

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL  
NEW DELHI

Dated 20 May, 2016

Broadcasting Petition No. 409 of 2013

Honey Sky Vision

...Petitioner

Vs

Sai Prasad Media Pvt. Ltd.

...Respondent

**BEFORE:**

**HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON**

**HON'BLE MR. B.B. SRIVASTAVA, MEMBER**

For Petitioner

: Mr. Surendra Kumar, Advocate

For Respondent

: None

**ORDER**

The petitioner, M/s. Honey Sky Vision, a proprietorship firm, is a Multi System operator (MSO); retransmitting signals of various Pay TV and FTA channels of different broadcasters to cable operators for further retransmission. The respondent, Sai Prasad Media Pvt. Ltd. is a broadcaster having its channel "News Express"; amongst others.

The petitioner seeks order/decree in its favour and against the respondent for an amount of Rs. 10,50,000/-, the outstanding amount due from the respondent as on date for carriage/placement of the channel "News Channel" on its TV network; along with interest @18%.

The case of the petitioner is that a channel placement agreement was executed between the petitioner and the respondent, at the behest of the respondent, for a period of 12 months beginning from 28.7.2011 and terminating on 27.7.2012. The consideration money, as per channel placement agreement, was Rs. 14 Lakhs plus service tax; and it was payable in four equal installments. In consideration of this amount the petitioner was supposed to place the respondent's channel "News Express" on "S" band. The petitioner has stated that it complied with all its obligations under the channel placement agreement by carrying/placing the channel of the respondent at the desired frequency/band to the complete satisfaction of the respondent. It is also stated that the representatives/officials of the respondent company regularly visited the network/units of the petitioner in various areas of Delhi. The petitioner has further stated that monthly invoices for placement of the channel and its carriage through the petitioner's network has been raised and provided to the respondent; which were duly received without any demur. The petitioner further states that inspite of placement and carriage of respondent's channel on the petitioner's network continuously, the respondent did not make payments; and as a consequence, an amount of Rs. 10,50,000/- plus service tax has become due on account of carriage fee/channel placement charges. It has also been stated that various

reminders, regarding payment of the aforesaid amount, to the respondent through letter/email were duly responded by the representatives/officials of the respondent company interalia stating about making the payment of the outstanding dues. The petitioner has averred that it sent a notice through its counsel, for payment of outstanding due, on 22.8.2013; without any result. The petitioner has annexed two documents in support of its contention viz channel placement agreement (Annexure P1) and notice through its counsel (Annexure P2). A Photostat copy of proof of dispatch through Overnight Express Limited has also been annexed, though not marked.

The respondent appeared and filed its reply on affidavit dated 19.3.2014. The respondent flatly denied that it ever approached the petitioner for placement of its channel "News Express" on the petitioner's network. The respondent had also averred that the petitioner repeatedly failed to fulfill its obligation in compliance with the stipulation in the channel placement agreement. It has also stated that, inspite of this, payment for three quarters were made by the respondent; and only the amount due for the last quarter has not been paid on account of petitioner's failure to ensure quality of transmission as well as continued availability of the channel "News Express" on its network. The respondent has annexed a document provided by Chrome Data and Analysis Media, claiming that it is an independent agency whose

report is relied upon throughout the country as it cannot be tampered with. The respondent has also annexed a tabular statement regarding payments made to the petitioner for three quarters amounting to Rs. 11,09,150/-. The two documents are annexed as Annexure R1 and Annexure R2.

The petitioner in its rejoinder has denied each and every allegation, averments and submissions in the reply on the ground that the reply of the respondent is neither specific nor the version of the respondent is supported by meticulous reasoning. In the rejoinder, the petitioner has also questioned the bonafide of Mr. Rajesh Kumar, S/o. Shri Ram Naresh Singh, purportedly Assistant Manager of the respondent company, to swear and file affidavit on behalf of the respondent. It has been stated that there is no authorization on behalf of the respondent company to Mr. Rajesh Kumar to swear and file reply on behalf of the respondent company. The petitioner has reiterated that execution of the placement agreement was, on the basis of consensus between both parties. It has also denied the allegation that it failed to show the channel "News Express" on its network; and has stated that there was never any email or any other form of correspondence either verbal or written to support the claim of the respondent regarding taking up the matter of placing the channel regularly on petitioner's network or about the quality of transmission. While denying the authenticity of the channel mapping

document issued by Chrome Data Analysis Media, in absence of any signature and/or stamp of the said organization; the petitioner has annexed a channel mapping document claiming that the channel "News Express" had been placed without any disturbance in the last quarter of the agreement i.e. 28.4.2012 to 27.7.2012. The petitioner has also claimed that it had carried and placed the channel "News Express" even after expiry of the agreement period i.e. beyond 27.7.2012 till October, 2012. This document is annexed as Annexure P3.

It is worthwhile to note that, during the currency of the proceeding before the Tribunal after framing of issues and filing of petitioner's evidence on affidavit followed by cross examination of the petitioner's witness by the respondent's counsel; the respondent has repeatedly failed to appear and has not produced any evidence on its behalf to support and prove its contention. In view of this fact, the matter was directed to proceed ex-parte on 7.1.2016.

In view of the above we now proceed to examine the pleadings, supporting documents and evidences produced by the petitioner on affidavit along with cross examination of the petitioner's witness.

It is noteworthy that the channel placement agreement annexed with the petition does not bear signature of the respondent; nor does it indicate as to when it was signed even by the petitioner. Secondly, notwithstanding averment by the petitioner regarding raising/providing monthly invoices no

copy of any invoice has been annexed with the petition. In course of his cross examination, the petitioner's witness, the sole proprietor himself, has made statement as reproduced hereunder: -

"Q.6: Is it correct that no invoices have been raised on the respondent claiming any amount?

A: It is incorrect.

Vol. We have given 4 invoices of 4 quarters to the respondent.

Q7: Is it correct that you have not filed any invoices along with the Petition?

A: It is correct.

Vol. Since we have already provided the hard copies of the invoices to the respondent and hence there is no question of filing this along with the petition.

Q8: Is it correct that since there was no invoices raised and hence it is not filed on record?

A: It is incorrect."

In fact the information volunteered by the petitioner's witness that: -

"Since we have already provided the hard copies of the invoices to the respondent and hence there is no question of filing this along with the petition."

is completely unacceptable.

In addition no statement of account has been furnished by the petitioner in support of its contention regarding the outstanding dues of Rs. 10,50,000/-+service tax. The petitioner's witness in this regard has stated as follows during his cross examination:

"Q9: is it correct that neither any statement of account has been filed on record nor given to the respondent?

A: Yes

Q10: Is it correct that since there was no statement of account ever raised and hence it is not filed on record?

A: I do not know what statement of account is and hence I cannot answer this question."

Although the respondent has also annexed a tabular statement in its reply on affidavit about having made payments for three quarters amounting to Rs. 11,09,150/- (Annexure R2); this document too seems unreliable. In view of absence of any document purported to be authentic copy of invoice issues/raised as well as authentic statement of account the claim of due amount i.e. 10,50,000/- plus service tax seems doubtful and suspect. It is also worth mention that the channel mapping document annexed by both petitioner as well as the respondent (Annexure P3 and Annexure R2) are unacceptable as none of these two documents bear either any signature or any stamp of issuing authority; besides non availability of any material about the authenticity as well as mandate to the issuing authority to generate and produce such channel mapping documents.

In view of foregoing facts we find that the whole exercise of execution of channel placement agreement and subsequent behavior of petitioner as well as the respondent is completely opaque and ambiguous to say the least and hence non maintainable. While the petitioner has failed to produce any invoice which it might have raised/provided to the respondent as also any authentic statement of accounts which would depict clearly the due amount of Rs. 10,50,000/- plus taxes; the

respondent has claimed to have made payments for three quarters, but produces a document whose authenticity is completely doubtful. In view of these facts it is not possible to determine even the exact due amount, if any.

In view of above facts and circumstances, we disallow the petition.

There will be no order as to costs; being an *ex-parte* matter.

(Attab Alam)  
Chairperson



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

/NS/