

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

Dated 22nd November, 2013

Petition No.246(C) of 2012

Wire & Wireless (India) Ltd.Petitioner

Versus

Mahua Media Pvt. Ltd.Respondent

Petition No.247(C) of 2012

Indian Cable Net CompanyPetitioner

Versus

Mahua Media Pvt. Ltd.Respondent

BEFORE:

**HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON
HON'BLE MR. KULDIP SINGH, MEMBER**

For Petitioners : Mr.Tejveer Singh Bhatia, Advocate

For Respondent : Mr.Vineet Bhagat, Advocate
Ms.Neha Jain, Advocate

Aftab Alam, Chairperson – M/s Wire & Wireless (India) Ltd.,
[petitioner in Petition No.246(C)/2012] and its subsidiary company, namely,
Indian Cable Net Company Ltd. [petitioner in Petition No.247(C)/2012],
have brought their respective claims of money against a common

respondent, Mahua Media Pvt. Ltd. In both the cases not only the respondent is the same but the set of facts giving rise to the petitioner's claims are also identical. Hence, the two petitions were heard together and are being disposed of by this common judgment.

Both the petitioners are multi-system operators and their operations are spread all over the country, including the city of Kolkata. The respondent is a broadcaster, transmitting a number of TV channels e.g., Mahua, Mahua Bangla Entertainment, Mahua Bangla Khobar and also, according to the petitioners', Pragya.

M/s Wire & Wireless (India) Ltd. (WWIL) seeks recovery of Rs. 4,30,87,335/- (as on September 30, 2011) along with interest @ 24% per annum till the date of payment by the respondent. The aforesaid amount is claimed as carriage fee/placement charges payable by the respondent-broadcaster for placing/carrying its aforesaid four channels on the agreed bands/frequencies for the period January 1, 2011 to September 30, 2011.

M/s Indian Cable Net Company Ltd. (ICNCL) similarly seeks recovery of Rs.5,26,50,797/- (as on September 30, 2011) along with interest @ 24% per annum till the date of payment by the respondent. The aforesaid amount is claimed as carriage fee/placement charges payable by the

respondent-broadcaster for placing/carrying its aforesaid four channels on the agreed bands/frequencies for the period June 1, 2011 to September 30, 2011.

It is the case of the two petitioners that they had an interconnect relationship with the respondent since 2008-2009 for carrying its channels on the petitioners' platforms in Kolkata city and its adjoining areas and as a result of the long relationship they had developed a good understanding with the respondent. The last agreements (previous to the ones that are in dispute and give rise to the present petitions) between the two petitioners and the respondent came to end on December 31, 2011 (in respect of Mahua), May 31, 2011 (in respect of Mahua Bangla Entertainment and Mahua Bangla Khobar) and on May 6, 2011 (in respect of Pragya). It is further the case of the petitioners that though they had not received copies of the countersigned channel-placement agreements from the respondent on the due dates, they nevertheless continued to carry all the four channels of the respondent on the agreed bands/frequencies as a gesture of business goodwill. The two petitioners sent a number of communications to the respondent for sending back to them the countersigned copies of the agreements and/or extension letters in respect of the agreements that were earlier entered into between the two sides. It is further the case of the

petitioners that by email dated June 6, 2011 they requested the respondent to send back to them the duly signed copies of the agreements that were already signed for and on their behalf and further requested the respondent to clear the outstanding channel-placement charges (carriage fees) which were more than Rs.7 crores (in each of the two cases) as on June 6, 2011. It is stated on behalf of the petitioners that the Chairman of the respondent company intimated the petitioners, vide email of the same date that the channel placement agreements had already been signed and sent back to them and the outstanding dues would also be released soon after verification. The copies of the emails exchanged between the two petitioners and the respondent on June 6, 2011 were enclosed in the two petitions as Annexure P-3 (colly). It is also stated on behalf of the petitioners that the officers of the respondent company further confirmed the carriage details and the execution of the agreements between the parties and promised to intimate the status of the duly signed agreements as and when it came to be known from their Chairman's office. The officials of the respondent company also conveyed their thanks to the petitioners, assuring that the outstanding channel placement charges/carriage fee would be cleared within a short time; copies of the letters dated July 11 and July 14, 2011 were enclosed with the petitions as Annexure P-4(colly).

The crux of the case of the petitioners is that in terms of the agreements executed by the two sides for the period beyond the last agreements as indicated above, the petitioners uninterruptedly carried the respondent's aforesaid four channels on their cable TV network in Kolkata on the desired/agreed bands/frequencies. For carrying the four channels, the petitioners duly raised invoices which were acknowledged by the respondent without any objection. The copies of the invoices raised by the petitioners along with proof of dispatch with acknowledgement due were annexed with the petitions marked as Annexure P-5 (colly). In violation of the terms of the channel placement agreements, however, the respondent became irregular in making payments of channel placement/carriage fees to the petitioners and as a result, the two petitioners had their dues accumulated, as claimed by them in their respective petitions and as borne out by the statements of account as per their records/books of accounts which were annexed with the two petitions as Annexure P-6 (colly).

M/s Mahua Media Pvt. Ltd., the respondent in both the cases, filed its Reply on May 30, 2012 completely denying the claims of the petitioners. It denied that there was any agreement between the two sides for the year 2011-12 and that the petitioners had carried the four channels as claimed by

them on their respective platforms in pursuance of any bipartite agreement between the two sides. In paragraph 6 of the reply it was stated as under:

“Insofar as Placement Agreement for the year 2011-12 are concerned, it is submitted that the **Respondent had clearly and categorically refused to renew the Agreements with the Petitioner, telephonically and also by returning the unsigned Agreements back to the Petitioner** since the Respondent has been sustaining losses and the Respondent was not in a position to afford to pay for the placement of its channels. Further, it is not the Respondent who is seeking to renew the Placement Agreements but it is the Petitioner who was seeking to renew them as is clear from various e-mails exchanged between the parties and which have been annexed by the Petitioner along-with its Petition. The Petitioner is trying to mislead this Hon’ble Tribunal by making false statements before this Hon’ble Tribunal. It is vehemently denied that the Respondent has ever told the Petitioner that the Placement Agreements for the year 2011-12 have been signed by the Respondent. **As far as e-mail dated 06 June 2011 is concerned it is submitted that the Respondent had clearly and categorically refused to renew the Agreements with the Petitioner telephonically and also by returning the unsigned Agreements back to the Petitioner as informed vide the said mail dated 6th June, 2011.”**

(emphasis added)

The respondent also denied any dues as claimed by the petitioners at the expiry of the agreements for the earlier period. With reference to the emails dated July 11 and 14, 2011 which, according to the petitioners, were sent by the officers of the respondent company and which were heavily relied upon by the petitioners in support of their claims, it was stated in the respondent's reply that those were procured from its erstwhile employees who were disgraced and discharged from the respondent company. In paragraph 7-9 of the reply, it was stated as under:

“The Petitioner has created false and fabricated letters dated 11.07.2011 & 14.07.2011, as an after-thought, which have been procured by it from the disgracefully discharged employees of the Respondent who have subsequently and willingly issued the said letters to settle their score with the Respondent Company by colluding with the Petitioner.”

In the same paragraph, the respondent once again denied having entered into any agreement with the petitioners for the year 2011-12.

Apart from denying any claims of the petitioner in Petition No.246(C)/2012, the respondent raised a counter claim of Rs.1,37,613/- which according to the respondent, the petitioner was liable to refund along with 24% interest. Similarly, in Petition No.247(C)/2012, the respondent

raised a counter claim of Rs.3,10,455/- which the petitioner in that case was liable to refund along with 24% interest.

Further, in so far as channel 'Pragya' is concerned, the respondent took the plea that it was not a part of the respondent company and hence, the respondent was not liable to make any payment in connection with that channel.

Here, it is significant to note that the respondent did not, as a matter of fact, deny the transmission of the four channels by the two petitioners for the period in question. It, however, took the plea that the petitioners might have carried the channels on their respective platforms due to the popularity of those channels but the transmission was not in pursuance of any agreement executed by the respondent and hence, it was not liable to make any payment for the transmission of the channels.

In light the pleadings of the parties, the Tribunal by its order dated May 31, 2012 framed the following five issues:

- “1. Whether the letters dated 11 July 2011 & 14 July 2011 are false and fabricated and obtained by way of collusion?
2. Whether there is any Placement Agreement between the Petitioner & the Respondent for the year 2011-12?

3. Whether the Respondent has fully paid up its liabilities by way of on account payment & whether the excess payment, so made, is liable to be refunded by the Petitioner is the Respondent along with an interest?
4. Whether the Respondent is entitled to recover the excess payments made by it to the Petitioner?
5. To what relief, if any, the petitioner is entitled to?"

As the matter stood at this stage the petitioners might have found it difficult to establish their claims in as much as they were apparently not in possession of copies of agreements for the periods in question jointly signed by them as well as the respondent. The copies of the agreements enclosed with the two petitions were signed only for the respective petitioners but did not bear the signatures on behalf of the respondent. But certain collateral developments took place of which taking full advantage the petitioners were able to add considerable strength to their case.

On August 1, 2012 the petitioners filed miscellaneous applications in their respective cases [M.A. No.400/2012 in Petition No.246(C)/2012 and M.A. No.401/2012 in Petition No.247(C)/2012]. In the miscellaneous applications it was stated that the respondent was facing an investigation by the Central Bureau of Investigation (CBI) in a case of bank fraud. In connection with the investigation a certain D. J. Bajpei, Inspector of Police,

Central Bureau of Investigation, BS&FC, New Delhi had summoned the petitioners to provide certain documents. In response to the summons an authorized representative of the two petitioners had appeared before the CBI officer and submitted to him the documents as required by him. It was further stated in the miscellaneous applications that in the meeting with the officer, the petitioner's representative came to learn that the documents on which the petitioner's claim rested before the Tribunal and which were sought to be denied by the respondent were in the custody of the CBI. In the miscellaneous applications, therefore, a prayer was made to issue summons to the aforementioned D. J. Bajpei, Inspector of Police, Central Bureau of Investigation, BS&FC to produce the seizure memo pertaining to the placement agreements dated 5.5.2011 as well as the placement agreements, the details of which were furnished in the miscellaneous applications as under:

Sl. No.	Date of Agreement	Validity	Channels	Agreed band/ Frequency	Placement Fee (Annually)
1.	5.5.2011	1.1.11 – 31.12.11	Mahua	E 41	91,79,510
2.	5.5.2011	1.6.11 – 31.5.12	Mahua Bangla Entertainment	Colour Band	3,15,00,000
3.	5.5.2011	1.6.11 – 31.5.12	Mahua Bangla Khobar	S Band	2,25,00,000

4.	5.5.2011	7.2.11 6.5.11	–	Pragya	Within 550 Mhz	40,50,000
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The Tribunal after hearing both sides, allowed the miscellaneous applications and by order dated August 6, 2012 directed Mr. D. J. Bajpei to produce the documents as described in the two applications.

In pursuance of the directions, the documents were produced before the Tribunal, the originals of which were returned after retaining their true Photostat copies on the record of the case as per the order dated August 6, 2012.

The documents are contained in the volume titled as “Documents submitted by CBI” and those include a seizure memo dated February 7, 2012 detailing the articles and documents seized in connection with the CBI Case No. RC BD1/2012/E/0001-BS&FC/New Delhi from the premises of M/s Century Communications Ltd., Plot No.17B, Sector 16A, Film City, Noida (U.P.). The Seizure Memo is signed by one Bhupendra Narayan Singh besides D. J. Bajpei of the CBI and two witnesses.

Annexure ‘C’ to the Seizure Memo contains a list of all the seized documents and at serial number 8 is recorded “one file containing placement agreements dated 05.05.2011 between M/s Mahua Media Pvt. Ltd. and Wire

& Wireless India Ltd.; M/s Mahua Media Pvt. Ltd. and Indian Cable Net Company Ltd. etc. containing pages 1 to 116". These are actually two sets of agreements (on stamped papers), one each between the two petitioners and the respondent. Each set comprises two copies of four agreements relating to (i) Mahua Bangla Entertainment channel (ii) Paragya channel (iii) Mahua Bangla Khobar channel and (iv) Mahua channel. The first set is between WWIL [Petitioner in Petition No. 246 (C) of 2012] and the respondent Mahua Media Pvt. Ltd. and the second set is between ICNCL [Petitioner in Petition no.247 (C) of 2012] and the respondent. All the agreements were made on May 5, 2011; for Mahua Channel the agreements were for the period January 1, 2011 to December 31, 2011, for Mahua Bangla Entertainment and Mahua Bangla Khobar Channels, for the period June 1, 2011 to May 31, 2012 and for Pragya, for the period February 7, 2011 to May 6, 2011. All the agreements mentioned the agreed band/frequency on which the two petitioners were required to carry the respondents' channels and the consideration amounts payable by the respondent in each case.

As indicated earlier, all the four agreements between the respondents and the two petitioners were in duplicate and each page of both the copies of the four agreements were signed for and on behalf of the two petitioners by one Soumen Roy Choudhary with the round seal of the company affixed at

each place of signature. On behalf of the respondents, the agreements were similarly signed by one Sona Debnath. The signatures for and on behalf of respondent, however, were not accompanied by the round seal of the company.

From the four agreements that have come before the Tribunal from the custody of the CBI, having been seized from the respondent's office, it is perfectly clear that the respondent, though fully aware of their existence, consciously and purposefully took a false plea before the Tribunal by stating in its reply:

“....it is submitted that the Respondent had clearly and categorically refused to renew the Agreements with the Petitioner, telephonically and also by returning the unsigned Agreements back to the Petitioner....”

Apart from the agreements the petitioners, in support of their case, also relied upon the exchange of mails that took place between the two sides.

It is the case of the Petitioners that by email dated June 6, 2011 the petitioners requested the respondent to send the duly signed copies of the agreements that were already signed on behalf of the petitioners and further requested the respondent to clear the outstanding channel-placement charges

(carriage fees) which were more than Rs.7 crores (in each of the two cases) as on June 6, 2011. It is stated on behalf of the petitioners that the Chairman of the respondent company intimated the petitioners, vide email of the same date that the channel placement agreements had already been signed and sent back to them and the outstanding dues would also be released soon after verification. It will be useful here to reproduce the two emails which were enclosed in the petitions as Annexure P3 (colly). The email from the petitioners' side was sent by one Suresh Sethiya. It was addressed to one P.K. Tiwari and reads as under:

“Dear Tiwariji

The agreements for Mahua Bangla and Mahua Khabar has expired on 31st May, 2011, Mahua Bhojpuri has expired on 31st December 2010.

It was agreed on the 5th of May at your Kolkata office with your goodself that the agreement copies given to your office will be signed and given back to us within one week, unfortunately more than one month has passed and we have still not received the agreement copies.

We had also given the statement of accounts showing the dues and it was discussed that a part of the payment will be done by 31st May and the within 15th June.

More than 7 crores is due as on date and it is increasingly become difficult for us to carry on the business.

We request you to clear the dues within 15th June 2011 as discussed.

Looking forward to your co-operation.

Thanking you,

Suresh Sethiya”

In response, Mr. P.K. Tiwari wrote back as under:

Dear Mr. Sethiya,

The agreements has (sic) been despatched to you.

Regarding the dues, we will verify the same and we will release the payment as soon as possible.

Thanks

P.K. Tiwari”

There is no hint or suggestion in Mr. Tiwari's reply that the respondent did not want to extend or renew the placement agreement with the petitioners or that the agreements that were sent by the petitioners for counter signatures were being returned unsigned and unsealed. The reply is calculated to mislead and anyone reading it in the context of Mr. Sethiya's mail is bound to get the impression that the agreements were dispatched after being duly countersigned on behalf of the respondent.

It is further to be seen that in the reply filed on behalf of the respondent Mr. Tiwari's email of June 6, 2011 is sought to be explained away by stating as under:

“As far as e-mail dated 06 June 2011 is concerned it is submitted that the Respondent had clear and categorically refused to renew the Agreements with the Petitioner telephonically and also by returning the unsigned Agreements back to the Petitioner as informed vide the said mail dated 6 June 2011.”

The refusal to renew the agreement is said to have been conveyed on telephone and the email dated June 6, 2011 is cited to say that the agreements were returned back to the Petitioners unsigned. We have, however, seen that actually the agreements were not returned and those were

with the respondent until those were seized from its office by the CBI. The statement made in the reply thus appears to be clearly incorrect.

Let us now turn to the evidences adduced by the two sides regarding the disputed emails and some other materials relied upon by the petitioners in support of their case and denied and disputed by the respondent.

The two petitioners examined five witnesses in support of their claim. The first witness examined by the petitioners was one Mr. Suresh Kumar Sethiya who was the authorized signatory of WWIL and a Director in ICNCL. He fully supported the claims of the two petitioners. He also identified a copy of the email sent by him to Mr. P.K. Tiwari, Managing Director of the respondent company on June 6, 2011 and Mr. Tiwari's email of the same date in reply to his mail. The email of Mr. P.K. Tiwari was then marked as Exhibit PW-1/2. Mr. Sethiya was thoroughly cross-examined in regard to the exchange of emails but he came out unscathed and we see no reason not to accept the petitioners' case regarding the exchange of the emails on June 6, 2011.

At this stage we may observe that Mr. P. K. Tiwari, the Chairman and the Managing Director of the respondent company from whose mail box and under whose name the all-important email dated June 6, 2011 was sent and

thus who could be the best person to deny or explain the mail or say anything in that connection chose not to appear as a witness. Thus the petitioners' case based on the respondent's email of June 6, 2011 goes practically unchallenged.

The second witness examined on behalf of the petitioners was one Mr. Soumen Roy Choudhary (the signatory to the agreements on behalf of the petitioners) who was the CEO of the ICNCL and the authorized signatory of WWIL. He also fully supported the prosecution case. He identified the channel-placement agreements, for the periods in question, that were signed by him on behalf of the two petitioners (Exhibit PW2/1 colly.) and said that the countersigned copies of the agreements were not provided by the respondent to the petitioners. He too was thoroughly cross examined but there is nothing in the cross-examination to discredit the witness in any way.

The third witness examined on behalf of the petitioners was one Atul Kumar Singh who was working as AVP (Finance) in the two Petitioner companies. He identified the placement agreements between the parties which were marked as Exhibit PW-4/1(colly). He identified the emails of the officers of the respondent companies dated July 11 and 14, 2011 in which assurances were given for payment of the placement charges/carriage

charges dues which were marked as Exhibit PW-4/4 (colly). He also identified the copies of the invoices raised by the Petitioner along with proof of dispatch and acknowledgments which were marked as Exhibit PW-4/5 (colly). He also identified copies of the letters exchanged between the parties which were marked as Exhibit PW-4/7(Colly).

The fourth witness examined on behalf of the Petitioners was one Nripen Ch. Bhowal who worked as Technical Supervisor in the Petitioner companies. He stated on affidavit that during the period under dispute all the four channels of the respondent were duly carried on the desired/agreed frequencies/bands. He identified a whole bunch of the monthly placement/carriage reports of the respondents' TV channels during the agreed period which were marked as Exhibit PW-4/1(Colly).

The fifth and the last prosecution witness examined on behalf of the petitioners was one V. Suresh who was examined to prove the notice received from the CBI summoning a representative from the Petitioner company for production of documents before the CBI.

On behalf of the respondents the only witness examined was one Mr. Suddhasil Basu who described himself as the Authorized Representative of the respondent company. In his affidavit (filed in lieu of examination-in-

chief) he said that in the email of June 6, 2011 it was clearly stated on behalf of the respondent that dues would be verified and payment would be released as soon as possible and later on payment was actually made and, therefore, it is absolutely wrong for the petitioners to say that they had dues of Rs.7 crores as on June 6, 2011. What he says in the affidavit is not in issue and he does not say a word about the counter-signing of the agreements on behalf of the respondent (and as a matter of fact he is quite incompetent to say anything in that regard). In regard to the emails of July 11 and 14, 2011 from the officers of the respondent company (Annexure P-4 to the petition and later marked as Exhibit PW4/4) Mr. Basu said that those were false and fabricated and were procured by the petitioners “from the disgracefully discharged employees of the respondent who have subsequently and willing (sic.) issued the said letters to settle their score with the respondent Company colluding with the Petitioner”. No material is produced in support the bald statement, making wild allegations not only against the petitioners but certain individuals. No cause of discharge or date of discharge is stated; no discharge letter is produced before the Tribunal. We are therefore not prepared to reject the emails of July 11 and 14 as collusive and fabricated materials.

Moreover, there are far weightier reasons not to accept the testimony of Mr. Basu. He stated in cross-examination that he was working in the respondent company from September 17, 2011 and his knowledge and information about the facts of the case were derived from the company's Chairman, Mr. P.K. Tiwari. He also said that they had no placement agreement in the East and they had returned the agreement unsealed and signed. However, when asked pointedly whether he had any document to show that the respondent returned the agreements unsigned to the Petitioners he replied in the negative. The first part of his statement makes him appear as a hearsay witness and the second part of the statement is clearly wrong; the respondent did not return the agreements, unsealed and unsigned, to the Petitioners but those agreements, signed though not sealed on behalf of the respondent, were actually seized by the CBI from the respondent's office and were produced before the Tribunal. He was pointedly asked in cross-examination whether he was aware of any CBI raid conducted in the office of the respondents' office at M/s Century Communications Ltd., Plot No.17B, Sector 16A, Film City, Noida (U.P.) on February 7, 2012. He answered that he had no clue of (any) CBI raid on February 7, 2012.

It is noted above that the seizure memo of the CBI was signed by one Bhupender Narayan Singh besides these two witnesses and the CBI officer.

In cross-examination, it was suggested to Mr.Suddhasil Basu that the aforesaid Bhupender Narayan Singh was the National Political Editor of the respondent. Mr.Basu first said that he had no idea about Mr.Singh's designation or authorization but when pressed further, he said that he will find out and inform the Tribunal within a week or two.

It is also noted above that all the placement agreements were signed on behalf of the respondent by one Sona Debnath. She too like Mr. P.K. Tiwari did not appear before the court as a witness. Her signatures on the placement agreements were shown to the respondent's witness Suddhasil Basu and he was asked whether he could recognize the signature. He answered in the negative. But when further pressed as to who might have signed the agreements on behalf of the respondent, he replied that he would furnish the answer within a week or two.

The aforesaid Suddhasil Basu filed an additional affidavit in which he admitted that Bhupender Narayan Singh used to work with the respondent company and was present at the time when the raid was conducted by the CBI at the Noida Office of the respondent company. He, however, added Bhupender Narayan Singh had left the respondent company on August 3, 2012 and no longer worked there.

As regards the signing of the agreements by Ms. Sona Debnath, Mr. Basu made the following statement in the additional affidavit:

“That I say that Ms. Sona Debnath had signed the Agreement which starts from Page No.125 of the documents produced by the CBI on 17.08.2012 and ends at Page No.135 of the documents produced by the CBI on 17.08.2012. I further say that she is not the director in the Respondent Company but she had the authority to sign the said Agreement vide Authority Letter dated 01.04.2011 issued by the Respondent in her favour, which is exhibited as Exhibit RW-1/3.”

From the evidences adduced on behalf of the petitioners, it is clear that the emails exchanged between Suresh Kumar Sethiya from the petitioners' side and Mr. P.K. Tiwari as Chairman-cum-Managing Director of the respondent company on June 6, 2011 are true and genuine and were written in the normal course of business. There is nothing in the evidence of the respondent to throw any doubt on the email of Mr. P.K. Tiwari dated June 6, 2011 or for that matter on the emails dated July 11 and 14, 2011 sent by the officers of the respondent company. The email dated June 6, 2011 from Mr. P.K. Tiwari is itself sufficient to constitute a valid acceptance and concludes the placement agreement between the parties in respect of the four channels for the period in question.

Furthermore, from the two sets of agreements produced from the custody of CBI, it is evident that though the agreements were duly signed for and on behalf of the respondent, the official seal was not affixed and the countersigned agreements were held back with an ulterior motive.

In the face of such materials, as discussed above, that completely falsify the stand taken by the respondent before the Tribunal, Mr.Vineet Bhagat valiantly defended the respondent and tried to resist the claims of the petitioners. Mr.Bhagat submitted that the invoices were not sent to the respondent but were produced for the first time before the Tribunal. The placement reports were filed only with the rejoinder and the witness examined in support of the placement reports stated that he signed all the reports at the time of signing of the affidavit. He also submitted that the petitioner in Petition No.246(C)/2012 had submitted a single courier receipt for all the six invoices. He, therefore, urged the Tribunal to hold that the invoices and placement reports were manufactured by the petitioners for this case. He further pointed out that a part of the invoices [from page 82 to page 108 in Petition No.246(C)/2012] which were undisputed bore the Kolkata address whereas the disputed invoices (from page 110 to page 131 of the paper-book) bore Noida address. From this he inferred that the disputed invoices were printed at Noida for this case.

We are not impressed by these submissions. In regard to the demands for payment made by the petitioners, it is significant to note that as early as on September 30, 2011, the petitioners had written to the respondent demanding payment of their outstanding dues. In case of WWIL, the outstanding amount was Rs.4,30,87,335/- and in case of ICNCL, there is a whole bunch of invoices duly proved by the petitioners' witness showing that invoices were raised demanding the petitioners' dues.

Mr. Bhagat further submitted that though the agreements produced by the CBI, both the signatures of Ms. Sona Debnath were not accompanied by the official seal of the company.

According to us, this is the most deplorable part of the case of the respondent. It appears to us that in its dealings with the petitioners the conduct of the respondent has been deceptive and duplicitous. It represented to the petitioners that the carriage/placements of the four channels on the petitioners' networks were to continue as before and it would be sending the signed agreements in that regard. But in fact it held back those agreements, apparently with the view that in case of any dispute, any legal action by the petitioners should be destined to fail. Further, even as the matter came before the Tribunal, the respondent, confident in its belief that it would be impossible for the petitioners to produce the agreements countersigned on its

behalf, took the patently false plea that it had returned the unsigned agreements to the petitioners and there were no placement agreements between the respondent and the petitioners for the disputed period. Fortunately for the petitioners the agreements were seized by the CBI from the respondent's office and could thus be produced before the Tribunal. Having led the petitioners up the garden path and having derived advantage from its dishonest representation, the respondent cannot be allowed to turn back and take the plea that there were no concluded agreements and, therefore, it is not liable to make any payments to the petitioners.

In light of the discussions made above, we answer the issues in the following manner:

Issue no.(i) is answered in favour of the petitioners, holding that the letters dated July 11, 2011 and July 14, 2011 are true and genuine documents sent by the officers of the respondent company in normal course of business.

Issue no.(ii) is also answered in the affirmative in favour of the petitioners holding that there was a placement agreement between the two sides for the year 2011-12.

Issue nos. (iii) and (iv) are answered in the negative and against the respondent.

Issue no.(v) is answered in favour of the petitioners holding that the petitioners are entitled to the respective amounts claimed by them.

Both the petitions are accordingly allowed. The registry is directed to make a decree in Petition No.246(C)/2012 for a sum of Rs.4,30,87,335/- with interest @ 12% per annum from September 30, 2011 till the date of payment and in Petition No.247(C)/2012 for a sum of Rs.5,26,50,797/- with interest @ 12% per annum from September 30, 2011 till the date of payment.

Sd/-
.....**J**
(Aftab Alam)
Chairperson

Sd/-
.....
(Kuldip Singh)
Member

/sks/