconnected on 11.5.2015. Since then, the petitioner is not receiving the respondent's signals.

On the previous dates when the petitioner offered to clear the entire dues and prayed for mandatory injunction to the respondent to restore the supply of its signals, the Tribunal declined the prayer on the ground that a First Information Report (FIR) was stated to have been instituted against it on allegations of piracy; further, cheques given by the petitioner to the respondent were dishonored and the respondent had issued notices under section 138 of the NI Act. The Tribunal then observed that it would take a view in the matter only after a proper Reply is filed by the respondent.

The respondent has filed its reply, which is on record.

Mr. Singh states that admittedly a FIR was filed against the petitioner on 1.2.2015 and after investigation the Police submitted the final form on 11.4.2015 stating that there was no sufficient evidence for the petitioner's prosecution.

He reiterated the offer to make payment of the entire dues to the respondent, which according to Mr. Tandon amount to Rs. 3,09,750/-.

On hearing counsel for the parties, the respondent is directed to restore the supply of its signals to the petitioner as soon as its dues are fully paid.

It may also be noted that the earlier agreement between the two sides expired on 31.3.2015 and they are now required to enter into a fresh agreement.

Mr. Vikram Singh submits the process for execution of a fresh agreement would be greatly facilitated if the matter is referred to the mediation centre. Mr. Kunal

Tandon has no objection to the course of suggested by Mr. Singh. We, accordingly direct the parties to appear before the mediation centre of the Tribunal on 28.8.2015. It is made clear that until the fresh agreement is executed between the parties, the petitioner shall not indulge in retransmission of respondent's signals on resumption of supply of signals beyond the areas mentioned in the earlier agreement."

Subsequently, we passed the following order on 03-06-2016

"No one appears for the petitioner. The matter was referred to the Mediation Centre. There too there was no regular appearance on behalf of the petitioner.

Mr. Tandon, counsel for the respondent appears and states that during the pendency of the matter before the Tribunal, the petitioner has changed its technical system and when a representative of the respondent went to the petitioner's head-end, he was now allowed to make any audit or inspection of the system. According to Mr. Tandon, the outstanding dues against the petitioner now stands to Rs. 8,39,675/-.

The petitioner is receiving signals from the respondent in terms of the interim directions made by the Tribunal.

In the aforesaid circumstances of the case, we are of the view that the petitioner no longer deserves any indulgence by the Tribunal. The interim direction asking the respondent to give signals to the petitioner is recalled.

Put up under the same head on 28.7.2016.

In case, no one appears for the petitioner on the next date, the petition may be dismissed for non-prosecution without prejudice to any claim of the respondent. "

Post this order, the signals to the petitioner were disconnected on 15-06-2017. Our further orders dated 28-07-2016 is also reproduced below to clear the sequence

"There is appearance on behalf of the petitioner.

Mr. Vikram Singh, learned counsel appeared on behalf of the petitioner submits that due to inadvertence no notice was given by the Registry. Hence, he could not

appear on 3.6.2016 and the interim protection granted to the petitioner vide order dated 19.8.2015 was recalled by the Tribunal.

Mr. Kunal Tandon, learned counsel appearing on behalf of respondent submits that pursuant to this order the signals to the petitioner's network were disconnected on 15.6.2016 and the total outstanding as on date is Rs.9,12,935/-.

In view of the submissions made by the learned counsels, it is ordered as follows:

1. The petitioner will pay Rs.3 lakhs immediately and another Rs.3 lakhs by 5.8.2016.
2. In the meanwhile, two sides will reconcile the account as per earlier agreement by the next date and balance payment, if any, will also be effected by the next date fixed.
3. The respondent is also directed to undertake audit of the system of the petitioner and complete it by the next date fixed."

On 21-10-2016, learned counsel for the petitioner offered to withdraw the petition which was opposed. Subsequently, the respondent has filed MA No. 392 of 2016 on 27-1-2016 with the following prayers

- (a) Allow the present application and pass an order of restitution against the petitioner and in favour of the respondent thereby directing the petitioner to pay the entire outstanding amount of Rs. 9,18,308.05 (Rupees Nine lakhs eighteen thousand three hundred and eight and paise five only) to the respondent immediately along with interest on this sum at the rate of 18% per annum calculated from 15.6.2016 till the date of its recovery from the petitioner
- (b) Direct the petitioner to give a security for an amount of Rs. 9,18,308.05 (Rupees Nine lakhs eighteen thousand three hundred and eight and paise five only) during the pendency of this application.

In this restitution application, the respondent has prayed, inter-alia, for a direction to be placed in the same position as it would have been in the event the interim order dated 19-08-2015 would not have been passed, and subsequently vacated, vide order dated 03-06-2016 by the Tribunal. It has been argued by the respondent that it is entitled to be compensated for the period 18-12-2015 to 14-06-2016, during which the signals of the channels distributed by the respondent were ordered to be continued, pursuant to the interim order dated 19-08-2015. A total sum due and payable by the petitioner for the said period of 18-12-2015 to 15-06-2016, as claimed by the respondent is Rs. 9,18,308.05/-. This claim is supported by a statement of account, although no invoices have been produced. We also note that on 28-07-2016, we had directed the parties to reconcile the accounts, which did not happen. In view of this, we observe at this stage that the amount for the period 18-12-2015 to 15-06-2016 during which signals continued on account of this Tribunal's orders, needs to be finally adjudicated. Let the petition be prepared for final hearing. For this purpose, put up the matter on ^{Dr} under the head "for directions".

(B.B. Srivastava)
Member



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(A.K. Bhargava)
Member