

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 31st October, 2017

Broadcasting Petition No. 844 of 2012

Media Pro Enterprises India Pvt. Ltd. ...Petitioner
Vs.
Mahankal Cable Network (Ujjain) ...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 : Mr.Upender Thakur,Advocate
Mr. Rohan Swarup, Advocate
Mr.Kunal Vats,Advocate

For Respondent No. 1 : Mr. Anjani Kumar Mishra, Advocate
Ms.Hardeep Kaur,Advocate

For Respondent No.3 : Ms.Shilpa Gupta,Advocate
Mr.Ranjeet Singh, Advocate

ORDER

By A. K. Bhargava, Member – The petitioner is a content aggregator that acts as an agent/distributor of various broadcasters while the respondent is a Multi System Operator. The petitioner started its operations in July 2011 and prior thereto the channels distributed by the petitioner were distributed by M/s Star DEN Media Services Pvt. Ltd. and M/s Zee Turner Ltd. The petitioner submits that both Star DEN Media Services Pvt. Ltd. and Zee Turner Ltd. have authorized him to collect outstanding dues on their behalf from all the MSOs including the respondent.

M/s ZEE Turner Ltd. had executed an agreement with the respondent on 28-1-2011 for a period from 26-12-2010 to 31-03-2011 for a monthly subscription fee of Rs. 3,07,858/- (plus Service Tax) for the municipal limits of Ujjain (MP). Similarly an agreement was executed on 26-04-2011 between Star Den and the respondent for a period from 01-01-2011 to 31-12-2011 for a monthly subscription fee of Rs. 7,26,660.51 (excluding taxes) for Ujjain. The petitioner from time to time raised invoices on the respondent not only for the payment of monthly subscription fee but also the payment towards old outstanding dues payable to M/s Star Den and M/s Zee Turner. Copies of the invoices have been annexed with the petition. On 28-03-2012, the petitioner issued a clause 4.1 notice and on 30-03-2012 issued clause 4.3 notice on the respondent for non-payment of outstanding dues of subscription fee. The petitioner claims to have deactivated its TV channel signals to the respondent's network on 27-04-2012 after due compliance with the interconnection regulations. Subsequently on 22-11-2012, the petitioner has filed this petition with the following prayers

- (a) Order / decree in favour of the petitioner and against the respondent for an amount of Rs. 66,16,671.06 (Rupees sixty six lakhs sixteen thousand six hundred seventy one and six paise only) being the outstanding subscription fee payable by the respondent to the petitioner.*
- (b) An order awarding interest @ 18% p.a. in favour of the petitioner on the aforesaid payment of Rs. 66,16,671.06 (Rupees sixty six lakhs sixteen thousand six hundred seventy one and six paise only) from due date till date of payment as also pendente lite interest.*

The petition has been filed within the limitation period.

This is a case in which there has been a long history of brief appearance and long non-appearance on behalf of the respondent. Under this situation, on 5-5-2017 we had observed the following

"From various orders passed earlier particularly order of Dy. Registrar dated 28.4.2017, it is absolutely clear that after prolonging the matter for quite some time, respondent no. 1 has ceased to appear in this proceeding for at least six last consecutive dates. In such a situation, the right of respondent no. 1 to lead evidence is closed.

Since the evidence on behalf of the petitioner is already on record and respondent no. 2 and 3 are proforma parties, apparently supporting the petition, let the matter be now treated as ready for final hearing as ex-parte.

Post for ex-parte hearing in usual course."

Then on 11-09-2017, we heard the prayer made by learned counsel of the respondent no. 1 and permitted him to address this court as soon as learned counsel for the petitioner finished his arguments. The arguments were finally concluded on 13-09-2017.

The petitioner has maintained that the signals have been supplied till 27-4-2012 while the respondent has submitted that he had returned the IRD boxes to the respondent on 16-11-2011 and did not receive the signals beyond this period. Petitioner's contention in this regard is supported by its evidence and also by its public notice issued on 30-03-2012. The respondent has not led any evidence in this regard. Besides, invoices have been issued by the petitioner beyond 16-11-2011 and on account payments also have been made by the respondent after this period. In view of this, we agree with the submission of the petitioner that the signals were supplied till 27-04-2012.

In support of its claim of recovery, the petitioner has placed a statement of account (Annexure – P6) which shows a total outstanding of Rs. 66,16,671.06 (approximated to Rs. 66,16,671 hereinafter) for the period Apr-11 to Apr-2012. The statement of account is supported by the invoices that have been annexed in the petition for the period 01-07-2011 to 30-04-2011 and credit notes have been shown for 27-04-2012 to 30-04-2012 so that the last bill amount is upto the date of disconnection i.e. 27-04-2012. The invoices raised are for a consolidated amount of subscription fee payable for both Zee Turner and Star DEN. We notice that the agreement with Zee Turner had expired on 31-03-2011 and with Star DEN on 31-12-2011. Thus invoices raised by the petitioner include the claims in respect of Zee Turner for the for the period during which no written agreement was subsisting. In respect of Star DEN, the written agreement was not subsisting for the period 01-01-2012 to 27-04-2012. Learned counsel for the petitioner submitted that during the claim period, Interconnection Regulations 2004 were applicable. As per the provisions contained in clause 8 of the Telecommunication (Broadcasting and Cable Services) Inerconnection Regulations 2004, claim upto three months after the expiry of the agreement is permissible. Clause 8 of the Interconnection Regulation 2004 (as amemdmed 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 of this, claims relating to Star DEN are admissible only upto 31-03-2012 but the claims related to Zee Turner channels are not admissible during the claim

period. Hence the claims related to Zee Turner for the period from 01-07-2011 to 27-04-2012 and Star DEN for the period 01-04-2012 to 27-04-2012 are disallowed. Monthly subscription fee as per earlier agreement for Zee Turner is Rs 3,39,567.3 (including taxes) and the bill amount for 01-04-2012 to 27-04-2012 (after taking into account the credit notes for April 12) is Rs 9,86,076.11. Accordingly, the allowed claim amounts to Rs. 25,74,489 (6616671 – 339567.3x9 – 986076.11).

In view of the above, we allow the claim of the petitioner for the recovery of Rs. 25,74,489/- (Rupees Twenty Five Lakh Seventy Four Thousand Four Hundred and Eighty Nine 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 844(C) of 2012 is allowed in above terms. A decree may be drawn 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