

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

Dated 16th December, 2014

Petition No. 29(C) of 2013

Delhi Distribution Company Petitioner

Versus

Sahara India Pvt. Ltd. Respondent

BEFORE:

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

For Petitioner : Mr. Vibhav Srivastava, Advocate
Mr. Gaurav Kaushik, Advocate

For Respondent : Mr. Mahavir Singh, Advocate

ORDER

By Aftab Alam, Chairperson – The petitioner is a multi-system operator. It has filed this petition against the respondent who is a broadcaster for recovery of Rs.16,21,410/- as dues of placement charges for carrying the respondent's channels, namely, "Sahara One" and "Filmy" on its network.

According to the petitioner, a Memorandum of Understanding was executed between the petitioner and the respondent on 29 January 2010. It was

for the period 1 February 2010 to 31 January 2011. In terms of the MoU, the petitioner was to carry on its network the respondent's channels "Sahara One" and "Filmy" on colour band and s-band respectively in consideration of Rs.60 lakhs (excluding service tax) payable in 12 equal monthly instalments of Rs.5 lakhs each. A copy of the Memorandum of Understanding drawn up on a printed format of the respondent is enclosed with the petition as Annexure P-1. It is duly signed on behalf of the petitioner but the column for the respondent's signature is blank. It is the case of the petitioner that the countersigned copy of the MoU was never given to it and its original copy was taken away by one Mr.Anupam Choudhary, an employee of the respondent. It is further the case of the petitioner that it carried the two channels of the respondent on the respective bands as stipulated in the MoU on its network. The respondent, however, defaulted in payments of the monthly instalments with the result that the amount claimed by the petitioner fell due against it. The respondent did not make the payment despite reminders and the petitioner was, therefore, constrained to come to the Tribunal.

In support of its case, the petitioner has enclosed the statement of account as also the channel mapping report showing that for the period of the MoU, the respondent's two channels were duly carried on its network on the respective bands as stipulated in the MoU.

The respondent does not deny that there was an arrangement between the two sides for carrying its channels on the petitioner's network. It, however,

denies its liability to make payment of the amount claimed by the petitioner on the ground that in the months of November and December 2010 and January 2011, the petitioner did not carry the two channels on the frequencies as mentioned in the MoU executed by the two sides. The respondent has also produced a copy of the MoU which according to it, was executed by the two sides and which is slightly different from the MoU produced by the petitioner.

It is, therefore, to be determined which of two MoUs, one produced by the petitioner and the other by the respondent, is the true one that was executed by the two sides and on that finding, would depend the outcome of the case.

The provision regarding placement of the channels in the copy of the MoU produced by the petitioner is as under:

“(A) PLACEMENT: The centre of _____ (as per Annexure hereto) will carry Sahara One & Filmy on the below frequencies:

Sr.No.	Channel	Band	Frequency	Before	After
01	Sahara One	Colour			
02	Filmy	S-Band			

In the table above, under the column for Channel, “Sahara One” and “Filmy” are printed and in the column for Band, “colour” and “s-band” respectively are filled-up in hand. The rest of the three columns are left blank.

In the copy of the MoU produced by the respondent, the provision regarding placement of channels is as under:

“(A) PLACEMENT: The centre of DELHI DISTRIBUTION CO. (as per Annexure hereto) will carry Sahara One & Filmy on the below frequencies:

Sr.No.	Channel	Band	Frequency	Before	After
01	Sahara One	Colour	E-12	IMAGINE	ZOOM
02	Filmy	S	S-15	NEWSX	24X7

In the table above, under the column for Channel, “Sahara One” and “Filmy” are printed; also printed are “colour” and “s” respectively in the column for Band. The next three columns, “Frequency”, “Before” and “After” are filled-up in hand.

The copy of the MoU is duly signed both on behalf of the petitioner and the respondent.

It is the case of the respondent that in the months of November and December 2010 and January 2011, the petitioner did not carry the two channels in the frequencies assigned to them in the MoU and hence, it was not liable to make payment of the placement fee for the three months.

On the face of it, the copy of the MoU produced by the respondent appears quite alright. But unfortunately for it, the respondent made a fatal error which shows that the MoU was actually later interpolated. It is seen above that Sahara One is assigned colour band and the frequency E-12. However, the frequency E-12 does not belong to colour band but it is a prime band frequency.

Mr. Vibhav Srivastava invited out attention to “tv frequency.xls” which shows that E-12 frequency in 224.25 MHz is a prime band frequency.

He also invited out attention to the notification dated 5 September 2013 bearing no.S.O.2693(E) issued by the Ministry of Information and Broadcasting, wherein it is stated as under:

“Explanation: For the purpose of this notification, the expression “prime band” constitutes frequencies relating to channel falling in band 1 (channels 2 to 4 ranging from 47 to 68 MHz) and

band III (channels 5 to 12 ranging from **174 to 230 MHz**) and “non-prime band” shall be construed accordingly, in relation to “prime band”.”

Mr. Srivastava also brought to our notice, the respondent’s statement of account, a copy of which is enclosed with the reply filed on its behalf. From the statement of account it appears that the respondent made due payments for the months of January to October 2010. However, for the months of November and December 2010 and January 2011, the statement of account records the deduction of tax at source but no payment of the monthly dues. If the respondent, as claimed by it, was not liable to make payments for the months of November and December 2010 and January 2011, where was the question of making any TDS from the payment to be made to the petitioner.

The petitioner in support of its case, examined one Shri Ravi Gupta, as its witness. He stated that he was the authorised representative of the petitioner and was fully conversant with the facts of the case. The witness fully supported the case of the petitioner and proved all the material documents including the MoU produced by the petitioner, the channel placement reports and the statement of account etc. The witness was able to fully stand by his case in course of his cross-examination on behalf of the respondent.

On a consideration of the materials on record and in light of the discussions made above, we are clearly of the view that the copy of the MoU produced by the petitioner is the correct copy. The MoU stipulated that the two channels “Sahara One” and “Filmy” should be carried on colour and s band

respectively by the petitioner. The petitioner in discharge of its obligation under the MoU duly carried the two channels on their assigned bands on its network and it is entitled to recover the dues as claimed by it.

The petition is accordingly allowed. The office is directed to make a decree for a sum of Rs.16,21,410/-. The decretal amount shall also carry interest @ 9% from the date of filing of the petition till the date of payment. The respondent is liable to pay the cost of litigation to the petitioner, quantified at Rs.50,000/-.

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(Aftab Alam)
Chairperson

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(Kuldip Singh)
Member

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