

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL  
NEW DELHI

Dated <sup>1<sup>st</sup></sup> September, 2017

Broadcasting Petition No. 135 of 2015

M/s Manthan Broadband Services Pvt. Ltd. ... Petitioner  
Versus  
Birja Electronics ...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 September 2010 according to which the respondent was to pay the petitioner a monthly subscription fee of Rs. 1,60,462/-. 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 full payment of the monthly subscription amount, resulting in building up of an arrear of Rs 12,68,081/- as on 31-08-2014. The petitioner had 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 20-03-2015 for the following reliefs :

- (a) Direct the respondent to pay to the petitioner a sum of Rs. 12,68,081/- as on 31.8.2014 alongwith interest at the rate of 18% p.a.
- (b) Direct the respondent to pay to the petitioner an amount of Rs. 1,13,189/- on the above amount calculated at 18% p.a. for the period 1.9.2014 till 28.2.2015 and future interest till the payment of entire dues.

In view of non-appearance of the respondent, the matter has proceeded *ex-parte*. During the course of hearing, the petitioner has filed an M.A. No. 286 of 2017 on 8-8-2017 stating on affidavit that inadvertently a copy of the agreement which did not bear 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 Sep-10 and the terms of the agreement were to continue until terminated in accordance with the agreement clause 5. In view of the affidavit filed, we find that the condition of there being a written agreement during 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. 1,268,081 for the period Sep-10 to Aug-14. Since the claim is from Sep-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 July-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 recovery effectively will be for the period June-13 to Aug-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 for the same written agreement. The carry forward outstanding amount reflects the on account payments made. The last of such running invoice during the validity of the same agreement is dated 5-8-2014 for a total payable amount of Rs. 12,68,081 with an outstanding of Rs. 11,87,674 and monthly invoice amount of Rs 80,407. These invoices have not been challenged despite a notice issued on 8-8-2014 for clearing the outstanding. Thus Aug-14 is the last valid reference for the total outstading amount that is claimed for 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 the other conditions that can lead to variation in the 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. 12,681,081/- as prayed. 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 135(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**