

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 31st October, 2017

Broadcasting Petition No.244 of 2015

Discovery Communications India

...Petitioner

Vs.

Trustline Broadband Services Pvt. Ltd.

... Respondent

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

: Ms. Payal Kakra, Advocate
Ms. Vidya Prabhakaran Khurana, Advocate

For Respondent

: None

ORDER

By A. K. Bhargava, Member - The Petitioner is a Broadcaster while the Respondent is a Multi System Perator (MSO). Both the parties entered into an agreement for a period from 01-04-2014 to 31-12-2014. In terms of this agreement, the respondent was to pay to the petitioner a monthly subscription fee of Rs. 164474/- (exclusive of taxes) for re-transmission of the petitioner's channels. The petitioner submits that he regularly supplied signals and raised due invoices on the respondent seeking payment of subscription amount as per the agreement. However, the respondent persistently defaulted in making payment as per the due invoices. The petitioner made request vide letter dated 16-02-2015 and issued a notice dated 30-03-2015 to clear the subscription dues, but to no

avail. Subsequently, the petitioner has filed this petition on 26-05-2015 for the following relief:

(a) Adjudicate the present petition and pass a decree for the sum of Rs. 16,79,819/- (Rupees Sixteen Lakh Seventy Nine Thousand Eight Hundred and Nineteen only), on account of subscription dues payable till 31.03.2015, in favour of the petitioner and against the respondent along with the pendent lite and future interest @18% per annum from the date of the institution of the petition till the realization of the amount against the respondent.

(b) Award the cost of the petition to the petitioner and against the respondent.

In view of non-appearance of the parties, the matter has proceeded ex-parte.

At the outset, we observe that the claim has been filed within the limitation period. We further notice that while the agreement expired on 31-12-2014, the claim has been made upto 31-03-2015. Learned counsel for the petitioner Ms Kakra submitted that the signals were indeed supplied upto 31-03-2015 as supported in the evidence and also explicitly mentioned in the notice dated 30-03-2015. She further argued that the said agreement was for the non-DAS area and as per the provisions contained in clause 8 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulations 2004 governing the non-DAS areas, claim upto three months after the expiry of the agreement, i.e. upto 31-03-2015 in this case, is permissible. Clause 8 of the Interconnection Regulation 2004 (as amended in 2006) reads as follows

“Provided that if the negotiations for renewal of the interconnection agreement continue beyond the due date of expiry of the existing agreement then the terms and conditions of the existing agreement shall continue to apply till a new agreement is reached or for the next three months from the date of expiry of the original agreement, whichever is earlier. However, once the parties reach an agreement, the new commercial terms shall become applicable from the date of expiry of the original agreement.”

In view the above submissions, we accept the period of claim from 01-04-2014 to 31-03-2015.

In support of its claim of recovery, the petitioner has placed a statement of account (Annexure - P4) which shows a total outstanding of Rs. 16,79,818.84 (rounded to 16,79,819 hereinafter) for the period April-14 to March-2015. The statement of account is supported by proper invoices that have been raised in accordance with the written agreement and also reflects the on account payements made by the respondent. The invoices have been annexed with the petition along with the proof of delivery. These invoices have not been challenged despite a notice issued on 30-03-2015 for clearing the outstanding. Proof of delivery of this notice has also been annexed. We thus find that the amounts shown in the invoices are in accordance with the written agreement.

In view of the subscription agreement and supporting invoices along with the statement of account, we accept the claim of the petitioner for recovery of Rs. 16,79,819/- (Rupees Sixteen Lakh Seventy Nine Thousand Eight Hundred and Nineteen only) towards subscription charges. 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.

Petition 244(C) of 2015 is allowed in above terms. A decree may be drawn accordingly.

.....
(S.K.Singh, J)
Chairperson

.....
(B.B. Srivastava)
Member



.....
(A.K.Bhargava)
Member