

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

Dated 10th May, 2012

PETITION No. 389(c) of 2011

Hathway Cable & Datacom Ltd.	...Petitioner
Vs	
Triveni Media Ltd.	...Respondent

Petition No.390(C) of 2011

Hathway Bhaskar Multinet Pvt. Ltd. Anr.	...Petitioners
Vs.	
Triven Media Ltd.	...Respondent

Petition No.391(C) of 2011

Gujarat Telenik Pvt. Limited	...Petitioner
Vs.	
Triveni Media Ltd.	...Respondent

BEFORE:

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

For Petitioner : Mr.Arun Kathpalia, Advocate
Mr.Nasir Husain, Advocate

For Respondent : None

P.K.Rastogi, Member

JUDGMENT

Petition No. 389(c) of 2011

This petition has been filed by the petitioner to recover the amount of placement fees which the respondent has failed to pay.

2. The petitioner is a MSO and the respondent is a broadcaster.
3. As nobody appeared before this Tribunal despite service of notice, this petition was heard ex-parte.
4. According to the petitioner, the respondent approached it seeking placement of its channel "Voice of India" on the Petitioner's platform for various territories and both the parties entered into a Placement Agreement on 24-6-2008 for the digital networks of the Petitioner for Delhi and NCR Region and for the analog networks for the areas of JDC, Noida, Preet Vihar, Gujranwala town and Shalimar Bagh ('S' band) for the period 1-7-2008 to 30-6-2009 on an annual consideration of Rs.2.75 crores plus service tax, payable in advance every quarter.

The petitioner has also entered into an Agreement on 30.6.2008 for Ludhiana, Chandigarh, Palampur, Allahabad, Farrukhabad and Lucknow for the period 1-7-2008 to 30-6-2009 on an annual consideration of Rs.1.22 crores plus service tax, payable in advance every quarter.

On 01.10.2008 both parties entered into an agreement for additional areas of Indrapuram, Rajouri Garden, Preetampura, Gurgaon and Tilak Nagar for an amount of Rs. 30 lakhs for the period 25th September 2008 to 24th September 2009.

5. The petitioner has produced the photocopy of the minutes of the meeting dated 24.06.2008 between the petitioner and the respondent which indicates that the carriage deal for one channel "Voice of India" starting from 1st July 2008 to 30th June 2009 for all the digital networks at Delhi and NCR region and placement on S Band except disturbed frequencies at JDC, Noida, Preet Vihar, Gujrawala Town and Shalimar Bagh with deal value of Rs. 2.75 crores.

The petitioner has also produced the copy of the minutes of meeting dated 30.06.2008 for placement deal starting from 1st July 2008 to 30th June 2009 for all digital and analogue networks at Ludhiana, Chandigarh, Palampur, Allahabad, Farukhabad and Lucknow on S band except disturbed frequencies with total deal value of Rs. 1.22 crores.

The minutes of meeting dated 1.10.2008 for additional area for an amount of Rs. 30.00 lakhs for one year starting from 25th September 2008 has also been produced.

6. The petitioner had raised invoices on the respondent on 01.10.2008 for the period 1.10.2008 to 31.12.2008 for an amount of Rs. 68.75 lakhs towards carriage fees.

Another invoice dated 01.10.2008 was raised towards placement of voice of India for the period 01.10.2008 to 31.12.2008 for an amount of Rs. 30.50 lakhs.

Similarly, 3rd invoice was also raised on for placement for the period 25.09.2008 to 24.09.2009 for Rs. 30 lakhs.

7. The petitioner has submitted that the channel placement was discontinued w.e.f. 31.12.2008 as per request of the petitioner. The respondent did not pay the due amount inspite of the letter to the respondent on 10.03.2009 about non payment of outstanding channel placement fees.

8. The petitioner has further submitted that an MOU was entered into between the petitioner and the respondent on 31.03.2009. According to which, the respondent admitted an outstanding amount of Rs. 1,91,87,500/- and promised to transfer all its right title, interest and benefit in the allotment of certain flats from TIDCO to be allotted to Triveni. However, later it was found that the respondent's representations warrantees and assurances were wholly false and the said MOU was entered into on the basis of fraudulent misrepresentation, with the intent to cheat the Petitioner and play a fraud on it. Therefore, the petitioner terminated the MOU vide its letter dated 31.01.2011.

9. The petitioner has filed evidence by way of affidavit of its witness Shri Harish Reddy working as DGM Operations of the petitioner company who has proved the documents produced by petitioner. The witness has produced the original document of MOU dated 31.03.2009 wherein the respondent has admitted and acknowledged that an amount of Rs. 1,91,87,500/- is owing and due from it to the petitioner.

The said admission on the part of the respondent even otherwise constitutes sufficient proof of the claim of the petitioner.

10. As the petitioner has proved its claim, we allow the petition and hold that the petitioner is entitled for recovery of a sum of Rs. 1,91,87,500/- alongwith pendential interest and future interest @ 12% per annum from the respondent.

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11. In this petition the placement deal was signed on 24.06.2008 whereunder it was agreed that respondent would pay a sum of Rs.1,25,00,000/- plus taxes per annum as placement charges payable quarterly in advance for all digital and analogue networks of Bhaskar at Indore, Jaipur, Bhopal, Mhow, Mandasaur and Burhanpur on S. Band except disturbed frequencies.

12. Invoices were raised on 28.06.2008 for an amount of Rs. 35,11,250/- for the period from 1.7.2008 to 30.09.2008 and other invoice on 1.10.2008 for the same amount for the next quarter.

13. After negotiations, an agreement / MOU was executed on 31.03.2009 wherein the respondent admitted and acknowledged that an amount of Rs. 39,37,500/- was due and payable to the petitioner by it.

14. Accordingly, we allow the petition and hold that the petitioner is entitled for recovery of a sum of Rs. 39,37,500/- alongwith pendente lite interest and future interest @ 12% per annum from the respondent.

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15. In this petition the MOU was signed on 13.08.2008 whereunder it was agreed that respondent would pay a sum of Rs.1,25,00, 000/- plus taxes per annum as placement charges payable quarterly in advance for all digital and analogue networks of Gujarat for the period 1.8.2008 to 31.7.2009.

16. Invoice was raised on 24.08.2008 for an amount of Rs. 93,75,000/- plus taxes for the period from 1.8.2008 to 31.10.2008.

17. After negotiations, an agreement / MOU was executed on 31.03.2009 wherein the respondent admitted and acknowledged that an amount of Rs. 93,75,000/- was due and payable to the petitioner by it.

18. Accordingly, we allow the petition and hold that the petitioner is entitled for recovery of a sum of Rs. 93,75,000/- alongwith pendentialite interest and future interest @ 12% per annum from the respondent.

19. In the facts and circumstances of these cases, there shall be no order as to costs.

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(S.B. Sinha)
Chairperson

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(P.K. Rastogi)
Member

/NC/