

(24)

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

Dated 12th February, 2019

Broadcasting Petition No. 160 of 2015

MSM Discovery Pvt. Ltd. ...Petitioner

Versus

Indiverse Broadband Pvt. Ltd. ...Respondent

BEFORE:

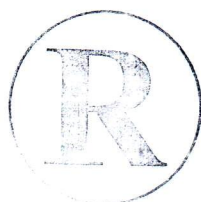
**HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON
HON'BLE MR. A.K. BHARGAVA, MEMBER**

For Petitioner : Mr. Meet Malhotra, Sr. Advocate
Ms. Payal Kakra, Advocate
Ms. Vidya Prabhakaran Khurana, Advocate
Ms. Tanya Gupta, Advocate
Mr. Sushant Chaturvedi, Advocate
Mr. Ravi S. S. Chauhan, Advocate
Ms. Pallak Singh, Advocate

For Respondent : None

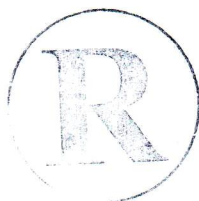
ORDER

By S.K. Singh, Chairperson – This petition has been heard *ex parte* because no one has appeared for the respondent since it abandoned the proceedings



midway after filing reply. Initially, the respondent had appeared through counsel and pleadings were completed. After the petitioner filed its affidavit in evidence, an Advocate Commissioner was appointed for recording the evidence and respondent was required to file its affidavit in evidence. Thereafter, the respondent stopped appearing and chose not to file its evidence and cross-examine the petitioner's witness. In spite of opportunities, the respondent has never appeared thereafter.

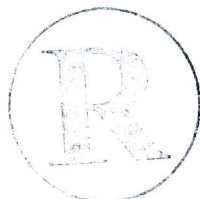
2. The claim of the petitioner is for recovery of money from the respondent. It has sought a decree for a sum of Rs.1,47,16,498/- in favour of the petitioner along with *pendente lite* and future interest @ 18% from the institution of the petition till the realisation of amount from the respondent. Since the witness of the petitioner has supported its case and has not been cross-examined by the respondent, ordinarily, the claim for money ought to have been allowed in full but the difficulty in the way of the petitioner is a judgement of this Tribunal dated 10.05.2016 in B.P. No. 611 of 2015 (**UCN Cable Network India Pvt. Ltd. Vs. Raj Cable Network & Anr.**) and B.P. No. 176 of 2015 (**Manthan Broadband Services Pvt. Ltd. Vs. Rajarhat Cable Broadband Services & Anr.**). By that judgement a Division Bench of this Tribunal reversed the law earlier settled by judgement of



Hon'ble Chairperson sitting singly dated 18.10.2012 in Petitions Nos.46(C) and 47(C) of 2012 passed in the case of **S.R. Cable TV Pvt. Ltd.**

3. The learned Chairperson sitting singly had entertained money claim of the petitioner in that case based on oral agreements by holding that provisions of the Indian Contract Act such as Sections 65 and 70 would be available for the aid of the petitioner even in absence of a written agreement required under the relevant Regulations. In that judgement, clause 4 of the Regulations introduced on and from 17.03.2009 was extracted to notice that the Regulations made it mandatory for the broadcasters of pay channels and distributors of TV channels to reduce the terms and conditions of all their interconnection agreements to writing. The Regulations also prohibited from making available signals of TV channels to any distributor of TV channels without a written interconnection agreement. It held in paragraph 12 that because the consequences of acting contrary to the Regulations were not provided in the Regulations, the liability to pay a reasonable amount would be enforced on the basis of Sections 65 and 70 of the Indian Contract Act because supply of signals was not made gratuitously.

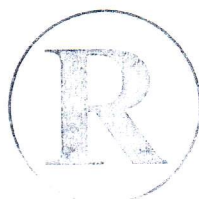
4. The above judgement dated 18.10.2012 was considered along with several other Supreme Court judgements by a Division Bench of this Tribunal in the case



of **UCN Cable Network(supra.)** and the Division Bench took a contrary view to hold that in absence of a written interconnect agreement this Tribunal will not help a petitioner to recover money once it is found that the petitioner had violated the statutory injunction of having a written agreement for supply of TV signals. This was held necessary for orderly growth of the sector and to enforce non-discrimination in the matter of interconnect arrangements with different distributors.

5. While taking the aforesaid view the Division Bench of this Tribunal noted clause 5(16) of the DAS Interconnect Regulations 2012 (corresponding to clause 8 of the Interconnect Regulations 2004). Since these provisions allowed even after expiry of an agreement, three months' time to the parties to negotiate the terms of the fresh agreement, it held that claim for a period of three months even after expiry of a written agreement could be considered on merits.

6. In the present petition, the parties had a written interconnect agreement for the period 01.08.2013 to 30.12.2013. The petitioner who is a broadcaster has further claimed subscription fees from the respondent-MSO not only for the aforesaid agreement period but also for a further period upto 12.01.2015. In order to get over the legal obstacle arising from the judgment in the **UCN Cable**



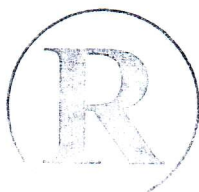
Network case, learned Senior Advocate, Mr.Meet Malhotra, has highlighted certain amendments described as the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Sixth Amendment) Regulations 2016. No doubt the amendments in clause 5 of the 2012 Regulations bring more clarity in the earlier provisions that it shall be mandatory for the broadcaster and the MSO to have a written interconnection agreement but the amendment in no way affects the law laid-down by a Division Bench of this Tribunal in the case of **UCN Cable Network**. We are not persuaded to take a different view and feel ourselves bound to follow that law which has held the field for more than two years and has governed a large number of cases like that of the petitioner. In fact, a three judges Bench of this Tribunal relied upon the aforesaid judgment in B.P. No.145 of 2014 (**Sun Distribution Services Pvt. Ltd., Chennai Vs. Lifestyle Communications, Hyderabad**) decided on 23.05.2017. It was noted that Manthan Broadband Services had challenged the said judgment before the Hon'ble Supreme Court but without success and its Civil Appeal was dismissed.

7. The fact that this petition was filed in 2015 whereas judgment in the case of **UCN Cable Network** was rendered on 10.05.2016 would, in our considered opinion make no difference to the case of the petitioner. That judgment, as a



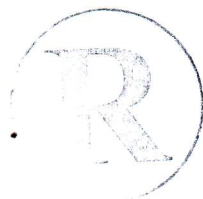
precedent, deserves full respect especially when we do not find any good reason to take a different view.

8. On the basis of aforesaid discussion, we are not persuaded to accept petitioner's claim for the period after March 2014. As noted earlier, after the expiry of the agreement in December, 2013, the petitioner would be entitled to claim subscription fees for the next three months at the maximum if it succeeds in showing that in fact negotiations were going on for a fresh agreement but the efforts could not succeed even after three months. It has been shown from Paras 11 and 12 of the reply that the respondent's case is that it wound-up its business from April, 2014 itself and if typographical error of 2015 is ignored in Para 12 and "2015" is read as "2014", the respondent has alleged that no invoices were raised by petitioner after March 2014 but the negotiations continued for the months of January-March, 2014. The case of the respondent is that although the petitioner issued disconnection notice in September 2014 also but the negotiations continued and failed in November, 2014. It has further pleaded in Para 15 that it wanted reduction in the fees determined through agreement of 17.10.2013 and therefore, it considered that the fees charged by the petitioner through invoices for January to March 2014 was excessive and needed reduction.



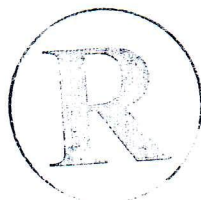
9. From the materials on records which have been duly proved on behalf of the petitioner, it is clear that there was a written agreement dated 17.10.2013 and copies of invoices at least till 31.03.2014 are part of **Annexure P-3**. The same also contains a copy of statement of account. The total outstanding as per the statement of account till 31.03.2014 in respect of MSM Discovery channels is Rs.3,34,543/-. The same break-up is available in Para 12 of the petition also. But from 01.04.2014 to 12.01.2015, the petitioner has claimed Rs.1,40,91,828/- as dues payable by the respondent for the MSM Discovery channels and Rs.2,90,127/- for TVTN channels. By adding all the three figures, the total claim as noticed earlier is for Rs.1,47,16,498/-. In view of discussions made earlier, the claim for the period of 01.04.2014 onwards is not found acceptable because admittedly there was no agreement, much less a written agreement between the parties. However, the claim upto 31.03.2014 for Rs.3,34,543/- only is allowed.

10. Although the petitioner has claimed interest @ 18% per annum, following our orders in large number of similar cases, we allow interest @ 9% per annum from April, 2015 till the date of realisation of this amount from the respondent. In the fact of the case, petitioner is also awarded a cost of Rs.20,000/-. The respondent is directed to pay the decretal amount with cost within two months from today failing which the petitioner will be entitled to realise the entire decretal



amount including interest and cost through execution. If the cost is not paid within two months, the same shall also carry interest at the same rate from the date of this judgment till the date of realisation. Office is directed to prepare a decree at the earliest, preferably within two months.

11. The petition is allowed to the aforesaid extent.



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(S.K. Singh, J)
Chairperson

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(A.K. Bhargava)
Member