

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

Dated 10th October, 2014

Petition No. 209 (C) of 2013

Honey Sky VisionPetitioner
Versus	
Media Worldwide Pvt. Ltd.Respondent

BEFORE:

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

For Petitioner : Mr. Tejveer Singh Bhatia, Advocate

For Respondent : None

ORDER

This is a petition for recovery of Rs.11,92,351.00 as dues of placement fee.

The petitioner, Honey Sky Vision, is a multi-system operator and a distributor of various pay and free-to-air channels of different broadcasters. The respondent is a broadcaster of a channel under the name and style of Music India.

The respondent did not appear despite service of repeated notices and hence, the petition was proceeded *ex parte*.

According to the petitioner, it entered into a channel placement agreement with the respondent for carrying the Music India channel of the respondent on its network at the frequency/band as agreed between the parties. Under the agreement, the respondent was liable to pay the placement fee of Rs.11,25,000.00 for the entire

period of the agreement. The petitioner carried the respondent's channel on its network, at the stipulated frequency/band, but the respondent defaulted in payment of the placement fees. As a result the dues, along with interest, accumulated to the sum of Rs.11,92,351.00 as on the date of the filing of the petition.

Copies of the placement agreement, statement of account, the chart showing the dues and the email sent by the petitioner to the respondent demanding payment of its dues are enclosed with the petition. It is alleged that despite repeated requests, the respondent did not pay the lawful dues and the respondent was, therefore, constrained to file this petition before the Tribunal.

In support of its case, the petitioner has examined its sole proprietor, Vikram Prakash, as its witness. However, before adverting to the witness's deposition, it is needed to take a look at the placement agreement which is the sheet anchor of the petitioner's case. The agreement is made on a printed format of the respondent, M/s Media Worldwide Pvt. Ltd. but it has some curious features in that some of the spaces in the format are left blank. The first omission is in respect of the date on which the agreement was executed. The format begins with the clause regarding the date of entering the agreement and it is in the following form:

“This Agreement is made and entered on _____2012 BY AND BETWEEN

MEDIA WORLDWIDE PRIVATE LIMITED, a company duly incorporated and registered under the provisions of the Companies Act, 1956 and having its registered office at C-15, Dalia Industrial Estate, Opp. YRF Studios, Link Road, Andheri (W), Mumbai 400053, India (hereinafter referred to as “MWPL”, which

expression shall unless it be repugnant to the context or meaning thereof be deemed to mean and include its successors in interest and permitted assigns) of the **ONE PART**

AND

_____ Company/firm incorporated under the laws of India, having its registered office at _____ hereinafter referred to as “**MSO**”, which expression shall unless it be repugnant to the context or meaning thereof be deemed to mean and include its successors in interest and permitted assigns) of the **OTHER PART.**”

The space for the date is left blank. Further, the space for the name of the second party (in this case the petitioner, M/s Honey Sky Vision) is left blank.

However, clause 2 relating to the Term is filled up and it shows that the agreement was for a total period of 12 months with effect from 01.04.2012 to 31.30.2013.

Once again, in clause 3 relating to distribution, the space with regard to the exact placement of the channel is left blank. In clause 5 relating to channel placement charges, the amount of Rs.11,25,000.00 is clearly filled up as the amount payable for the entire period of the agreement. The agreement is signed on all pages by the proprietor of the petitioner which, on comparison with the signatures on the affidavit and verification to this petition, appears to be identical. On the last page, the agreement is also signed by one, Mahesh Pawar, authorized signatory for and on behalf of Media Worldwide Pvt. Ltd.

The agreement has indeed certain lacunae as indicated but to our mind those are not of a nature as to prove fatal to the petitioner’s claim.

Mr. Vikram Prakash, the proprietor of the petitioner in his deposition stated as under:

“4. It is stated that the respondent had approached the petitioner for placement of its TV channel i.e Music India at the desired frequency/band and for that purpose a channel placement agreement was entered between the parties. A copy of the agreement (hereinafter referred to as channel placement agreement) is exhibited here and marked as **EXHIBIT PW-1/1**(Page no. 8-12 of paper book). The said channel placement agreement was for a total period of Twelve (12) months i.e starting from 01.04.2012 and ending 31.03.2013. The total consideration of the said channel placement agreement was Rs. 11,25,000/- plus service tax payable as per the terms arrived between the parties.

5. I state that the petitioner had complied with all its obligations under the channel placement agreement and had carried/placed the channel of the respondent at the desired frequency/band to the complete satisfaction of the respondent company, whose representatives/officials had regularly visited the networks/units of the petitioner in various areas of Delhi. The petitioner had also raised/provided monthly invoices for channel placement of its channels, which were duly received by officials / representatives of the respondent without any objection whatsoever.

6. Its is stated that even prior to the present agreement the petitioner and the respondent had a channel placement agreement under which the respondent is liable to make payment of Rs. 4,54,988/- for placement fee up to 31.03.2012. Copy of the ledger Account mailed to the petitioner by the respondent is exhibited here and marked as EXHIBIT PW-1/2 (page no. 13 of Paper Book). It is stated that thereafter, the respondent is liable to pay placement fee for its channel from 01.04.2012 to 31.10.2012 in terms of the agreement executed between the parties. A chart claiming the outstanding amount of Rs.7,37,363/- for the period 01.04.2012 to 31.10.2012 is exhibited here and marked as EXHIBITED PW-1/3 (page no. 14 of paper book). Thus, the total amount due and payable by the respondent to the petitioner is Rs. 11,92,351/-.”

The claim of the petitioner is fully supported by the placement agreement which is shown to have been duly executed by both sides. The claim of the petitioner

is further supported by the deposition of its witness which remains unrebutted and we see no reason not to accept his statement made in the deposition.

In light of discussions made above, we accept the petitioner's claims and allow the petition *ex parte*. The office is directed to draw up a decree against the respondent for the sum Rs.11,92,351.00. The decretal amount will also carry interest @ 10% per annum from the date of filing of the petition till the date of payment.

Since the case has proceeded *ex parte*, there will be no order as to costs.

.....
(Aftab Alam)
Chairperson

.....
(Kuldip Singh)
Member