

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**

**NEW DELHI**

**Dated : July 13 , 2011**

**Petition No. 390(C) of 2010**

IndusInd Media and Communication Limited ...Petitioner

Vs.

Triveni Media Limited & Anr. ...Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE S.B. SINHA, CHAIRPERSON  
HON'BLE MR. G. D. GAIHA, MEMBER  
HON'BLE MR.P.K. RASTOGI , MEMBER**

For Petitioner : Ms.Vandana D. Jaisingh, Advocate

For Respondent : None

**J U D G M E N T**

**S.B. Sinha**

The petitioner is a Multi Service Operator. The respondent is a broadcaster of a channel known as Voice of India.

The parties hereto had entered into a Memorandum of Understanding on or about 15.5.2009 for the purpose of placement/carriage of the respondent's channel in the prima band of the petitioner; the relevant portions whereof read as under:

"M/s IMCL agrees to carry TML-Voice of India – News Channel in S-Band on frequency \_\_\_\_\_ on both analogue and digital network. M/S IMCL has agreed to carry the channel in S Band position in all their networks in cities of (Mumbai, Nagpur, Nasik, Ahmednagar, Baramati, Ahmedabad, Baroda, Surat, Delhi and Udaipur).

In lieu of the above Triveni Media Limited will pay a total carriage/ placement fee of Rs. 3.15 crore (Rupees three Crores fifteen lakh only) net per annum, exclusive of all taxes for the period 15/5/09 to 14/5/2010.

The said amount will be paid on deferred quarterly basis in equated quarterly installments against invoices received from M/s.IMCL, after verifying the placement of channels as per the terms of the MOU. Any deviation from the above without mutual consent would be a violation of understanding and will tantamount to breach of contract. In the event M/s.IMCL interrupts or shifts the possession/signals of the above mentioned channels from S band frequency, TML shall be entitled to reasonably and proportionately reduce or recover cost for such period against the agreed amount accordingly. Also in the event of payments not received within 30 days of bills being received from M/s.IMCL this MOU and accompanying contract stands cancelled with no liabilities whatsoever on each of the parties.

This MOU shall be valid, binding and subsisting on the parties, for a maximum period of one year w.e.f 13/5/09, till the full fledged agreement is signed between the parties hereto.

Based on the terms of this MOU, a detailed agreement shall be drawn up, and the terms and conditions of this MOU shall not be renegotiated and shall continue to operate between the parties and will be valid and binding."

According to the petitioner although no formal agreement had been entered into, the said MOU was given effect to.

It now stands admitted that the respondent issued a cheque on or about 16.6.2009 for a sum of Rs.78,75 000/- towards placement charges for three months. The said cheque, however, was dishonoured. According to the petitioner it carried the channels of the respondent in the prime band for a period of three months.

Although the respondent has appeared and filed a reply, it, despite notice, has neither cross-examined the witness of the petitioner nor adduced any evidence.

We may, however, notice the following statements made in the reply.

"As the alleged Memorandum of Understanding dated 15/05/09 have not been executed as per the law, the said Memorandum of Understanding was executed on plain papers not on stamp papers, however as per law it should be executed on stamp papers upon which proper stamp duty must be paid by the parties.

As the petitioner states that the cheques issued by the respondents qua the first installments got dishonoured in the month of July, 2009 precisely, on 3-7-2009 as is reflected from Annexure P-2 at page

12 and 13 of the petition. Acting under the said Para 4 of the Memorandum of Understanding dated 15-5-09 on or around 2-07-09 on account of default made by the respondent."

The petitioner in support of its case has examined one Shri Sandeep Arya. He in his affidavit categorically stated that on the assurance of the respondent that payments would be made on expiry of three months, the signals in good faith was carried. He, moreover, denied or disputed that the said MOU was terminated by the petitioner on 2.7.2009.

The petitioner has, apart from proving the contents of the cheque and dishonor thereof, has also proved the MOU.

A statement of account dated 15.5.2009 and a notice issued to the respondents herein by Ms.Vandana Jaisingh, learned Advocate for the petitioner have also been brought on record. The said notice appears to have been refused to be accepted by the respondents despite having been tendered by the postal authorities both at their original address as also at the `redirected address`.

It has further been brought on record that the notices were issued under Registered Cover with Acknowledgement Due.

Execution of the memorandum of understanding is not in controversy.

The issuance of the cheque as also dishonour thereof is also not in controversy.

Section 118(a) of the Negotiable Instrument Act carries a presumption as regards a cheque, which is a negotiable instrument.

It reads as under:

"118. Presumptions as to negotiable instruments. – Until the contrary is proved, the following presumptions shall be made: -

- (a) of consideration- that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred was accepted, endorsed, negotiated or transferred for consideration

We may also notice another presumption which is to be raised by a court of law in terms of Section 139 of the said Act.

The said provision reads as follows:

"139. Presumption in favour of holder- It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.

The agreement between the parties for carriage/placement of channel of the respondent stands admitted and furthermore in view of the fact that the respondent had issued a cheque during currency of the agreement namely on 16.6.2009, for all intent and purport, the liability of the respondent to pay the amount mentioned under

agreement on a quarterly basis must be held to have been established.

It may be true that no formal agreement has been entered into but the same in view of the stipulations contained therein did not result in invalidation thereof. It is also true that the MOU is not on a stamp paper but the contract need not be in writing. A memorandum of understanding under the provisions of Indian Stamp Act is not required to be written on a stamp paper. Moreover the said MOU was written on the letter head of the respondent itself.

The contractual liabilities of the parties flow from the agreement contained in the said MOU. The petitioner has brought on record the evidence of its witness to show that the channel of the respondent has been carried/placed by the petitioner in its prime band. The respondent, therefore, must be held to be liable to pay the agreed amount by way of quarterly charges. The petition, thus, must succeed.

The only controversy which survives is as to whether the respondent No.2 was liable to pay the stipulated amount under the MOU in his individual capacity.

The respondent No.2 having executed the agreement only as a 'Director' of the respondent No.1, he, in our opinion is not liable in his personal capacity; the latter being a juristic person.

Moreover in the facts and circumstances of the case we are also of the opinion that the petitioner is not entitled to interest at the rate of 24% per annum and in our considered view interest of justice would be subserved if interest @12% per annum from 15.5.2009 till realization is allowed.

This petition is allowed in part and to the extent mentioned hereinbefore as against the respondent No.1 only. The petitioner is entitled to a decree for a sum of Rs.78,75,000/- towards the carriage charges for a period of three months. In the aforementioned facts and circumstances of the case, there shall be no order as to costs.

**(S.B. Sinha)**  
**Chairperson**

**(G.D. Gaiha)**  
**Member**

**(P.K. Rastogi)**  
**Member**

**July 13 , 2011**  
**`anu'**