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

Dated 10 March, 2016

**Broadcasting Petition No. 304 of 2014**

SCOD 18 Networking Pvt. Ltd. Mumbai ... Petitioner  
Vs.  
Pearls Broadcasting Corporation Ltd.,  
New Delhi ... Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON  
HON'BLE DR. KULDIP SINGH, MEMBER  
HON'BLE MR. BIPIN BIHARI SRIVASTAVA, MEMBER**

For Petitioner : Mr. Sharath Sampath, Advocate  
Mr. Manikya Khanna, Advocate  
For (Media Pro) : Mr. Azmat H. Ammanullah, Advocate

**ORDER**

**By Aftab Alam, Chairperson** – The petitioner is a Multi System Operator (MSO) engaged in the distribution of TV signals of different broadcasters. It has filed this petition against the respondent, Pearls Broadcasting Corporation Ltd. which is a broadcaster for recovery of Rs.31,27,353/- as dues of channel placement charges for carrying the respondent's TV channel, namely, P7 News on its digital cable TV network. The aforesaid amount is claimed along with interest at the rate of 24% per annum *pendent lite* and till the payment of the dues.

The claim of the petitioner is based on a Channel Placement Agreement dated 23 March 2015. The agreement was for the period of one year from 1 April 2013 to 31 March 2014. In the agreement, after the usual clauses, it was stipulated in clause 3, under the marginal heading "Placement of Channel", as under:

"3.1 In consideration of the Channel, paying the consideration under Clause 4, the Distributor hereby undertakes to position the said Channel for the head-end distribution area in accordance with the terms of this agreement. The Distributor undertakes that the Channel will be always placed in News and Current Affairs Genre only.

3.2 The Distributor shall position the said Channel on Digital Mode, in accordance with the terms of this agreement.

3.10 The Distributor shall use its best efforts to maintain the quality of signal transmission, as received from satellite, for the Service. The Distributor further agrees and undertakes that it shall cause continuous distribution of the Service to all its Subscribers during its telecast without blacking it out or interfering with it in any manner whatsoever except in the circumstances beyond its control. In case of discontinuance of service by the Distributor due to delay or non-payment of placement fee, quarterly in advance, by the Channel, the Distributor shall not be held responsible.

In clause 4 of the agreement the consideration for carrying the respondent's channel in the petitioner's network was agreed to be as under:

4. **CONSIDERATION:**

The Channel shall pay to the Distributor a sum mentioned hereunder in the table plus tax and other levies as may be imposed from time to time, towards placement fee for placement of its channel for a period of One year with effect from 01.04.2013 to 31.03.2014, as per table below:

Name of the Channel	Frequency	Total Deal Amount (Rs.)	Payment Terms
P7 News	Digital	Rs.60,00,000/-	Quarterly

The Channel shall make the payment of placement fee on Quarterly basis, in advance, within seven days of start of the quarter and any default in making payment or delay shall give the Distributor a right to discontinue the service for the period of delay."

It is the case of the petitioner that it carried the respondent's channel on its digital cable TV network following all the terms and conditions stated in the agreement. It also raised invoices in terms of the agreement from time to time which were duly received by the respondent. The respondent, however, always made short payments against the invoices. Nevertheless, the petitioner continued to carry the respondent's channel on its network on the assurance that the payments would be made shortly. However, as no payments were made despite the assurances, the petitioner issued demand notices on 19 December 2013 and 3 February 2014 and when no payment was received in spite of the reminders through emails and the demand notices, the petitioner finally stopped transmission of the respondent's channel on its network from 10 March 2014. According to the petitioner, its dues against the respondent till the time of filing of this petition amounted to Rs.3,27,353/-. The petitioner also filed a Statement of Account in support of its claim.

The respondent in its Reply did not dispute the execution of the Channel Placement Agreement (paragraphs 3 & 4 of the Reply). It is, however, stated on its behalf that at the time of execution of the agreement, the petitioner had agreed to carry the respondent's channel within the top 7 in the news genre, to make the respondent's channel available in all its packages and to make it available on its entire network. According to the respondent, the petitioner did not carry the respondent's channel as per the agreement between the parties.

It is further stated that the respondent made full payment to the petitioner *for carrying its channel till 22 September 2013* but after having made payment for the second quarter, it came to know that the petitioner had violated the terms of the agreement and was not placing its channel, as agreed and in the manner specified, on all its network and in all its packages. It is then contended on behalf of the respondent that the petitioner discontinued the transmission of its signals on its network from 10 March 2014 without giving any disconnection notice and the action of the petitioner was, thus, in complete violation of clause 4 of the Interconnect Regulations.

From the Reply filed on its behalf it is evident that the only defence of the respondent is that the petitioner did not carry its channel as per the agreement between the two sides as regards its placement. The terms of the placement that are spelled out in the Reply, however, are not reflected in the Channel Placement Agreement.

The petitioner has filed a rejoinder to the Reply filed by the respondent. In the rejoinder it is stated that the petitioner never agreed to carry the channel of the respondent within the top seven in the news genre. It is further stated that before the execution of the agreement, emails were exchanged between the parties wherein the petitioner had clearly stated that it would not be placing the respondent's channel within the top seven news genre. The two emails that, according to the petitioner, form the basis of the agreement are annexed as

Annexure A. In the email from the petitioner to one Chandra Bhan, who was the head of distribution in the respondent company, it is stated that the channel would run in all the basic packages of SCOD. In reply, the mail by Chandra Bhan states as under:

“Dear bharat,

This is with reference to our discussion wherein the following points were discussed and agreed upon/

1. Deal for 12 months.
2. **P7 will be placed in Top 7 in news genre.**
3. Will be available in all packages.
4. Deal amount 60 lakhs annually.
5. **P7 will be available in all networks of Scod.**

Wrgds

Cb”

(emphasis added)

However, the points formulated as “agreed” in the above email, especially those at serials 2 & 5 are not stated in the agreement that followed. This is the state of pleadings and we now advert to the evidences led by the two sides.

The petitioner examined as its witness one Johnwin George Manavalan, who is an authorised representative of the petitioner company. Shri Manavalan fully supported the petitioner’s claim. In his deposition, he identified (i) the Channel Placement Agreement dated 23 March 2013 which was marked as Exhibit PW 1/2, (ii) the invoices raised by the petitioner that were marked as Exhibit PW 1/3 (Colly), (iii) the demand notices dated 19 December 2013 and 3 February 2014 that were marked as Exhibit PW 1/4(Colly), (iv) the emails sent

to the respondent as reminders for payment of placement charges dues that were marked as Exhibit PW 1/5 (Colly), (v) the statement of account that was marked as Exhibit PW 1/6 and finally the emails exchanged between the petitioners representative and Chandra Bhan that preceded the execution of the agreement and that were marked as Exhibit PW 1/7.

On behalf of the respondent, Chandra Bhan who is the head of distribution was examined as a witness. In paragraph 3 & 4 of his disposition he indeed supported the respondent's case and stated as under:

"3. I say that at the time of negotiations and execution of an agreement, the Petitioner specifically agreed to carry the channel of the Respondent within the top 7 channels in the news genre, to make the channel available on all its packages and to make it available on all its networks. These terms are recorded in my email to the Petitioner dated 23.03.2013 which the Petitioner has placed on record.

4. I say that despite agreeing to the afore-stated terms, the Petitioner failed to comply with these terms and conditions. In fact, after having made the payment to the Petitioner for the period ending on 22.09.2013, the Respondent became aware and realized that its channel was not being carried and placed by the Petitioner in terms of the agreement between the parties."

In his cross-examination, however, he accepted that the agreement that was in writing fully incorporated the understanding between the parties. The relevant extract from his cross-examination is as under:

"Q. I put it to you that the Agreement dated 23.03.2013 (from pg. 9-18 of the paper book) has been prepared by the Respondent incorporating the entire understanding between the parties.

A. Yes."

The admission of the respondent's witness actually puts an end to the defendant's case which in any event is not supported by the written agreement between the parties.

In course of submissions, Mr. Azmat Amanullah made a weak attempt to rely upon the email in which Chandra Bhan has enumerated the two conditions relating to the placement of the respondent's channel but those are plainly of no avail in view of the written agreement Exhibit PW 1/2 and the admission of Chandra Bhan in the cross-examination.

In light of the discussions made above, the un-escapable conclusion is that the claim of the petitioner must be allowed.

We, accordingly, allow the petition and direct the office to prepare a decree against the respondent in the sum of Rs.31,27,353/-. The decretal amount will carry interest at the rate 11% per annum from the date of filing of the petition till the discharge of the decree.



(Aftab Alam)  
Chairperson



.....  
(Kuldip Singh)  
Member



.....  
(B.B. Srivastava)  
Member

