

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 17 May, 2016

Broadcasting Petition No.389 of 2015

Intermedia Cable Communication Pvt. Ltd. ...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. Navin Chawla, Advocate
Mr. Anurup Narula, Advocate
Mr. Anurag Sharma, Advocate

For Respondent : None

ORDER

The petitioner, Intermedia Cable Communication Pvt. Ltd., seeks recovery of Rs.37,92,150/- towards carriage/placement charges for the period 20.5.2014 to 19.2.2015 along with interest at 18% per annum from M/s. Sai Prasad Media Pvt. Ltd., the respondent.

The petitioner is a Multi System Operator (MSO) and operates a digital addressable system (DAS) in the city of Pune. The respondent is a broadcaster of a channel "News Express" within the meaning of Interconnect Regulations. It is the case of the petitioner that a carriage/placement agreement was executed on 15.9.2013 for the period 20.5.2013 to 19.5.2014 with the respondent for carrying the channel "News Express" on the petitioner's network and placing the same in digital mode in the territory of Pune. The consideration money, payable in 4 equal installments in advance, was Rs. 45 Lakhs (Annexure P2). It is also the case of the petitioner that it sent an email dated 2.5.2014 to

one Mr. Amit Tripathi at email address – amit.tripathi@newsexpresstv.net to the effect that the aforesaid agreement was going to an end by efflux of time. It was also informed that an amount of Rs.12,64,050/-, the amount due for the last quarter, needed to be paid at the earliest (Annexure P3). The aforementioned contents were repeated vide further two emails dated 8.5.2014 and 17.5.2014. Mr. Amit Tripathi, vide his email dated 19.5.2014 sent from email ID amit.tripathi@newsexpresstv.net, assured the petitioner about payment of Rs.12,64,050/- by the end of that week and made a request regarding continuation of the carriage of the respondent's channels as the respondent intended to finalize the terms and conditions of the new deal before the month end (Annexure P4 colly).

Further to this, two more emails were received from the respondent, both dated 1.7.2014 requesting for invoice for the last quarter apropos first agreement and the other attaching the MoU for the year 2014-2015 (Annexure P5 colly).

The petitioner has stated that it dispatched the original MoU for the year 2014-2015 along with first quarter invoice through the First Flight Courier on 8.8.2014. The copy of the MoU and the email dated 8.8.2014 have been annexed at Annexure P6 and Annexure P7 respectively. The MoU stipulated carriage and placement of the channel "NEWS EXPRESS" on the petitioner's network in the city of Pune for the period of 20.5.2014 to 19.5.2015 for a consideration of Rs. 45,00,000/- excluding service tax. Subsequent to this there have been exchange of communications between the petitioner and the respondent regarding non-receipt of MoU by the respondent as well as the invoice and the petitioner's response regarding dispatch of MoU and the invoice as well as scanned copy of the proof of delivery of First Flight Courier regarding the MOU and invoice at the address of the respondent (Annexure P8, P9 and P10 colly). The petitioner has averred, that inspite of all these

communications as well as assurance on behalf of the respondent by one Mr. Rajesh Kumar regarding effecting payment; the dues were never settled; prompting the petitioner to request again, vide letter dated 4th August, 2014, to Mr. Amit Tripathi, COO of the respondent firm. This communication has been pursued through reminders vide email dated 18.11.2014 and letters dated 22.11.2014 and 30.12.2014 (Annexures P11 and P12 colly). These communications are addressed to Mr. Rajesh Kumar (Distribution), Mr. Amit Tripathi (COO) and MR. Prasoon Shukla (CEO) of the respondent company.

The petitioner has annexed invoices for the period 20.5.2014 to 19.8.2014, 20.8.2014 to 19.11.2014 and 20.11.2014 to 19.12.2015 amounting to a total of Rs.37,92,150/-. A statement of account has also been annexed by the petitioner (Annexure P15). Failing in his attempt to persuade the respondent to pay the due amount by way of carriage /placement charges a legal notice was also served to the respondent vide speed post dated 4.2.2015 (Annexure P14).

There has been no appearance on behalf of the respondent in this matter and consequently it was directed on 22.10.2015 that the petition shall proceed *ex-parte*. The petitioner was directed to file its evidence on affidavit and to produce the deponent for the examination. The petitioner filed its evidence on affidavit through Mr. Shyam Sunder Pappu working as Senior Executive in the petitioner company; and his examination in chief was completed before Advocate Commissioner on 27.1.2015. The petitioner's witness has formally identified the aforesaid documents annexed with the petition.

In view of the forgoing, it is pertinent to examine the case of the petitioner apropos the documents and the evidence adduced in their support.

It is worth mention that the carriage/placement agreement between the petitioner and the respondent has been signed by the petitioner only. However, it is also pertinent to mention that the respondent has all along accepted the existence of arrangement with the petitioner for carriage/placement of its channel "News Express". In addition the respondent has also stated through emails about its intention to pay the carriage/placement charges raised through invoices by the petitioner. Hence notwithstanding the fact that the respondent choose not to present its case before the Tribunal, it is evident that it has admitted the existence of a written arrangement with the petitioner for carriage/placement of its channel and its commitment to pay in lieu thereof.

Accordingly, we allow the petition and the respondent is directed to pay an amount of Rs. 37,92,150/- along with interest @ 8% per annum from the date of filing of the petition till the amount is finally paid to the petitioner.

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



(Aftab Alam)
Chairperson

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

/NS/