

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 5/9/2017

M.A. No. 207 of 2016

In

Broadcasting Petition No. 353 of 2016

(With M.A. Nos. 353 & 363 of 2016, M.A. No. 15 of 2017)

Balu Cable Network ...Petitioner
Versus
Sun Distribution Services Pvt. Ltd. ...Respondent

BEFORE:

HON'BLE MR. B.B. SRIVASTAVA, MEMBER

HON'BLE MR. A.K. BHARGAVA, MEMBER

For Petitioner : Mr. Tushar Singh, Advocate

For Respondents : Mr. Angad Singh Duggal, Advocate

ORDER

This Broadcasting Petition No. 353 of 2016 is filed against the disconnection notice issued by the respondent on 6/4/2016 on ground of non-payment of dues of Rs. 59,904.84 as on the date of notice, besides few other issues. The prayers in the petition are as follows :

- (a) Direct the respondent to herewith reconnect the signals of the petitioner.
- (b) Direct the respondent to enter into a new subscription agreement with the

petitioner on such terms and conditions as may be found reasonable and non – discriminatory by this Hon'ble Tribunal.

- (c) Direct the respondent not to raise demand of monthly subscription fee for the period of April 2016 as stipulated in the invoice dated 11.4.2016.
- (d) Fix an adhoc interim monthly subscription fee for the period April 2016 onwards as this Hon'ble Tribunal may deem fit.
- (e) Direct the respondent to produce the agreements of M/s Kaddem Cable Network of the past three years.

The petitioner is a new entrant MSO operating in the area of Jannaram. Petitioner submits that the only other MSO in the area, pre-existing the petitioner and having a much larger subscriber base, is being charged by the respondent at the rate of Rs. 16,000/- per month while he is being billed at the rate of Rs. 25,000 per month. It is further brought to our notice that a petition No. 258(C) of 2015 was filed by the petitioner in which the Tribunal vide order dated 22-12-2015, as an ad-hoc measure directed the respondent to give the signals of its channels on a monthly subscription fee of Rs. 25,000 and to enter into a provisional agreement upon submission of detailed SLR by the petitioner with liberty to the respondent to conduct a joint survey. While signals continued, not much progress was made on survey and agreement. Finally, Tribunal vide order dated 03-03-2016 disposed of the petition in terms of the statement of the Respondent's counsel that the respondent is willing to accept the SLR of the petitioner and raise invoices upon it on the basis of the SLR for its channels. However, on 6-4-2016,

the respondent issued a disconnection notice under Clause 4.1 and 4.3 of Regulations to clear its outstanding dues of Rs 59,905/- within 3 weeks. The petitioner filed this appeal on 17-5-2016 with the abovementioned prayers. Before the petition was filed, supply of signals was discontinued on 28-4-2016 in pursuance of the notice and restored on the day of hearing on 18-5-2016. The issue of outstanding amount of Rs. 59,905/- appears to have been settled.

However, some other issues remain and in the meanwhile, the petitioner has filed M.A. No. 207 of 2016 for interim direction regarding payment of monthly subscription fees. The prayers in the MA 207 of 2016 are as follows:

- a) Fix an ad-hoc monthly subscription fee for the period April 2016 onwards at the rate of Rs. 16000/- per month or any other rate as this Hon'ble Tribunal may deem fit.
- b) Direct the respondent to file before this Hon'ble Tribunal the Agreements of M/s Kaddem Cable Network for the area of Jannaram/ Jannaram Mandal of the past year as well as the current subsisting agreement.
- c) Direct the respondent to file before this Hon'ble Tribunal invoices raised by the respondent to M/s Kaddem Cable Network for the area of Jannaram/ Jannaram Mandal for the period January 2016 till July 2016.

Petitioner submits that he wrote letters to the respondent expressing its concern and kept making payments at the rate of Rs. 16,000 per month. He further states that he

has approached the respondent on several occasions to enter a new subscription agreement for the period 01-04-2016 onwards on a non-discriminatory basis. The respondent, on the other hand, submits that the petitioner has not approached the tribunal with clean hands and an FIR has been filed against the petitioner for illegal transmission of signals.

It is noted at this stage that while the petitioner was transmitting in analog mode at the time of filing of the M.A., all areas have now moved to Digital transmission mode. We also note that both parties have not entered into a written agreement and we do not want such situation to linger on. Allowing the parties to continue under ad-hoc rates in the interim is not a solution. If the parties wish to continue supply and retransmission of signals, they must enter into a written agreement in accordance with extant regulation. Accordingly, we direct the parties, if they wish so, to enter into a mutually negotiated agreement or a RIO based agreement within 30 days, without any prejudice to the rights and contentions of either party. Past liabilities being a matter of adjudication will not come in the way of signing the agreement. However, it is made clear that post signing of the agreement, the petitioner will make payments strictly in accordance with the agreement. In case the written agreement is not signed within the 30 day period, respondent will be at liberty to disconnect in accordance with law.

Issue of producing documents related to rates offered by the respondent to the other competitor is integral part of the main petition and will be considered in due

course of the hearing. The proceedings are at advance stage and no need is felt to pass interim directions in this regard, in view of the above mentioned directions.

M.A. 207 of 2016 is disposed of in above terms.

Put up on ^{12 Oct 2017} for further direction in the case.

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(B.B. Srivastava)
Member

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(A.K. Bhargava)
Member

