

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

Dated 29th April, 2016

Broadcasting Petition No.210 of 2013

Honey Sky Vision, Rohini, Delhi

...Petitioner

Vs.

INX News Pvt. Ltd., Noida

...Respondent

BEFORE:

HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON

HON'BLE MR. BIPIN BIHARI SRIVASTAVA, MEMBER

For Petitioner : Mr. Surendra Kumar, Advocate

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

ORDER

The petitioner M/s. Honey Sky Vision, a proprietorship firm, is a Multi System Operator (MSO); and is in the business of retransmitting signals of various Pay TV and FTA channels of various broadcasters to cable operators. The respondent, INX News Pvt. Ltd. is a broadcaster interalia having its channel – News X.

This petition has been filed for issuance of order/decreed in favour of the petitioner and against the respondent for an amount of Rs. 23,59,560/-, the outstanding amount due against the respondent, in lieu of placement of channel of the respondent on petitioner's network. Additionally an order awarding interest at the rate of 18% in favour of the petitioner on the afore-stated amount has also been beseeched.

The case of the petitioner is that the respondent had entered into an agreement with the petitioner for placement of its channel, News X on the petitioner's network. The agreement was for the period 28.9.2011 to 27.9.2012; and for a consideration of Rs. 21

Lakhs per annum plus service tax as payable. The consideration money, according to the petitioner, was payable in four equal installments as per terms arrived at between the parties. The petitioner has stated that in pursuance of the agreement it complied with all its obligations; carried/placed the channel of the respondent at desired frequency/band to the complete satisfaction of the respondent, whose representatives/officials have regularly visited the networks/units of the petitioner in various areas of Delhi.

The petitioner also claims to have raised/provided monthly invoices to the respondent for placement of its channel and that they were duly received by the respondent's representatives without any objection whatsoever.

The grievance of the petitioner is that, despite fulfillment of all obligations on its part under the agreement; the respondent did not make any payment towards the placement charges. Rather, inspite of various reminders, duly responded by the representatives/officials of the respondent stating interalia that payment towards placement, if any, will be made good, the respondent did not make any payment whatsoever. Accordingly, the petitioner was compelled to come to the Tribunal in this petition.

The respondent completely denied all allegations made by the petitioner including execution of any placement agreement between the parties for the period 28.9.2011 to 27.9.2012. In the reply filed by the respondent it has been categorically stated that there was no agreement between the two sides for carrying the respondent's channel on the petitioner's network. The denial of the respondent, in the under mentioned paragraph from the reply, is abundantly clear:-

"The contents of paragraph no. 5 are incorrect and hence denied. It is denied that any placement agreement was entered into between the parties for the period 28.9.2011 – 27.09.2012. The contents of

the annexure, being Annexure P-1, are vehemently denied. It is denied that 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 28.09.2011 and ending on 27.09.2012. It is denied that the total consideration of the said Channel Placement Agreement was Rs. 21,00,000/- plus service tax. 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. It is most respectfully submitted that there was no channel placement agreement whatsoever between the petitioner and the Respondent. The Respondent keeps a record of all the agreements entered into. However, without prejudice to the Respondent, the Respondent emphatically and categorically states that there was no signed agreement between the petitioner and the Respondent as such an agreement is not present in the Respondent's records, and such an agreement is not present with the Petitioner as well."

In view of the respective cases of the petitioner and the respondent, it is pertinent to examine the impugned placement agreement, the basis of the petitioner's claim; and the evidences adduced by the parties in support or in denial of legitimacy thereof.

The petitioner has annexed a placement agreement (Annexure P-1) with the petition; which bears the signature of a person purportedly on behalf of the petitioner.

However, the placement agreement doesn't bear any signature on behalf of the respondent; nor any date apropos execution of the agreement and area of distribution of channel finds place in the agreement. In the petition, filed by the petitioner as well, there is no mention about the name of the executant on behalf of the respondent or the date on which the agreement was executed. The petitioner in his rejoinder has reiterated its stand that "both the parties duly executed a placement agreement for the period of 12 months starting from 28.9.2011 and ending on 29.9.2012".

The petitioner also claims to have raised/provided monthly invoices for channel placement for the channel of the respondent. However, no copy of any invoice

raised/provided has been annexed or produced in this regard. The respondent too denies this fact and states that the petitioner had never raised/provided monthly or any invoices for channel placement of its channel.

The petitioner has annexed a chart showing the outstanding payable by the respondent to the petitioner (Annexure – P2); a document which is unsigned. The respondent questions the evidentiary value of this document and has termed it as “a mere print out”. The petitioner states about various reminders to the respondent and its acknowledgement by latter; and has annexed in support of this statement an email dated 21.2.2012 from one Parveer Gaur, (Annexure – P3); a fact denied by the respondent to the effect that any such reminder was responded by the representatives/officials of the respondent. The petitioner has also annexed a document (Annexure-P4 with its rejoinder; and has named it “channel mapping”.

After filing reply and rejoinder by the respondent and the petitioner respectively the matter proceeded for evidence. In the affidavit filed by the petitioner, one Vikram Prakash, the sole proprietor of the petitioner firm, a channel placement agreement has been exhibited and marked as PW1/1 – (Page No. 8-17 of the paper book).

The affidavit by the witness petitioner also mentions about an email dated 22.2.2012 wherein one Jaspreet Khurana communicated about enclosing copy of agreement for News X (Exhibit PW1/2) and the scanned copy of the agreement attached with the email has been exhibited and marked as PW1/3.

A perusal of Exhibit PW 1/3 reveals that once again there is no signature of any person as executant on behalf of the respondent. The witness petitioner Vikram Prakash, during his cross- examination on 26.8.2014 identified his signature on the PW1/1 and besides identifying his signature admits that it does not bear signature of any authorized

signatory of the respondent nor any date of execution. Curiously, it has been termed as a "sample copy of the agreement".

As per relevant extracts from his cross examination on 24th December, 2014, the position clarified by witness petitioner is as follows: -

"(Attention of the witness is drawn to Pages 8 to 16 of the Evidence Folder.)

All these pages bear my signatures.

This alleged agreement was signed by me in my office.

(Attention of the witness is drawn to Annexure P-1 at page 8 of the Petition).

In the agreement at page 8 of my evidence (Ex. PW-1/3), I had filled up the blanks and sent it to the respondent.

Again said, I had only signed the agreement and the blanks written in hand were not filled by me.

Vol.: The blanks were filled by Mr. Parveer Gaur, who was working in INX at that time.

The blanks in Ex.PW1/3 were not filled in my presence.

The copy of the agreement annexed as Annexure P-1 with the petition is blank. However, the agreement exhibited as Ex.PW-1/3 was later found by me after checking my records and therefore filed along with my affidavit.

It is correct that none of these agreements were ever signed on behalf of the respondent.

Vol.: This agreement was sent by the respondent to the petitioner as a confirmation of the agreement"

Respondent's witness was also asked about Ms. Jaspreet Khurana being an employee of the respondent company and the period she worked. The respondent's witness stated as hereunder: -

"Q14. Sine when was Ms. Jaspreet Khurana an employee of Respondent Company and till when?

Ans. I am not aware when Ms. Jaspreet Khurana joined the Respondent Company. She was an employee till July-August, 2015 approximately"

In view of facts emerging on the basis of pleadings, documents and evidences adduced, it is extremely difficult to accept the agreement, in the form it has been produced before us, as a legitimate and validly executed agreement between the petitioner and the

respondent. Rather we hold and find that there was no agreement between the petitioner and the respondent.

It is also a fact that the petitioner has failed to provide any copy of any invoice presented to the respondent. In addition, the chart placed at Annexure P2 as a breakup of amount allegedly due from the respondent, is also an unsigned one. A plain reading of this chart simply suggests that these are channel placement charges for News X channel for various periods. However, it does not convey that this is an amount due and if at all from the respondent. The cross examination of the petitioner in this regard as extracted are reproduced as follows: -

“There are no invoices on record with regard to the placement fee under the alleged agreement, raised by the petitioner on the respondent.

Vol.: The invoices have been sent to the respondent in advance after receiving the agreement Ex. PW-1/3 from the respondent.

There are no demand letters on the record raised by the petitioner on the respondent for payment of placement fee.

(Attention of the witness is drawn to Annexure P-2 at page 18 of the petition)

I do not remember as to who is the author of the said document.

In fact, the annexure P-2 is sans any mention about facts e.g. invoice number, PAN of the petitioner company, service tax registration number etc. to lend legitimacy to the document.

As regards various correspondences through emails regarding the issue of outstanding payments as well as communication regarding enclosure of copy of agreement for News X (Annexure P3 and Exhibit PW1/2 respectively), these are too cryptic and fail to clearly spell out as to what is being referred in these communications. The channel mapping document is also unsigned and fails to convey details about the issuing authority; leave aside the mandate, if any, to such an authority to issue a certificate in this regard.

In our considered view, since the agreement itself fails to get our acceptance and absence of invoices and proper statement of account, there is no justification for entertaining this petition. Accordingly, we find no merit in the petition and it is accordingly dismissed.

No costs.

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(Aftab Alam)
Chairperson

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(B.B. Srivastava)
Member

/NS/