

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

**Dated 19<sup>th</sup> October, 2012**

**Petition No.385(C) of 2011**  
**(M.A.No.144 of 2012)**

Wire & Wireless (India) Limited  
Vs.

...Petitioner

ACME Digicom Pvt. Ltd.

...Respondent

**BEFORE:**

**HON'BLE MR. P.K. RASTOGI, MEMBER**

For Petitioner

: Mr. Tejveer Singh Bhatia, Advocate  
Mr.Surendra Kumar,Advocate

For Respondent

: Mr. M.K.Sharma, Advocate

**Judgment**

This petition has been filed by the petitioner for recovery for certain amount pertaining to channel placement charges which was to be given to the petitioner by the respondent for placement of its channels viz. Channel No. 1, Lemon TV and Azad News in the cable TV operational areas of Delhi, Noida, and Greater Noida.

2. The petitioner is a Multi System Operator and respondent is a broadcaster.

3. The petitioner and the respondent had entered into a MOU for the period 23.06.2009 to 22.06.2010 for placement of two channels i.e. Channel No. 1 and Lemon TV on the frequency in the Analog and Digital modes of transmission as mentioned in the MOU.

4. The petitioner has submitted that it has placed all the channels of the respondent at the desired frequency and also raised invoices, which were duly received by the representative of the respondent.

5. The petitioner and the respondent entered into another MOU for the extension of the period of channel placement agreement and also for carrying additional channel i.e. Azad News for the period starting from 1.4.10 to 31.03.2011.

6. According to the petitioner, it placed all the three channels of the respondent at the desired frequency i.e. UHF band below E-50 and also raised invoices for the aforesaid three channels on regular basis, which were accepted by the respondent without any objections. The respondent, however, failed to make full payment and had been making only part payments.

7. The petitioner sent a legal notice for payment of outstanding amount to the respondent through its Advocate on 8.6.2011 and another notice on 20.07.2011 for making the outstanding channel placement charges.

8. As the respondent failed to pay the entire amount, the petitioner has requested this Tribunal for the following reliefs :

(a) Order / decree in favour of the petitioner and against the respondent for an amount of Rs. 49,63,500/- (Rupees forty nine lakhs sixty three thousand five hundred only) being the outstanding dues of channel placement charges from the respondent as on December 2010 for the placement of respondent's TV channels on desired frequencies / bands by the petitioner.

(b) an order awarding interest @ 12% in favour of the petitioner on the aforesaid payment of Rs. 49,63,500/- till date.

9. The respondent on the other hand, submitted that the respondent was a mediator who dealt with the channels and MSO's separately for the placement of channels on commission basis. It was totally wrong to consider it as a broadcaster or service provider.

The petitioner did not disclose before this Tribunal that the respondent had terminated the deal for the channel Azad news via email to its officials on 16.08.2010.

The petitioner neither placed the channel at the desired frequency i.e. below U 45 and not in all the Head ends and due to the same, the channels did not issue payment to the respondent. The respondent regularly requested the petitioner to place the channel at all head ends on the frequency below U 45 but the petitioner ignored the same.

The petitioner had issued legal notice for the sum of Rs. 59,04,118/- and on the other hand in the petition they are claiming Rs. 49,63,500/-. It clearly shows that the petitioner is not presenting the true facts before this Tribunal.

Although the petitioner has stated that they had issued credit note for the sum of Rs. 12,57,541/- on 31.08.2011 but the same is not adjusted anywhere in the account.

Further, the advance payments for a sum of Rs. 15,00,000/-

made to the petitioner against the placement of CNEB channels has not been disclosed anywhere and not adjusted anywhere in the respondent's account.

10. The petitioner in its rejoinder submitted that even though the respondent, through its email dated 16.08.2010, requested to stop transmission of Azad News channel, it was further assured that the Azad News channel would be replaced by some other channel. The carriage agreement as such between the petitioner and the respondent continued thereafter.

Further, there was no 4.3 notice given by the respondent to enable the petitioner to stop transmission of Azad News and the said email dated 16.08.2010 does not constitute a notice under clause 4.2 of the Interconnect Regulations.

A perusal of the said e-mails making clear that the switch off was only proposed due to poor track record of the payment. The channels were to be switched off only after finding a suitable replacement for the said channels however, since the decision was taken almost at the end of the carriage deal and also at the end of the Financial Year ending it was decided by the petitioner that the channels of the respondent may

be carried despite the poor payment record since no suitable carriage fee was available during that time.

11. The petitioner has filed a copy of MOU signed between the petitioner and the respondent. We may reproduce the terms and conditions of the one MOU :

*"The following terms have been decided between WWIL and Acme Digicom Pvt. Ltd. to execute channel Placement Agreement immediately.*

- *The placement/carriage deal will come into effect from 23<sup>rd</sup> June 2009 to 22<sup>nd</sup> June 2010 (Twelve months only)*

- *The total agreed placement fee amount is Rs. 50,00,000 (Rupees fifty lac only) plus service tax at applicable rates payable in quarterly installments in advance for each quarter.*

- *Citywise bifurcation of channel placement fee of Rs. 50,00,000/- (Rupees fifty lac only) plus service tax as follows :*

- *Delhi - Rs. 40,50,000/- plus service tax*
- *Noida - Rs. 4,00,000/- plus service tax*
- *Greater Noida - Rs. 5,50,000/- plus service tax*

- *Deal is for Analog and Digital units of WWIL in Delhi, Noida and Greater Noida excluding delivery through headend in the Sky (HITS).*

- *The deal is for placement of 2 channels which will be placed in the following bands / frequencies with effect from 23<sup>rd</sup> June 2009.*

- *Channel no. 1 - UHF Band (within U 40 to U 45)*
- *Lemon TV - UHF Band (within U 40 to U 45)*

- *The results will be monitored in two ways – physically by Network Development Team and officially by TAM Media Research. Net. Dev.*

*Team will have monthly meetings with the operations department of Wire and Wireless (India) Ltd. and check the frequency and result delivered after initiating the deal.*

- *Acme Digicom Pvt. Ltd. shall make payment of Rs. 12,50,000/- (Rupees Twelve Lac fifty thousand only) plus applicable service tax on account of placement fee for first quarter starting from 23<sup>rd</sup> June 2009, immediately on signing of this MOU.*

- *Both the parties hereto agree to sign a channel placement agreement within fifteen days of signing of this MOU."*

12. The petitioner has also filed another MOU effective from 1/4/2010 to 31/3/2011 :

*"The following terms have been decided between WWIL and Acme Digicom Pvt. Ltd. to execute channel Placement Agreement immediately.*

- *The placement/carriage deal will come into effect from 1/4/2010 to 31/3/2011 for 12 months only.*

- *The total agreed placement fee amount is Rs. 60,00,000 (Rupees sixty lacs only) in which 20,00,000 for each channel plus service tax at applicable rates payable in quarterly installments in advance for each quarter.*

- *Deal is for Analog and Digital units of WWIL in Delhi, Noida and Greater Noida unit of WWIL excluding delivery through headend in the Sky (HITS).*

- *The deal is for placement of 3 channels which will be placed in the following bands / frequencies.*

- *Channel no. 1 - UHF Band (below E-50)*
  - *Deal period: 1/4/2010 to 31/3/2011*

- *Lemon TV* - *UHF Band (below E-50)*
  - *Deal period: 1/4/2010 to 31/3/2011*
- *Azad News* - *UHF Band (below E-50)*
  - *Deal period: 1/4/2010 to 31/3/2011*

- *The results will be monitored in two ways – physically by Network Development Team and officially by TAM Media Research. Net. Dev. Team will have monthly meetings with the operations department of Wire and Wireless (India) Ltd. and check the frequency and result delivered after initiating the deal.*

- *Acme Digicom Pvt. Ltd. shall make payment of Rs. 15,00,000/- (Rupees Fifteen Lacs only) Plus applicable service tax on account of placement fee for first quarter immediately on signing of this MOU.*

- *Both the parties hereto agree to sign a channel placement agreement within fifteen days of signing of this MOU.”*

13. It is seen from the terms and conditions of these MOUs that both the parties agreed to sign a placement channel agreement within 15 days of signing this MOU. It is presumed that no agreement was signed between the parties as nothing has been placed on record in this regard by the parties.

14. According to the respondent, it had terminated the deal for the channel Azad News vide email dated 16.08.2010. The respondent had written an email on this day to Mr. Neeraj Soni and Mr. Ankit of WWIL. The contents of the same may be reproduced:

*"This is to inform you that due to some problem with owner of Agad News payment has not been released by him with this mail. We request you to switch off Agad News immediately because of this few cheques, issued by me on his behalf was get dishonoured. Also want to put on record that since April our channels was not placed on agreed frequencies, in most of your network, as I have to clear pending dues in which the following payments may kindly be released by your kind cooperation.*

*Dishonoured cheques - 15 lacs  
Less - 5 lacs  
- 10 lacs*

*Less 25 days displacement (Azad News switch on 15 May 2010 where as bill generate from 15 April 2010)*

*It was already inform Mr. Monish Sehgal and he was agreed to issue the necessary credit note in our favour since my liabilities for Azad News start from 15 May to 15 Aug 2010. We would request to calculate the actual amount payable after considering the above facts. I will pay Rs. 4 lakhs on 21 Aug 2010 and Azad News will be replaced with other forthcoming channels to be add in our bouquet within 30 days. Another 5 lakhs will be given on that particular day and balance payment will be cleared within next 30 days. You have ensure that our channel 1 Lemon TV, be placed below U 42 on all your network in Delhi and NCR since owner of this channel has incurred huge losses from 4-5 months. Because of non placement and frequency problems of your network. I am ready to sit with you so that we can come mutually agreed figure.*

*A line of confirmation in the matter will be highly appreciated."*

In this email, the respondent has complained to the petitioner that it had not placed channel – 1 and Lemon TV on the frequency as agreed in the MOU on its network in Delhi and NCR and the owner of this channel has incurred huge losses because of non – placement of channel and frequency problem of the petitioner’s network for the 4-5

months. The respondent offered to sit with the petitioner so that both the parties could come on mutually agreed figure.

It further raised an issue that Azad News was started on 15.05.2010 whereas the bill was generated from 15.04.2010, it means that the petitioner has raised the bill for one additional month.

15. On November 1, 2010 at 11.52 AM, Mr. Neeraj Soni of WWIL wrote to Mr. Rajeev Sharma and Shivani Singh, wherein it mentioned that :

*"Dear Rajeev / Shivani*

*Its decided finally to switch off Lemon TV and Channel No. 1 with immediate effect due to :*

- (A) Poor Track Record of Payments*
- (B) Poor carriage deal*
- (C) Bounced cheques of Rs. 2.6 mn as on date.*

*Deal Details :*

*Deal amount - Rs. 4 mn*  
*Deal period - 12 months (1 April 2010 to 31 March 2011)*  
*Freq. - Below U – 50 (2 Freq)*  
*Area coverage - Delhi, Noida and Greater Noida*

*We are cancelling carriage deals also with immediate effect.*

*Zonal Team – to ensure channels are switch off and must not be placed back (owner Mr. Rajeev Sharma and MR Shivani Pratap)*

*Corporate content and accounts team – to ensure completion of process of cancellation and billing stops (owner Ms. Manpreet for placement deal cancellation process and Mr. R. K. Gaur for billing cancellation process)*

*Revenue Assurance Team – to ensure legal notice to be sent to the broadcaster for recovery (owner Mr. Ankit Narula)  
Way forward – Corporate content team has to ensure immediately to find and close new deal so that there is no revenue loss (Owner Maria Irland)*

*Regards,  
Neeraj Soni”*

At 1.28 PM on 1.11.2010, Mr. Neeraj Soni of WWIL again wrote to Mr. Rajeev Sharma and Shivani Singh mentioning the following :

*“Sub : Switch Off call*

*Dear Rajeev / Shivani*

*We are about to close a new channel placement deal and the freq(s) of lemon TV and channel No. 1 will be utilized for the forthcoming deal.*

*This is an update for you all  
Cheers!!!  
Neeraj Soni”*

Yet again, on 11.11.2010, Mr. Ankit Narula of the WWIL wrote to the Maria Ireland regarding switch off call stating the following :

*“Sub : Switch Off call  
Dear Maria,*

*We have to sue this guy under section 138 and ensure recovery. Just need the confirmation from you as mentioned the attached file.*

*Once you confirm we will process the necessary credit note, get*

*the confirmation from Finance too before sending notice to him.*

*Pl. look into this on top priority and confirm the same.*

*In case if there is any deviation do let me know.*

*Warm Regards*

*Ankit Narula"*

16. The petitioner has produced three witnesses. Shri Sanjay Arya, who is working as Vice President (Technical) in the petitioner Company has filed an affidavit and has stated that :

*"I state that the petitioner has carried respondent's channels "Channel One, Lemon TV and Azad News as per the channel placement agreement/undertakings entered between the petitioner for the period of 23.6.2009 to 22.6.2010 for placement of two channels i.e. Channel No. 1 and Lemon TV and as per another understanding/ Agreement, the petitioner company has also placed the above mentioned two channels i.e. Channel No. 1 and Lemon TV for another period starting from 1.4.2010 to 31.3.2011 and third channel – Azad News from the period 15.4.2010 to 14.4.2011 from the head end operations in Delhi, Noida and Greater Noida to the complete satisfaction of the respondent's representatives/officials. I state that the petitioner has not breached any terms of the channel placement agreement entered between the petitioner company and the respondent."*

In the course of cross-examination by the counsel of the respondent, the witness stated that:

*"Q 4: How you prepare channel mapping?*

*A : We get channel mapping from technical team at all units every week.*

*Q 5: Can you submit the weekly reports before this Hon'ble Tribunal?*

*A : Yes*

*(Ld. Counsel for the petitioner objects that channel mapping is already on record as Annexure P-9)*

*(Ld. Counsel for the respondent submits that the channel mapping which is already on record as Annexure P-9 is not a weekly report and is a monthly channel mapping report prepared/generated by the technical team of the petitioner”*

The petitioner although mentioned that he received the channel mapping from technical team for all units every week. However, the same has not been produced.

When the witness was asked by the counsel of the respondent whether they had received any email from Mr. Rajeev Sharma (Vice President (Operations) and Mr. Shivani Singh (GM Operations) regarding switching off the channel of the respondent, the witness stated that he need to check when the signals were switched off. Later he said we did not switch off channels. Still he will have to refer to channel mapping.

*"Q 10: Have you received any email from Mr. Rajeev Sharma, Mr. Shivani Singh or Mr. Neeraj Soni regarding the switching off of the channel of the respondent?*

*A : I need to check whether it was written or a verbal communication.*

*Q 11: Do you remember when you switch off the channel of the respondent?*

*A : I need to check.*

*Q 12 : I put it to you that you have not carried or placed the channels of the respondent as per the terms and conditions of MOU?*

*A : it is incorrect*

*Q 13: I put it to you that you have switched off all the channels of the respondent on 1.11.2010.*

*A : As far as I remember, we did not switch off the channels. Still I will have to refer to channel mapping."*

17. Mr. V. Suresh Kumar, who is working as Senior Manager (Legal)

in the petitioner company stated that :

*"As per MOU for the period 23.6.2009 to 22.6.2010, the petitioner has also raised an invoice for a sum of Rs. 13,78,750/- vide invoice No. DEL01-000113 dated 1.3.2010 for the period 23.2.2010 to 22.6.2010 on the respondent for the two channels i.e. Channel No. 1 and Lemon TV. I state that subsequently after signing/executing a fresh MOU for the period from 1.4.2010 to 31.3.2011, the petitioner has also raised another invoice vide No. DEL 01-000017 dated 20.5.2010 for Rs. 11,03,000/- for the period starting from 1.4.2010 to 30.6.2010 in terms of fresh MOU executed with the respondent. I state that since the second/fresh MOU for the period 1.4.2010 to 31.3.2011 was executed after raising invoice dated 1.3.2010 and the said invoice was fro the same channels i.e. Channel No. 1 and Lemon TV and covered same period as invoice dated 20.5.2010, the petitioner has given appropriate credit note for the said MOU vide Credit Note No. 16 dated 31.8.2011."*

Mr. V. Suresh Kumar, Sr. Manager (Legal) in his cross-examination was asked whether channel mapping is prepared monthly or weekly, he replied monthly. About switching of channels he stated that :

*"Q 6: Do you know how to prepare channel mapping?*

*A: Yes*

*Q 7: What are the basis?*

*A : In terms of agreement/MOU, we have to consider the following details in preparation of channel mapping i.e. – name of the channel, network/headend, band and frequency of each channel and the period and date of channel mapping.*

*Q 8: Do you prepare channel mapping monthly or weekly?*

*A : Monthly*

*Q 15: When you switched off the channel of the respondent?*

*A : No channel of the respondent is switched off.*

*Q 16 : Whether all the channels of the respondent are being shown till date?*

*A : Yes*

*Vol: In terms of first MOU of 2009, our company has placed two channels of the respondent as per the agreed band and frequencies in Delhi, Noida, and Greater Noida and as per the second MOU of 2010, our company has placed three channels of the respondent as per the agreed band and frequency in Delhi, Noida and Greater Noida.*

*Q 17: Have you ever received any email from the respondent for the request to switch off its channel Azad News?*

*A : For the first time, I had seen it in the reply filed by the respondent.*

*Q 18: Who was Mr. Ankit Narula?*

*A: He was with Accounts Receivable Department.*

*Q 19: Do you remember any email communicated in your office for the switch off call of the channels of the respondent in the year 2010?*

*A : For the first time I had seen it in the reply filed by the respondent."*

18. Mr. Rajkumar Mishra working as Director in the respondent company and Mr. Rajesh Maggon filed affidavits of evidence on behalf of the respondent. However, the witnesses did not appear for cross examination. Therefore, their evidences cannot be taken on record.

19. At the time of hearing, the respondent or the counsel of the respondent did not appear, therefore, the arguments of the counsel of petitioner were heard in absence of the respondent/its counsel.

20. The main issue for my consideration is whether the petitioner has carried out the signals of the channels of the respondent in terms of the MOU. The MOU provides for placing two channels i.e. Channel No. 1 and Lemon T.V. of respondent's on UHF band within U-40 to U-45 from 23.6.2009 to 22.6.2010 for analog and digital units of the petitioner in Delhi, Noida and Greater Noida. The amount was Rs. 50.00 lakhs. The second MOU was for the period starting from 1.4.2010 to 31.3.2011 for 3 channels. The amount was revised to 60.00 lakhs and the frequency band was revised to UHF band but below E-50.

It can be seen that the 2<sup>nd</sup> MOU came into force even before the expiry of the 1<sup>st</sup> MOU, i.e. 2 months 22 days earlier.

21. The respondent in its email dated 16.8.2010 requested the petitioner to switch off Azad News immediately. The petitioner in its Rejoinder has admitted receipt of such email. However, said that it did not stop Azad News Channel as the petitioner was assured that Azad News channel would be replaced by some other channel. Therefore the carriage agreement as such continued thereafter. The petitioner

further contended that the respondent did not issue 4.2 and 4.3 notice as required under Interconnect Regulation.

The placement agreements are not covered by any regulations. The placement charges and payment totally depends upon the mutual agreement between the parties and the submission of the petitioner that the respondent did not give 4.2 and 4.3 notices as required under Interconnect Regulation do not hold good. The MOU signed between the parties does not provide any clause where if one of the party request to switch off the channel, then what will be the consequence. The petitioner did not reply to the email. It did not raise any issue of 4.2 or 4.3 notice under Interconnection Regulations. It did not inform the respondent that it was continuing the placement of the channel.

The placement of channel is placing the particular channel at particular frequency. If the channel owner does not want to continue the placement in a particular frequency, the carrier of the channel cannot claim any charges for the same. However, if the respondent has violated some condition of the agreement, the consequence will follow as prescribed in the agreement / MOU.

Therefore, the petitioner is not entitled for any placement charges for the channel Azad after 16.08.2010.

22. In the same email dated 16.8.2010, the respondent informed the petitioner that Azad News Channel was switched-on on 15.5.2010 and not on 15.4.2010. The respondent clearly mentioned that this aspect of switching-on the Azad News Channel on 15.5.2010 was informed to Shri Monish Sehgal who agreed to issue a credit note and the liability for Azad News Channel arising only from 15.5.2010 to 15.8.2010. The petitioner was requested to calculate the actual amount after considering these aspects. The petitioner did not send any reply to this email. The petitioner has not denied this fact in its rejoinder. Therefore, the petitioner is entitled to have the placement charges only for the period 15.5.2010 to 15.8.2010 for Azad News Channel.

23. In its reply, the respondent has submitted its reply that the petitioner had switched off all the channels of the respondent on 1.11.2010. It has produced a printout of email which according to the respondent is given by the officials of the petitioner during the meeting for settlement of accounts. The email dated 1.11.2010 shows that Mr. Neeraj Soni of WWIL, who was handling the carriage deal with the

broadcaster wrote to Mr. Rajeev Sharma, Vice President (Operations), WWIL, in Delhi and NCR region and Mr. Shivani Singh (GM Operations), WWIL of the same region that it was decided to switch off Lemon T.V. and Channel 1 with immediate effect due to poor track record of payment, poor carriage deal, bounced cheque of Rs. 26 lakhs as on date. Further, a specific direction was given to Mr. Rajeev Sharma and Mr. Shivani Singh to ensure that channels are switched off. The Corporate content and account team were directed to ensure that billing should stop and the process of cancellation should be completed. The Corporate Content Team was also directed to ensure immediately to find and close new deal so that there was no revenue loss.

24. On the same date, Mr. Neeraj Soni again wrote to Mr. Rajeev Sharma and Mr. Shivani Singh informing them that they were about to close a new channel deal and frequency of the Channel No. 1 will be utilized for the forthcoming deal. In another email dated 11.11.2010 Mr. Ankit Jain (Accounts Receivable Department) wrote to one Maria Irland to sue the respondent under Section 138 and ensure recovery.

25. Besides the above internal email of the petitioner, Mr. Anil Jain who is working as AGM (Finance and Accounts) admitted in his cross-

examination that the channels have been switched off by the technical department on receiving email from Mr. Neeraj Soni, Mr. Rajeev Sharma and Mr. Shivani Singh and he had stopped raising invoices against the channel placement after the receiving of email. We may produce the cross examination of Mr. Anil Jain :

*"Q 10: Have you received an email from Mr. Rajeev Sharma, Mr. Shivani Singh or Mr. Neeraj Soni regarding switching off of the channels of the respondent?"*

*A : yes*

*Q 11: Do you remember the date of above said email?*

*A : it was in November, 2010.*

*Q 12 : After receiving the said email, what was your action?*

*A : We have nothing to do in fiancé and accounts department but the channels have been switched off by the technical department.*

*Q 13: Have you stopped raising invoices against the channel placement after receiving the said email?*

*A : yes"*

26. However Mr. V. Suresh Kumar who is looking after all legal affairs and finalization of various subscription and channel placement agreement has mentioned that the channels of the respondent has not been switched off and these are being shown till date.

27. The cross-examination of Mr. Anil Jain shows clearly that they have received an email from Mr. Neeraj Soni regarding switching off of channels of the respondent and accordingly they have stopped raising invoices against the channel placement. In view of the admission by

the witness of the petitioner, it is beyond doubt that all the channels of the respondent were switched off in November, 2010 itself.

28. In view of the aforementioned reasons, I am of the opinion that the petitioner is entitled for the placement charges for two channels namely Channel 1 and Lemon T.V. w.e.f. 23.6.2009 to October, 2010 and for Azad News Channel w.e.f. 15.5.2010 to August, 2010. The petitioner will be entitled for the decree for the same after deducting the payment already made by the respondent.

The parties are directed to submit the calculation sheet of the amount payable by the respondent in terms of the aforementioned direction and amount already paid by it within a week. The petitioner is also entitled for the interest @ 10% from the date of filing this petition, pendentelite and future.

29. The petition is disposed of in terms of the above directions. Advocate's fees is assessed at Rs. 25,000/-.

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

/NC/