

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 22nd September, 2017

Broadcasting Petition No. 119 of 2015

M/s Manthan Broadband Services Pvt. Ltd.

... Petitioner

Versus

Star n Star 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 April 2010. In terms of this agreement, the respondent was to pay to the petitioner a monthly subscription fee of Rs. 35,551/-. 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 notice dated 12-11-2013 and 26-4-2014

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. 4,64,047/- as on 30.11.2013;
- (b) Direct the respondent to pay to the petitioner an amount of Rs. 1,04,125/- on the above amount of Rs. 4,64,047/- calculated at 18% p.a. for the period 1.12.2013 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. 288 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 Apr-2010 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. 2,84,047 for the period Apr-10 to Nov-13. Since the claim is from Apr-10 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 Sep-13. Thus the cause of action arose in Sep-13 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 Jun-13 to Nov-13 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 5-11-2013 for a total payable amount of Rs. 2,84,047 with a carry forward outstanding of Rs. 2,35,264 and monthly invoice amount of Rs 48,783. These invoices have not been challenged despite a notice issued on 12-11-2013 for clearing the outstanding. Thus Nov-13 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, the claim for recovery of Rs. 2,84,047/- towards subscription charges appears to be in accordance with the agreement. Petitioner has further prayed for recovery of an amount of Rs. 1,80,000/- towards the amount paid for 99% stake in head-end of respondent which has not been returned back to him. The first notice dated 12-11-2013 does not mention this amount. However, this amount has been included in the notice issued by the petitioner on 26-4-2014, making the total recovery amount as Rs. 4,64,047. We notice that in Para 5 of the evidence affidavit, it is stated that the petitioner paid a sum of Rs 1,80,000 to the respondent for transfer of 99% stake holding in the head-end equipment. Para 9 of the petition and evidence affidavit further state that the petitioner has claimed the refund of this amount in the notice dated 26-4-2014. The evidence and averments have not been challenged. We therefore accept that an amount of Rs. 1,80,000 was paid by the petitioner to the respondent towards the head-end equipment. However, We notice that this amount is **not** mentioned in the Statement of Account anywhere. Accepting that this amount was paid, it should have reduced the amount of outstanding by equivalent amount in the statement of account. Accordingly, we find that, if this correction is applied in the statement of account, only Rs. 1,04,047 would be the net outstanding. We allow the same. Having said that, we further observe that the petitioner is entitled to the recovery of the value of the head-end after the the agreement has been extinguished. 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 monetray terms. If the first party withdraws the business then the second party may retain the head end equipmets 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 1,80,000 as claimed. Upon enquiry, the petitioner has submitted the fair residual value after 3rd year as Rs. 1,10,572 (15% deducted every year i.e. Rs. 1,53,000; 1,30,050; 1,10,572 respectively after every year). Since this amount of Rs. 1,10,572 is less than the 10% depreciation calculated linearly (i.e. Rs 1,26,000 after three years), we consider this as fair residual value and allow the same. The total recovery thus allowed is Rs. 2,14,619/- (1,04,047+1,10,572).

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 119(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