

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI**

Dated 12th December, 2019

B.P. No. 121 of 2015

Indiacast Media Distribution Pvt. Ltd.& Ors.	...Petitioners
Versus	
Mplex Networks Pvt. Ltd.	...Respondent

B.P. No.122 of 2015

Indiacast Media Distribution Pvt. Ltd.& Ors.	...Petitioners
Versus	
Mplex Networks Pvt. Ltd.	...Respondent

B.P. No.123 of 2015

Indiacast Media Distribution Pvt. Ltd.& Ors.	...Petitioners
Versus	
Mplex Networks Pvt. Ltd.	...Respondent

B.P. No.124 of 2015

Indiacast Media Distribution Pvt. Ltd.& Ors.	...Petitioners
Versus	
Mplex Networks Pvt. Ltd.	...Respondent

B.P. No.125 of 2015

Indiacast Media Distribution Pvt. Ltd.& Ors.	...Petitioners
Versus	
Mplex Networks Pvt. Ltd.	...Respondent

B.P. No.126 of 2015

Indiacast Media Distribution Pvt. Ltd.& Ors.	...Petitioners
Versus	
Mplex Networks Pvt. Ltd.	...Respondent

B.P. No.127 of 2015

Indiacast Media Distribution Pvt. Ltd.& Ors. ...Petitioners
Versus
Mplex Networks Pvt. Ltd. ...Respondent

BEFORE:**HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON**

For Petitioners : Mr. Shashank Shekher, Advocate
Mr. Amandeep Singh, Advocate

For Respondents : None

JUDGEMENT (ORAL)

Heard learned counsel for the petitioners. Nobody appears for the respondent. Records disclose that in all the 7 petitions notice was served on the respondent. It appeared through counsel and filed its reply in all the petitions but later it chose to abandon the proceedings leading to order for *ex parte* hearing passed on 3.8.2017. Since then the respondent, which is common in all the 7 petitions, has not appeared so far.

2. Learned counsel for the petitioners has explained that 7 separate petitions had to be filed because the parties had entered into different agreement for 7 different territories. To claim the outstanding dues, the petitioners have relied upon

various agreements, copies of invoices and summary of accounts claimed to have been maintained in the usual course of business. Some other correspondences including e-mail, demand notices and notices for disconnection have also been brought on record as annexures. Case of the petitioners is that they are entitled for the amount of money claimed in each of the petitions because there is no denial that parties were having an interconnect agreement during the relevant time; invoices were being raised as per subscription fees agreed between the parties and when substantial amount of scription fees fell into arrears, demand notices were issued but the arrears were not cleared leading to disconnection in supply of signals by the petitioners on 8.1.2015 in all territories covered by 6 petitions, except for the area of Hubli covered by B.P. No. 123 of 2015 wherein disconnection was effective as per request of the respondent on 30.11.2014 itself. It is the case of the petitioner that for other areas described in correspondence as - Rest of Karnataka (RoK) also respondent had made request for disconnection on the ground that it was about to close its business but for these terrortories (RoK) disconnection could be effected only after further exchange of correspondence and e-mail at the instance of the respondent itself. Hence in these areas, disconnection was effected on 8.1.2015.

3. As noted earlier, reply was filed on behalf of the respondent to which petitioners have filed rejoinder also but at the stage of recording of evidence the oral evidence on behalf of the petitioners was not subjected to cross examination and, therefore, remains unrebutted. Since respondent did not appear after filing reply, no evidence has been led on behalf of the respondent.

4. When these petitions were in the process of being heard *ex parte* in October and November 2017, petitioners sought permission and filed additional documents to bring on record copies of documents that have not been filed with the main petition as well as copies of remaining invoices for the relevant period. The statements of account filed earlier were also supplemented by filing detailed statements of account with a view to explain the opening debit balance as on 1.4.2013.

5. With a view to find out whether the money claims made by the petitioners are tenable and acceptable, the defences raised by the respondent in its reply have also been perused and examined. The defences are of common nature relating to all the petitions. The first defence is that the agreements were terminated by the respondent itself for Hubli area on 5.11.2014 and for Rest of Karnataka (RoK) on 10.11.2014. The letters to that intent have been annexed with the reply. To this

plea, which would have some minor bearing if accepted, the petitioners have given a categorical answer that there was no indication that prior public notice of 20 days as required by the Regulations had been given by the respondent. The request for Hubli was accepted and deactivation of signals was done on 30.11.2014. For rest of the areas, there were exchange of e-mails as evident from e-mail dated 30.12.2014 and, therefore, deactivation had to be delayed and was effected on 8.1.2015. These facts have been explained by the petitioners in their rejoinder also. There is no dispute that the respondent enjoyed the signals till the actual date of disconnection and invoices have been raised to charge the respondent only till the supply of signals were disconnected. Hence, this defence is found to be without substance.

6. The other defence raised in the reply, particularly in paragraphs 13-14, is that petitioners have omitted to consider and take into account a payment of Rs. 25 lakhs through two RTGSs dated 2nd and 9th July, 2014. This was a dishonest defence because in the rejoinder as amended through M.A. No. 199 of 2017 it has been well explained with the help of e-mails that payment of Rs. 25 lakhs was in respect of renewal of HCE agreement for the period 1.4.2014 to 31.3.2015 and was totally unconnected to the agreements which are subject matter of these petitions. E-mails of April, May and June, 2014 clearly show that RTGSs transfers were

made when a cheque for that amount was not presented on instructions of the respondent and the payments were for HCE agreements which as per rejoinder/MA related to distribution of signals to certain commercial entities such as hotels. Thus, the second defence of the respondent, as noted above, is also found to be without any substance.

7. In a business relationship invoices/bills/debit notes create a liability to make payments of the amounts concerned. When the party concerned meets its obligations and makes the payments, the same are also reflected in the accounts maintained in usual course of business. The outstanding amounts reflected in statements of accounts maintained in usual course inspire confidence and are generally accepted as a proof of the outstanding amount claimed through a petition. No doubt, the statements of accounts are on affidavit and for most of the periods, these support the claim of the petitioners but there is a clear exception in respect of claims for the period 1.7.2012 to 31.3.2013. This is the initial period for which the petitioners have claimed the following amounts in these seven petitions as reflected in the chart given below:-

Petition No.	Amount in Rs.
121 of 2015	602.57/-
122 of 2015	1,016.77/-
123 of 2015	5,048.10/-
124 of 2015	50,019.78/-
125 of 2015	604.50
126 of 2015	606.99
127 of 2015	606.01/-

8. In respect of the aforesaid claims relating to the period indicated, it is noticed that such an amount was actually outstanding after adjusting the payments etc. is not supported by a properly maintained statement of account which can satisfy the test of accounts maintained during usual course of business. In B. P. No. 124 of 2015 a separate sheet to support the claim of Rs. 50019.78 has been annexed with the additional affidavit but the sheet is clearly not a system generated one. It shows a debit balance of only Rs. 607.78 and not of the amount claimed. Similar sheets brought on record of other petitions, except B P. No. 121 of 2015, also do not appear to be system generated and are not found reliable. In B. P.No.121 of 2015 even manually prepared sheet is not on record.

9. For the aforesaid reasons, the claim in all the petitions of various amounts noted above for the period 1.7.2012 to 31.3.2013 is, therefore, found doubtful on account of not being supported by reliable statements of accounts maintained during the usual course of business. Hence, those claims in all the petitions are rejected.

10. So far as the remaining claims are concerned, they are neither barred by limitation nor there is any good material to doubt the statement of accounts which appear to be maintained during the usual course of business. These claims are supported by invoices and agreements for the relevant periods after 31.3.2013. Such

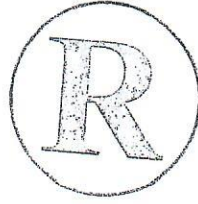
remaining claims for the subsequent period from 1.4.2013 till the date of disconnection for each of the areas is allowed. For each of the petitions, the amount allowed is given hereinbelow in the form of a chart:

Petition No.	Amount in Rs.
121 of 2015	93,851.86
122 of 2015	6,19,775.13
123 of 2015	12,85,200.52
124 of 2015	3,56,124.46
125 of 2015	64,585.12
126 of 2015	1,73,797.85
127 of 2015	1,06,895.32

11. The petitioners have also claimed for interest @ 18% per annum. However, following recent judgments of this Tribunal in several similar petitions, interest is allowed but only @ 9% per annum for the period since filing of the petitions, which will be treated to begin from April, 2015 till the date of realization.

12. Since the respondent has avoided to contest the claims, the petitions are allowed to the aforesaid extent, but without costs. The respondent is directed to pay the decretal amount of all the seven petitions within two months from today, failing which the petitioners shall be entitled to realize the decretal amounts along with interest through appropriate execution proceeding. The Registry is directed to prepare decrees in these petitions at an early date, preferably within six weeks.

13. The petitions are disposed of along with MA(s) , if any.



(S.K.SINGH)
CHAIRPERSON

