

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

Dated 6th November, 2019

Broadcasting Petition No.659 of 2016

Sony Pictures Networks India Pvt. Ltd.

...Petitioner

Vs.

Welcome Cable Network Pvt. Ltd.

...Respondent

BEFORE:

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON

For Petitioner : Mr. Shashank Shekhar, Advocate
Mr. Amandeep Singh, Advocate

For Respondent : None

Judgement

Heard learned counsel for the petitioner. Nobody appears for the respondent. The records disclose that the respondent was served with notice but has chosen not to appear at any point of time. No reply or evidence has been filed on behalf of respondent. Order for ex-parte hearing was passed on 16.1.2017. Accordingly the matter has been heard ex-parte.

2. The present petition is under Section 14 A(1) of the Telecom Regulatory Authority of India Act 1997 (TRAI Act). The petitioner has made the necessary averments to show that it is competent to maintain this petition to claim certain



amount of money from the respondent, for and on behalf of broadcasters such as Sony Picture Networks India Pvt. Ltd. and TV Today Networks Ltd.

3. The petitioner has pleaded that the respondent is a distribution platform operator (MSO), retransmitting signals of TV channels supplied by the petitioner for particular area/territory only, in terms of affiliation agreements executed from time to time. Petitioner's predecessor MSM Media Distribution Pvt. Ltd., as an agent of various broadcasters including Sony and TVT had executed an affiliation agreement with the respondent for the period 1.4.2014 to 31.2.2014. The monthly subscription fee under that agreement which is at Annexure P-1 (colly) was Rs. 74,580/- only. There was an understanding but no written agreement for the subsequent period of 1.1.2015 to 31.2.2015. Invoices were raised on the basis of monthly subscription fee fixed under the earlier agreement and against those invoices the respondent made substantial payments leaving only a deficit of Rs. 6673/- for the year 2015 in respect of Sony channels. So far as TVT channels are concerned, the payments made in the year 2015 when there was no written agreement in place, was in excess of the invoiced amount for that year by Rs. 761/- only.



4. The next set of agreements covering Sony channels and TVT channels were executed between the parties for the period 1.1.2016 to 31.12.2016 under which the monthly subscription fee for Sony channels was Rs. 74,580/- only and for the TVT channels Rs. 1215/-only. Clearly the rates of monthly subscription fee for both set of channels remained the same as was under the previous agreement.

5. The invoices for the various periods have been brought on record as Annexure P-2 (colly). The running account, as is apparent from the Statement of Accounts, appears to have been maintained during normal course of business and reflects the invoiced amount as debit and the payments as credit. For Sony channels the Statement of Accounts discloses an outstanding dues of Rs.6,10,468/-. This includes period upto the date of disconnection and also includes the outstanding of Rs. 6673/- for the year 2015 when there was no written agreement in place. For TVT channels the outstanding till the date of disconnection is Rs. 9944/-. The accounts show that there was no outstanding dues during the period 2015 and in fact an extra amount of Rs. 761/- was paid by the respondent which has been duly credited by way of regular entries for the payments made. Thus the outstanding of Rs. 9944/- for TVT channels includes no outstanding dues for the year 2015.



6. No doubt there appears to be a clear outstanding between the petitioner and the respondent even for the year 2015 when there was no written agreements in place because invoices were being raised regularly followed by payments reflected in the Statement of Accounts. However, it has been held in several judgements rendered by this Tribunal that a service provider cannot claim a decree for money for supply of signals in absence of a written interconnect agreement. In that view of the matter, since there is no written agreement in place between the parties for the year 2015, the amount claimed by the petitioner i.e. Rs. 6,20,412/- must be reduced by Rs. 6673/- which is the outstanding appearing from the accounts, for the year 2015. The amount of Rs. 6673/- cannot be claimed by the petitioner and hence the claim made in this petition is disallowed only to that extent.

7. Since the respondent has failed to contest the claim of the petitioner and has not filed any reply or evidence there is no good reason not to allow the claim for Rs. 6,13,739/- in the light of discussions made above. The claim is allowed to that extent. A decree in favour of the petitioner and against the respondent is allowed for that amount only. Petitioner has also claimed interest @18% p.a. from the date of invoice till the date of payments.



8. However, following large number of judgements and orders on the issue of interest passed by this Tribunal recently, the claim for interest is allowed but only @ 9% p.a. from the month of November 2016 when this petition was filed, till the date of realization. The respondent is directed to pay the decretal amount including the interest within six weeks from today failing which the petitioner will be entitled to recover the amount through an execution proceeding. The office is directed to prepare a decree on the basis of this judgement and order at an early date, preferably within six weeks.

9. The petition is allowed in the aforesaid terms, but without costs.



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(S.K. Singh, J)
Chairperson

