

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

**Dated 19<sup>th</sup> January, 2015**

**Petition No.314 (C) of 2013**

M/s. Srishti Ventures

...Petitioner

Vs.

M/s. INX News Pvt. Ltd.

...Respondent

**BEFORE:**

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

For Petitioner : Mr. Jayant K. Mehta, Advocate  
Mr. Surendra Kumar, Advocate

For Respondent : Mr. Karthik K.R., Advocate

**ORDER**

**By Aftab Alam, Chairperson** – The petitioner is a multi-system operator and the respondent is the broadcaster of a TV channel.

This petition is filed seeking recovery of Rs.11,37,315/- (along with interest) from the respondent as dues of carriage/placement charges. According to the petitioner, on 1 July 2011, the respondent entered into a placement agreement with the petitioner for carrying its channel "9X News" on the petitioner's network. The agreement was for the period 1 July 2011 to 30 June 2012 and under its terms, the petitioner was to carry the respondent's channel on S-band on its net-work for the total consideration of Rs.16 lakhs (exclusive of service tax and education cess) payable on quarterly basis. It is the case of the petitioner that as provided in the agreement, it duly carried the respondent's channel on its network on the stipulated band from 1 July 2011 to 22 February 2012 and after that date it put the channel on ordinary band, after giving one month's advance intimation to the respondent. It is the grievance of the petitioner that in violation of the agreement, the respondent did not make any payment towards the placement charges and after making some futile demands (including a legal notice), the petitioner was compelled to come to the Tribunal in this petition.

The respondent completely denied all allegations made by the petitioner and disowned the liability to make any payment whatsoever to the petitioner. In the reply filed by the respondent, it is categorically and repeatedly denied that there was any agreement between the two sides for carrying the respondent's channel on the petitioner's network. It is denied that any placement agreement with the petitioner

was executed on behalf of the respondent on 1 July 2011 or on any other date. The denial of the respondent is quite long winded but suffices here to reproduce a part of paragraph 5 from the reply:

“The contents of paragraph no.5 are incorrect and hence denied. It is incorrect to state that the Respondent had approached for placement of its TV Channel, i.e. 9X News at the desired frequency/band. It is denied that any placement agreement was entered into between the petitioner and respondent on 01.07.2011. The contents of the annexure, being Annexure P-2, are vehemently denied. It is denied that the said channel placement agreement was for a total period of Twelve (12) months. It is denied that the said placement agreement was starting from 01.07.2011 and ending on 30.06.2012. It is denied that the total consideration of the said Channel Placement Agreement was Rs.16,00,0000/- plus service tax and education cess. It is denied that the disputed consideration was payable in four equal installments. It is denied that there were any terms arrived at between the parties.”

Keeping in view the respective cases of the parties, we now proceed to examine the placement agreement, forming the basis of the petitioner’s claim, and the evidences adduced by parties in support or in denial of its legitimacy.

The petitioner has produced the placement agreement. It bears the signature of the petitioner’s representative along with the petitioner’s seal on every page of the agreement. At the place for the signature on behalf of the respondent, however, there is a scribbled signature but it is not legible and it is not possible from it to discern the name of the executant. The seal of the respondent (which is a company, incorporated under the Companies Act) is at no place in the agreement. On the last page the agreement is witnessed by someone called Anuj.

In the petition filed by the petitioner, there is no mention of the name of the person who executed the agreement on behalf of the respondent and in regard to the agreement, all that is said in paragraph 5 is as under:

“It is respectfully submitted that the respondent had approached the petitioner for placement of its TV Channel i.e. 9X News at the desired frequency/band and for that purpose a channel placement agreement was entered between the parties on 01.07.2011, a copy of the Agreement (hereinafter referred to as channel placement agreement) is annexed herewith and marked as ANNEXURE P-2. The said channel placement agreement was for a total period of Twelve(12) months i.e. starting from 01.07.2011 and ending on 30.06.2012. The total consideration fo the said Channel Placement Agreement was Rs.16,00,000/- plus service tax and education cess (Sixteen lacs plus service tax and education cess) payable in four equal installments as per the terms arrived between the parties.”

It needs to be noted here that even in view of denial of the agreement in such absolute terms in the respondent's reply, no rejoinder was filed by the petitioner giving the relevant details concerning the agreement such as the name of the executants for the respondent, his position in the respondent company etc.

After the reply was filed by the respondent, the matter proceeded for evidence.

In the affidavit filed by the petitioner (as substitute of the examination in-chief of it witness) once again there is no mention of the name of the executant on behalf of the respondent and paragraph 3 of the affidavit is a mere reproduction of paragraph 5 of the petition, as quoted above. It is only on the basis of a statement made by the respondent's witness in his cross-examination that the petitioner seems to speculate that the executant of the agreement on behalf of the respondent company was one Mr.Rakesh Gupta. The signatures on the agreement, purportedly on behalf

of the respondent, were shown to the respondent's witness but he said that he was unable to identify the signatures. The relevant extract from the cross-examination of the respondent's witness is as under:

“Q.10: Who was authorized to sign and execute the agreements on behalf of the respondent company during 2011-2012?

A: It depends on the network with whom the respondent company is executing the agreement.

Vol.: The person who signs the agreement on behalf of the respondent company must be duly authorized by the Board or the competent authority authorized by the Board.

(Attention of the witness is drawn to Circle in Red and marked A at page No.12 of the Paper Book.)

Q.11: Do you identify the signatures mentioned in the circle?

A: No.

Q.12: Who was handling distribution of channels of the respondent company during or before the period 1.7.2011 to 30.6.2012?

A: During the same period as mentioned above, Mr. Rakesh Gupta, the earlier CFO may be handling the distribution of channels.

(Attention of the witness is drawn to Circle in Red and marked B at page No.20 of the Paper Book)

Q.13 Do you identify the signatures mentioned in the circle?

A: No.”

The respondent's witness was also asked as to who is Anuj (who purportedly signed as the witness to the agreement). The witness answered that he was from the distribution team earlier.

In the form in which the agreement is produced before us and having regard to the evidence adduced by the petitioner in its support we find it extremely difficult

to accept it as a legitimate and validly executed agreement on behalf of the respondent. We hold and find that the alleged agreement was not executed by or on behalf of the respondent.

Mr.Mehta, learned counsel appearing on behalf of the petitioner invited our attention to some emails that were sent by the petitioner to one Gaurav Kohli, with copies to one Parveer Gaur. The first email is dated 7 January 2012 in which a demand is made for payment of the placement fees. In response there is a mail by Gaurav Kohli with copies to Parveer Gaur dated 9 January 2012 in which some assurances are given of clearing the dues. The third mail dated 16 January 2012 is once again from the petitioner to Gaurav Kohli in which he is requested to mail the countersigned agreement at the earliest.

In our considered view, once the agreement fails to get our acceptance the emails can hardly advance the case of the petitioner. Moreover, the emails themselves raise a number of questions. There is nothing on record to show that Gaurav Kohli was an employee of the respondent and he was authorized to give any assurance on its behalf. In the cross-examination of the respondent's witness he was asked as to who was Gaurav Kohli and he said that he (Gaurav Kohli) was from Company Fifth Avenue Media. It thus appears that Gaurav Kohli is not accepted by the witness as an employee of the respondent company. Moreover, as pointed out by the counsel for the respondent there is nothing to indicate that any demand for

payment of the alleged dues of placement fee was made prior to January 2012 even though the agreement is dated 1 July 2011 and the placement charges were payable on a quarterly basis. Further, the request for the countersigned agreement is equally strange and inexplicable.

For the aforesaid reasons, we are satisfied that the emails relied upon by the petitioner does not in any way advances its case.

At this stage it may be noted that this case was earlier taken up for hearing on 10 December 2014 when it was heard substantially. On that date, however, the hearing could not be concluded and it was next taken up for hearing only on 14 January 2015. In the meanwhile, on 15 December 2014, the petitioner filed an application under Order XI rule 14 of the Code of Civil Procedure. In this application, a prayer is made for a direction to the respondent to produce the following documents:

- “(i) Documents that have been signed and executed by Mr. Rakesh Gupta and Anuj, both employees of the Respondent;
- (ii) The Placement/Carriage Agreements entered into by the Respondent with the MSOs during the financial years 2010-2011, 2011-2012 and 2012-2013; and
- (iii) The audited annual accounts including balance-sheets of the Respondent for the financial years 2010-2011, 2011-2012 and 2012-2013.”

We see no justification to entertain this petition when the case is in the last stages of hearing. Moreover, as regards the “documents that have been signed and

executed by Mr.Rakesh Gupta and Anuj”, there is no averment by the petitioner anywhere, either in its petition or the evidence lad by it that the executant and the witness to the alleged placement agreement were Mr.Rakesh Gupta and Anuj. There would be, therefore, no justification for asking the respondent to randomly produce the documents signed by them. The demand for the documents at serial nos.2 and 3 clearly amounts to a roving and fishing inquiry. We, thus, find no merit in the application filed under Order XI rule 14 and it is rejected.

For the reasons discussed above, we find no merit in the main petition. It is accordingly dismissed.

No costs.

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**(Aftab Alam)**  
**Chairperson**

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