

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated /3 September, 2017

Broadcasting Petition No. 114 of 2015

M/s Manthan Broadband Services Pvt. Ltd. ... Petitioner
Versus
Maa Ujaleswari Cable Network ...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. Nidhi Mohan Parashar, Advocate
For Respondents : None

ORDER

By A. K. Bhargava, Member - The Petitioner is a MSO while the Respondent is a LCO affiliated to the petitioner. Both the parties entered into a Joint Venture agreement in November 2010. In terms of this agreement, the respondent was to pay to the petitioner a monthly subscription fee of Rs. 55,280/-. The petitioner submits that he raised regular monthly invoices on the respondent seeking payment of the monthly subscription amount for the signals which were delivered each month to the respondent. However, the respondent was irregular in making payment of the full monthly subscription amount resulting in building up of substantial arrears. The petitioner made several requests and sent a notice dated 08-08-2014 to

clear the subscription dues but to no avail. Subsequently, the respondent got the petitioner's signals discontinued. The petitioner then filed this petition on 13-03-2015 for the following reliefs :

(a) Direct the respondent to pay to the petitioner a sum of Rs. 21,83,711/- as on 30.06.2014 alongwith interest at the rate of 18% p.a.

(b) Direct the respondent to pay to the petitioner an amount of Rs. 2,61,686/- on the above amount of Rs. 21,83,711/- calculated at 18% p.a. for the period 1.7.2014 till 28.2.2015 and future interest till the payment of entire dues.

In view of non-appearance of the parties, the matter has proceeded ex-parte. The petitioner has filed an M.A. No. 287 of 2017 on 8-8-2017 stating on affidavit that inadvertently a copy of the agreement which was not bearing the signature of the petitioner had been placed on record and that it be permitted to place on record the signed copy of the same. The agreement starts from Nov-2009 and the terms of the agreement were to continue until terminated in accordance with the agreement clause 6. In view of the affidavit filed, we find that the condition of there being a written agreement for the claim period is satisfied.

In support of its claim of recovery, the petitioner has placed a statement of account (Annexure - P4) which shows total outstanding of Rs. 16,83,711 for the period Nov-09 to Jun-14. Since the claim is from Nov-09 and the petition for recovery of the claim has been filed in March-15, the question of limitation was raised. Learned counsel for the petitioner Ms. Nidhi Parashar submitted that the petitioner had been regularly raising the invoices and the respondent was also making on account payments, last of which was made in Apr-14. Thus the cause of action

arose in August-14 and they have filed the claim in March-15 which is well within the limitation period. Alternately, she argued that if the payments made are appropriated against last outstadings from previous invoices, then the balance recovery effectively will be for the period April-13 to June-14 which is well within the limitation period. The statement of account shows that regular invoices have been raised in accordance with the written agreement and on account payements have been made by the respondents. The invoices have been annexed with the petition which show the outstanding amount from previous bills and the monthly billing along with the total payable under the same written agreement. The carry forward outstanding amount also reflects the on account payments made. The last of such running invoice is dated 5-6-2014 for a total payable amount of Rs. 16,83,076 with a carry forward outstanding of Rs. 15,84,749 and monthly invoice amount of Rs 88,076. These invoices have not been challenged despite a notice issued on 8-8-2014 for clearing the outstanding. Thus Jun-14 is the last valid reference for the total outstading amount that is claimed under the same written agreement. We therefore find the claim of the petitioner within the limitation period.

It is further noticed that the monthly subscription amount billed varies significantly from month to month. Learned counsel for petitioner clarified that this is on account of variation in channels and subscriber base. This is in accordance with clause 3 of the Annexure-1 attached with the agreement which reads thus *"Both the parties do know and agree that, the amount of Subscription fee will increase with addition in number of Channel Bouquets and also will decrease with deletion in number of Channel bouquets."* Clause 4, 5 and 6 also detail other conditions of variation in billed amount. Further, the amounts billed have not been contested. We thus find that the amounts shown in invoices are in accordance with the agreement.

In view of the above, we allow the claim for recovery of Rs. 16,83,711/-. Petitioner has further prayed for recovery of an amount of Rs. 5,00,000/- towards the amount paid for 99% stake in head-end of respondent which has not been returned back to him. This amount has been included in the notice issued by the petitioner on 8-8-2014, making the total recovery amount as Rs. 21,83,711. We notice that this amount is mentioned in the Statement of Account in Oct-10 and the outstanding has consequently come down as reflected in subsequent entry and invoice of Nov-10. Clause 11 of the agreement provides that *"upon termination of the Agreement, Second party shall however have no claim in relation to the Head End or any property/equipment/cable etc. of the first party and/or its subscribers or LCO(s), which shall belong exclusively to the First party. The 1% share of the second party in the Head end shall also be settled only in monetary terms. If the first party withdraws the business then the second party may retain the head end equipments by paying the depreciated cost of the same (yearly depreciation rate 10%) to the first party."* We thus find that the petitioner is entitled to only the residual value of the head end and not the amount of Rs 5,00,000 as claimed. Upon enquiry, the petitioner has submitted the fair residual value after 5th year as Rs. 2,21,851 (15% deducted every year i.e. Rs. 425000; 361250; 307062; 261002; 221851 respectively after every year). Since this amount of Rs. 2,21,851 is less than the 10% depreciation calculated linearly (i.e. Rs 2,50,000 after five years), we consider this as fair residual value and allow the same. The total recovery thus allowed is Rs. 19,05,562/- (1683711+221851).

The petitioner has also claimed interest @ 18% per annum for the entire period of delay. However, the MoU between the parties does not mention any provision of interest on delayed

payment. In our view, it would be reasonable and in the interest of justice to allow the claim of interest only @ 5% per annum on the sum allowed till the date of realization.

Petition 114(C) of 2015 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

