

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

Dated 24th April, 2015

Petition No. 132 (C) of 2014

M/s Ortel Communications Ltd., New Delhi	... Petitioner
Versus	
Aryan Infratech Pvt. Ltd., Bhubaneswar	...Respondent

BEFORE:

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

For Petitioners	:	Mr.Devender Thakur, Advocate
For Respondent	:	None

ORDER

Kuldip Singh

This is a petition for recovery of Rs. 9,92,700/- as outstanding dues of carriage fees payable by the respondent to the petitioner.

The petitioner - M/s Ortel Communications Ltd. is a Multi System Operator (MSO) in terms of the interconnect regulations. It is in the business of distribution of TV signals directly to the subscribers.

The respondent is a company incorporated under the provisions of the Companies Act, 1956, having its registered office at House No. N2/57, IRC Village, Nayapalli, Bhubaneswar-751015, Distt.-Khurda,

Odisha. The Respondent is engaged in the business of broadcasting television signals and owns a channel "A2Z NEWS".

The respondent did not appear despite service of notice and hence, the petition proceeded *ex-parte*.

According to the petitioner, it entered into a Carriage and Placement Agreement dated 02-02-2011 for the placement and distribution of A2Z News Channel of the Respondent on the network of the Petitioner effective from 01-01-2011 for a period of one year. For this, an yearly payment of Rs. 36,00,000/- was to be made by the respondent to the petitioner in terms of the agreement.

The Petitioner carried the channel A2Z News on its network at the specified frequency to the satisfaction of the Respondent. As per the petitioner, no complaint of any nature pertaining to the carriage and placement of the channel was made by the Respondent at any point of time. Though as per the petitioner, it raised invoices on the Respondent from time to time, the respondent failed to make regular payments to the Petitioner, which resulted in building up of this outstanding dues of Rs. 9,92,700/- as on 30.04.2012.

Due to the default of the Respondent in clearing its outstanding dues, the Petitioner was constrained to remove the channel A2Z News from its network and stopped the placement and carriage of the same on its network w.e.f. 31st October, 2011.

Further, it is the case of the petitioner that the respondent again approached it to carry and distribute its channel from its head-end at Odisha. It assured the Petitioner that the pending dues would be cleared. Accordingly, the parties again entered into Carriage and Placement Agreement on 15-04-2012 for a period of one year and for a yearly payment of Rs. 36,50,000/-.

As per the petitioner, the Respondent issued five Post-dated cheques (PDCs) amounting to Rs. 58,011,40/- which included the previous outstanding for Odisha and Raipur Location and the advance payments for the monthly carriage fee. Further, when the petitioner presented the first two cheques namely cheque no. 365158 dated 16-04-2012 and cheque no. 365156 dated 30-04-2012 with its banker, the same were returned dishonoured for reason "Funds Insufficient". Consequently, the Petitioner filed Criminal Complaints under section 138 of the Negotiable Instrument Act, 1881 being CC No. 1752/2012 and 1925/2012 in the court of Ld. SDJM Bhubaneswar.

Photocopies of the 2 placement agreements, statement of accounts, copies of the various invoices and Criminal Complaints have been annexed with the petition.

In support of its case, the petitioner has examined Mr. Sudipta Pradhan, who is working as executive in the Petitioner company as its witness. The witness identified the photocopies of the carriage and placement agreement dated 2.2.2011 as Exhibit PW-1/1, photocopies of various invoices raised by the Petitioner upon the Respondent as Exhibit PW-1/2 (Colly), the Statement of Account for the period 01-04-2011 to 30-04-2012 as Exhibit PW-1/3, copy of the Carriage and Placement Agreement dated 15.4.2012 as Exhibit PW-1/4, photocopies of the five Post-dated cheques issued by the Respondent to the Petitioner as Exhibit PW-1/5 (Colly), photocopies of the Criminal Complaints filed by the Petitioner against the Respondent before the Ld. SDJM, District Courts, Bhubaneswar as Exhibit PW-1/6 and Exhibit PW-1/7 and copy of the Statement of Accounts showing the outstanding of the Respondent for Odisha as Exhibit PW-1/8.

The witness in its deposition has stated has under :

"4. I say that the Petitioner and the Respondent entered into Carriage and Placement Agreement dated 02-02-2011 for the placement and distribution of A2Z News Channel of the

Respondent on the network of the Petitioner effective from 01-01-2011 for a period of one year at the yearly payment of Rs. 36,00,000/- only (Rupees Thirty Six Lakhs Only). Photocopy of the Carriage and Placement Agreement is exhibited hereto as Exhibit PW-1/1.

5. I say that the Petitioner placed the channel A2Z News on its network at the specified frequency and carried the same on its network to the satisfaction of the Respondent. I further say that no complaint of any nature pertaining to the carriage and placement of the channel was made by the Respondent at any point of time. I say that for the placement and carriage of the Respondent's channel A2Z News in its network, the Petitioner raised invoices on the Respondent from time to time. Photocopy of the various invoices raised by the Petitioner upon the Respondent is exhibited hereto as Exhibit PW-1/2 (Colly).

6. I say that the Respondent failed to make regular payments to the Petitioner under the terms of agreement. The details of the part payments made by the Respondent towards its liability under the agreement are as follows:

<i>Date</i>	<i>Amount received</i>	<i>Cheque No.</i>
<i>04-01-2011</i>	<i>Rs. 100,000/-</i>	<i>By Cash</i>
<i>08-01-2011</i>	<i>Rs. 500,000/-</i>	<i>By Cash</i>
<i>14-01-2011</i>	<i>Rs. 400,000/-</i>	<i>By Cash</i>
<i>10-03-2011</i>	<i>Rs. 33,333/-</i>	<i>609060</i>
<i>10-03-2011</i>	<i>Rs. 328,467/-</i>	<i>By Cash</i>
<i>25-05-2011</i>	<i>Rs. 292,700/-</i>	<i>661283</i>
<i>12-03-2012</i>	<i>Rs. 661,800/-</i>	<i>By Cash</i>

7. I say that due to the default of the Respondent in clearing its outstanding under the agreement the Petitioner was constrained to remove the channel A2Z News from its network and stopped the placement and carriage of the same on its

network w.e.f. 31st October, 2011. I say that a sum of Rs. 9,92,700/- (Rupees Nine Lakhs Ninety Two Thousand Seven Hundred Only) remained as outstanding and payable by the Respondent to the Petitioner as on 30-04-2012. The Account Statement for the period 01-04-2011 to 30-04-2012 is annexed Exhibited as Exh. PW-1/3."

Nobody appeared on behalf of the respondent to controvert the averments made by the petitioner and the deposition of the witness remained un-rebutted.

In view of the discussion above, we accept the petitioner's claim and allow the petition *ex-parte*. The Registry is directed to draw a decree against the respondent for a sum of Rs. 9,92,700/-. The decretal amount will also carry an 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.

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(Aftab Alam)
Chairperson

.....
(Kuldip Singh)
Member

/NC/