

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

**Dated 7<sup>th</sup> July 2014**

**Petition No. 653 (C) of 2012**

**Indusind Media & Communication Ltd. ... Petitioner**

**Vs.**

**Sahara India TV Network &Anr. Respondents**

**BEFORE:**

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

For Petitioner : Ms. Kanupriya Gupta, Advocate  
Mr. Sandeep Arya, Manager (Legal)  
Ms. Vandana Jaisingh, Advocate

For Respondent : Mr. Arjun Natarajan, Advocate

**ORDER**

This is a recovery petition for an amount of Rs.4,43,21,568/-. The petitioner is a Multi System Operator (MSO) engaged in the business of receiving of signals from various broadcasters of Television channels and redistribution of the same to the subscribers. Respondent No.1 is in the business of broadcast of television channels, in particular 'Sahara One and Sahara Filmy'. Respondent No.1 has engaged the services of respondent No.2 in the distribution of the said channels of respondent

No.1 and to supply Integrated Receiver Decoders (IRDs) and VCs.

2. The parties entered into an agreement dated 25.8.2011 for the carriage of respondent's channels being 'Sahara One and Sahara Filmy' (hereinafter referred to as "the channels") in S. Band. In consideration of the placement of channels at the agreed frequencies, respondent No.1 (Sahara) was to pay the petitioner total carriage fee amounting to Rs.7.50 crores per annum plus service tax at the applicable rates. This amount was to be paid in equal monthly installments of Rs.62.50 lakhs each payable by or before 25<sup>th</sup> day of the month immediately following the month in which the payment becomes due. Petitioner, in turn, was required to pay monthly subscription amount of Rs.4,16,667/- exclusive of taxes to respondent No.1. The relevant clauses of the agreement are as under :-

**3. Placement :** *The MSO/Cable Operator has undertaken to carry the said Channels being Sahara One, Sahara Filmy and Firangi on the below agreed frequencies:*

**Neighborhood Channels**

Sr. No.	Channel	Band	Frequency	Before	After
01.	Sahara One	S. BAND			
02.	Sahara Filmy	S.BAND			
03.	Firangi				

**4. Carriage and Subscription Fee :**

*4.1 In consideration of the Cable Operator/MSO placing the said Channels at the agreed frequency and the qualitative and unhindered carriage of the said Channels, SAHARA shall pay to the MSO/Cable Operator a total carriage fee amounting*

*to Rs.7,50,00,000/- (Rupees Seven Crores Fifty Lacs Only) per annum plus Service tax at the rates applicable (said Carriage Fee) from time to time.*

*4.2 SAHARA shall pay the said Carriage Fee to the MSO/Cable Operator in 12 (twelve) equal installments of Rs.62,50,000/- (Rupees Sixty Two Lacs Fifty Thousand Only) each payable by or before the 25<sup>th</sup> day of the month immediately following the month in which the payment becomes due. However, every payment of Carriage Fee amount shall be subject to receipt of appropriate invoice by SAHARA from the MSO/Cable Operator and its due verification.*

*4.3 Accordingly, the MSO/Cable Operator undertakes to pay to SAHARA, a Monthly Subscription amount of Rs.4,16,667/- (Rupees Four Lacs Sixteen Thousand Six Hundred Sixty Seven Only) exclusive of taxes, payable monthly, in consideration for the grant of non-exclusive right to distribute/re-transmit the said Channels to Subscribers situated with the said Territory.*

*4.4 SAHARA shall have the right to vary the Subscription Amounts after giving notice of not less than one month to the MSO/Cable Operator and in compliance with the applicable law in force. The total subscription amounts payable by the MSO/cable Operator to SAHARA shall also vary accordingly.”*

The term of the agreement was for a period of twelve months from the effective date being 20.8.2011.

3. On 08.11.2011, respondent No.1 executed an addendum with the petitioner whereby placement of Sahara One channel of respondent No.1 was upgraded from S. Band to Prime Band with effect from 01.11.2011 to 19.8.2012. Consequently, carriage fee was increased from Rs.7.50 crores to Rs.9 crores exclusive of service tax.

4. Petitioner has been issuing invoices to respondent No.1 based on the aforesaid agreement. The contention of the petitioner is that respondents have not been making payment regularly as per the agreement and therefore, the petitioner issued a demand notice dated 16.4.2012 calling upon respondent to pay the outstanding dues ,inclusive of interest, amounting to Rs.3,31,71,174.31 as on 31.3.2012 with further interest @18% per annum till realization. However, as the respondent failed to clear the entire outstanding dues, petitioner issued notice dated 05.05.2012 to both respondents under clause 4.1 of the Telecommunications (Broadcasting & Cable Services) Interconnection (Third Amendment) Regulations, 2006. After some exchange of correspondence between petitioner and respondent No.2 and examination of statement of accounts provided by respondent No.2 to the petitioner, the outstanding amount as per the petitioner, was Rs.4,43,21,568/- on 17.8.2012, which is inclusive of interest. Petitioner on 07.7.2012 and 10.7.2012 published public notices in the newspapers under clause 4.3 of the regulations. Subsequently, respondent made a part payment of Rs.79,30,619/- but as the entire amount of outstanding was not cleared, petitioner filed the present petition on 10.9.2012.

5. During the pendency of the petition, some negotiations were going on between the parties. As per subsequent affidavit filed by the petitioner on 29.7.2013, respondent had made some payment on account to the

petitioner. However, even after adjusting the said payment made by the respondent, it was mentioned that as per the accounts of the petitioner there is an outstanding of Rs.98,31,090/- payable on 19.8.2012 which is inclusive of interest upto 10.7.2013. A copy of statement of accounts was annexed with the affidavit as Exb. 1.

6. Petitioner submitted affidavit by way of evidence of Mr. Umakant S. Dalvi its Vice President (Network Development). Witness identified the agreement dated 25.8.2012 and the addendum dated 08.11.2011 which were marked as exh. PW-2 and exh. PW-3. Witness also identified the invoices issued to respondent no.1 marked as Exb. PW-4 to Exb. PW-23. Witness also identified letter dated 23.01.2013 from the respondent No.2 as Exb. PW-34. As per this letter an amount of Rs.33,48,494/- was admitted as outstanding. As per the witness, the respondent has paid some amount but has not cleared the entire dues of the petitioner and the outstanding, inclusive of interest, payable by respondent No.1 is Rs.99,09,855/- as on 25.9.2013.

7. Respondent did not file any reply in the matter. Mr. Arjun Natarajan, learned counsel appearing for the respondent, stated that as per an understanding reached between the parties, no interest was payable to the petitioner. This was, however, denied by Ms. Vandana Jaisingh, learned counsel appearing for the petitioner. Mr. Natarajan referred to cross-examination of the petitioner's witness, in which he

suggested that the witness was not aware about the waiver of the claim for interest which was agreed by the witness. The question and answer in this regard is as follows :-

*”Q. I suggest that you are not aware about the talks between the parties as to waiver of the claim for interest.*

*A. I am not aware.”*

Mr. Natarajan could not produce any convincing evidence in support of his contention that the petitioner had agreed to waive off interest on delayed payments.

Mr. Natarajan further referred to the order of the Tribunal dated 02.8.2013 and argued that the only dispute remaining between the parties was with regard to the amount of service tax payable and the issuance of TDS certificate by the respondents to the petitioner. The relevant para of the order is as under :-

*“Counsel for both the sides state that the parties are trying to settle their disputes through reconciliation of their respective accounts. However, as audits are going on in both the entities, the process of reconciliation is somewhat delayed. Now the parties are trying to do the reconciliation of accounts by exchange through emails and according to the counsel for the petitioner, the dispute mostly relates to the amount payable as*

*Service Tax and the issuance of TDS certificate by the respondent to the petitioner.”*

8. As seen from above, the parties were still trying to reconcile their accounts and the order mainly recorded that the dispute mostly relates to the amount of service tax and issuance of TDS certificate. We are unable to agree with Mr. Natarajan that the petitioner had agreed that no other amount was payable. During the course of hearing, Ms. Vandana Jaisingh, learned counsel appearing for the petitioner was asked to explain the calculation of interest. Ms. Jaisingh accordingly filed statement of account with calculation of interest and a copy of the same was given to Mr. Natarajan. The Tribunal vide its order dated 14.3.2014 directed that the authorized representative of the respondent should visit the petitioner's office on 20.3.2014 for reconciliation of accounts in light of the statement of accounts submitted by Ms. Jaisingh before the Tribunal on that date. As per this statement of account, the amount due to the petitioner is as given below:

Principal amount outstanding as on 3.3.2014	Rs.20,47,650/-
Interest payable upto 17.8.2012 @ 18%	Rs.48,99,604/-
Interest from 18.8.2012 to 10.9.2012 @18% (date of filing the petition being 10.9.2012)	Rs. 4,86,024/-
Interest @ 9% from 11.9.2012 till 3.3.2014 (during pendency of the petition )	Rs.13,18,567/-
Total	<b>Rs.87,51,845/-</b>

9. In view of the foregoing, the petition is decreed for an amount of Rs.87,51,845/- due as on 3.3.2014 along with further interest @ 9% per annum till the payment of the said amount.

Parties shall bear their own costs.

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**(AftabAlam)**  
**Chairperson**

.....  
**(Kuldip Singh)**  
**Member**

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