

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

Dated 30th October, 2019

Broadcasting Petition No.302 of 2015

Darsh Digital Network Pvt. Ltd.	... Petitioner
Vs.	
Movie Channel	... Respondent

Broadcasting Petition No.303 of 2015

Darsh Digital Network Pvt. Ltd.	... Petitioner
Vs.	
Sansar Bharti Cable Network	... Respondent

BEFORE:

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON

For Petitioner : Mr. Sharath Sampath, Advocate
Mr. Manikya Khanna, Advocate

For Respondent : None

Judgement

Heard learned counsel for the petitioner. Nobody appears for the respondent.

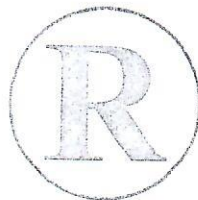
There is already an order for ex-parte hearing of these two petitions because the respondent appeared and filed its reply but thereafter left attending the proceedings and did not appear to challenge the petitioner's evidence nor it filed its own evidence. It was in these circumstances that the order for ex-parte hearing was passed in both the petitions on 22.09.2017. For the purpose of records, it is noted that in B.P. No. 302/2015 the ex-parte order was recalled



on 23.11.2017 on certain terms and conditions but subsequently on 31.01.2018, the order for ex-parte hearing was restored.

2. The facts and circumstances as well as the terms and conditions mentioned in the agreements in both the petitions are similar because the petitioner MSO is common in both the petitions. Hence, both the petitions have been heard together and shall be governed by this common judgement . The relevant and material difference between two petitions shall be pointed out at the appropriate stage in this judgement. For the sake of convenience, the facts are taken from B.P. No. 302/2015, unless expressly stated otherwise.

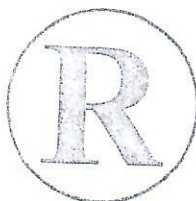
3. The prayer in both the petitions is for a particular sum of money payable to the petitioner by the respondent as on April, 2015 on account of (i) the outstanding subscription charges and (ii) towards the cost of STBs. Petitioner has also claimed interest on the entire outstanding amount @ 24% p.a. In B.P. No. 302/2015 the outstanding subscription charges are claimed to be Rs. 7,71,974.16/-; the number of STBs is claimed to be 1265 costing, as per petitioner, Rs. 17,71,000/-, calculated @ Rs. 1400/- per STB. In B.P.No. 303/2015, the outstanding subscription charges is claimed to be Rs. 4,12,340.52/-; the number of STBs claimed is 688 costing Rs. 9,63,200/- as claimed, @ Rs. 1400/- per STB.



4. The date of Interconnection Agreement is 29.01.2013. The agreement is annexed as Annexure – B. It discloses all the required details relating to subscription charges as well as the amount of security deposit required to be made by the respondent for each STB. The rights and obligations of the parties have also been set out in detail. The petitioner has annexed copies of relevant invoices as annexure – C (Colly) followed by Statement of Accounts for the period from 01.04.2014 to 29.04.2015. The closing balance in the Statement of Accounts is the same figure which the petitioner has claimed towards the outstanding subscription charges, as already noted.

5. It is the case of the petitioner that its Statement of Accounts is a copy of duly maintained ledger Account of the respondent. Petitioner has further claimed that because the respondent was making short payments leading to accumulations of outstanding dues, the petitioner was constrained to issue notice on 11.02.2015 under Clause 6.2 of the relevant Regulations and further on 19-20 February, 2015 under Clause 6.5 of the Regulations. The notices are on record as Annexure - E and Annexure – F (colly).

6. It is petitioner's case that the respondent, despite issuance of notices, failed to pay the outstanding dues and hence the petitioner was compelled to disconnect signals to the respondent on 16.04.2015.



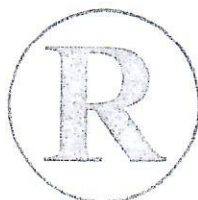
7. Petitioner has pleaded that it had provided 1265 number of STBs to the respondent of B.P. No. 302/2015 with clear understanding that these shall remain the property of the petitioner. In support of supply of STBs petitioner has relied upon Delivery Acknowledgment Forms and the same have been marked as Annexure – G (colly). Petitioner has claimed Rs. 1400/- as the cost of each STB and has made its claim on that basis. There is no documentary evidence in respect of cost of the STBs but petitioner has attempted to support its claim by referring to certain other materials including a discussion made in one of the judgments of this Tribunal dated 01.08.2019 passed in B.P. No. 637/2012 and other connected petitions. In that case also there was no document of purchase or sale to support the claim of the petitioner that the cost of STB was Rs. 1999/-. On the basis of some other material such as Tariff Order No. 1/2013 issued by TRAI, the reasonable cost of STB in or around 2012-2013 was, in the facts of that case, held to be Rs. 1500/- per STB.

8. In its reply the respondent has made a bold denial of subscription dues but failed to point out any errors in the invoices or the Statement of Accounts. However, in respect of claim relating to STBs, the respondent has pleaded that the STBs are provided to the LCOs for installing the same at the place of the subscriber only after depositing the cost of the boxes @ Rs. 900/-. The respondent has disputed not only the number of STBs supplied by the



petitioner but also the price of Rs. 1,400/- per STB. According to respondent, it had received lesser number of STBs and that too only after depositing varying amount of Rs. 900/- to Rs. 1,500/- per STB as refundable security deposit. In the reply, it is also urged that it is quite inconceivable that the petitioner would specify the amount of Rs. 900/- for the cost of STB in the agreement or in the receipt, if in reality the cost was much higher as is now being claimed. The respondent claimed that in terms of the agreement, it is to receive refund of the security deposit from the petitioner, of course as per the agreement, only if the STBs are returned. It is not the case of respondent that it has returned the STBs supplied by the petitioner.

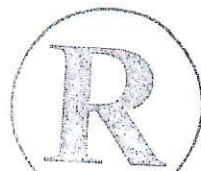
9. The respondent has annexed the photocopies of some receipts as Annexures R2 and R3. A careful perusal of Annexure R2 (Colly) discloses that the receipts show payment of substantial amount of money to the petitioner against STBs whose numbers are also indicated. The receipts are of the year 2013 and show a total payment of Rs. 5,94,000/- against 790 STBs. They are clearly payments towards security deposit which was required by the terms of the agreement to be at Rs. 900/- per STB. The actual payment made by the respondent as per its documentary evidence will be sufficient only for 660 STBs against the admitted supply of 790 STBs. The above documents are not denied or disputed.



10. Though the petitioner has claimed that it had supplied 1265 STBs, its own documentary evidence by way of Delivery Acknowledgement Forms shows that receipt of only 1220 STBs have been acknowledged by the respondent. This figure is accepted as proved. As against this number, the respondent has succeeded in showing that it has paid money as security deposit @ Rs. 900/- per STB and the amount is sufficient to cover 660 STBs. The respondent has however, failed to show that it has paid security deposit for the remaining 560 STBs.

11. So far as facts and figures of STBs and security deposits in B.P. No. 303/2015 are concerned, the respondent's documents with the reply show issuance of 245 STBs against actual payment of Rs. 1,68,500/- only. When refunded, it would suffice as security deposit only for 187 STBs. On the other hand the petitioner has claimed to have issued 688 STBs to the respondent in this case. But the acknowledgment, as per documents made available by the petitioner, is only for 435 STBs. This figure is accepted as proved. Since the security deposit as per document of the respondent is sufficient only for 187 STBs, petitioner has succeeded in further proving that for 248 remaining STBs the respondent has not paid any security deposit.

12. Having noted the relevant facts and figures, it is found that the petitioner's claim for outstanding dues on account of subscription fees deserves to be



accepted because although there is a minor discrepancy in the amount mentioned as dues in the notice of 11-02-2015, no error has been pointed out by the respondent either in the invoice or in the Statement of Accounts. Hence, the claim in both the petitions made towards arrears of subscription fees amounting to Rs. 7,71,971.16/- in B.P. No. 302 / 2015 and Rs. 4,12,340.52 in B.P. No. 303/2015 are decreed in favour of the petitioner and against the respondent.

13. So far as claim towards STBs is concerned, it is clear that petitioner has been able to prove supply of only 1220 STBs in B.P. No. 303/2015 and 435 STBs in B.P. No. 303/2015. Although it has claimed the cost of each STB as Rs. 1400/- and has shown that atleast in 2012-13 the cost of STBs was around to Rs. 1500/- per set, it is not possible to accept such a claim of cost per STB because of peculiar facts of this case. A perusal of the agreement clearly discloses that in Clause 3.7, under the head "Security Deposit", the respondent was required to make a deposit of Rs. 900/- per STB as interest free refundable security deposit. The Clause further mentions that this security deposit will only cover the cost of the STBs provided to him. In other words, other items were not to be covered by Rs. 900/- though other dues could also be taken into account if the respondent was found entitled to refund of the security on account of return of the STBs. In view of such clear stipulation in the



agreement, in the present case it can be safely held that parties have willingly and with open eyes agreed to fix Rs. 900/- as security and this amount is to cover only the cost of a STB provided to the respondent. Hence, the claim for STBs made by the petitioner in these two petitions is decreed only to the following extent:-

- (i) In B.P. No. 302/2015 the petitioner has already received money by way of security deposit which covers the cost of 660 STBs. For the remaining 560 STBs it is held entitled to recover the cost @ Rs. 900/- per STB. The amount of this head would come to Rs. 5,05,000/- towards cost of STBs. Only this amount is decreed in favour of the petitioner and against the respondent.
- (ii) In B.P. No. 303/2015 the petitioner has received security deposit for 187 STBs. Therefore, it is entitled to receive cost of only 248 STBs @ Rs. 900/- per STB. The amount on this head comes to Rs. 2,23,200/-. Only this amount is decreed in favour of the petitioner and against the respondent towards the cost of STBs.

14. It may be useful to reiterate that petitioner's claim towards outstanding subscription charges in both the petitions has already been allowed for the amounts indicated in the prayers and noted earlier i.e. Rs. 7,71,974.16/- in B.P. No. 302/2015 and Rs. 4,12,340.52/- in B.P. No. 303/2015.



15. The petitioner has claimed in both the petitions interest @ 24% p.a. However, following our several recent judgements, we allow interest but only @9% p.a. from July, 2015 till the date of realisation. The respondent is directed to pay the decretal amount including the interest within six weeks, failing which the petitioner will be entitled to realise the same through an execution proceeding. The Registry is directed to prepare decree on the basis of this judgment and order, expeditiously preferably within six weeks.

16. Both the petitions are accordingly allowed but without any order as to costs.



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(S. K. Singh, J)
Chairperson

