

decree in its favour and against the respondent for recovery of an amount of Rs. 34,45,120/- along with interest @ 18%. The respondent - Sai Prasad Media Pvt. Ltd. is a broadcaster as per Clause 2(e) of the aforesaid regulation and engaged inter alia in managing television channel "News Express".

The respondent in this matter, after completion of pleadings and framing of issues, has not been appearing on successive dates. In fact on 7.10.2016, Mr. Vikram Slingh, learned counsel for the respondent appeared and sought discharge in the matter; stating that he is not getting instruction from the respondent. However, the respondent did not appear in spite of second notice as well including *dasti*.

The petitioner prayed for substitution of Mr. Amit Kumar as its witness in place of Mr. Anjani Kumar on account of the later not joining the organization post an accident after filing the evidence on affidavit on behalf of the petitioner. This was allowed on 7.11.2016. In view of continued absence of the respondent another notice including *dasti* was issued against the respondent; and taking cognizance of the fact regarding non-appearance of the respondent, in spite of this notice, the matter was directed to proceed *ex-parte* on 7.12.2016.

It is the case of the petitioner that he entered into a channel placement agreement on 17.8.2012 valid from 17.8.2012 to 16.8.2013 for placement of respondent's channel "News Express" at specified frequency in the areas defined in Annexure – A of the agreement. The quarterly placement fee to be paid by the respondent was fixed at Rs. 48 Lakhs (excluding taxes). This was followed by another agreement dated 19.9.2013, for the period of 1.8.2013 to 31.07.2014 at the rate of Rs. 40,00,000/- per quarter (plus applicable taxes). The petitioner pleads that it fulfilled its obligations regarding placement of respondent's channel and continued to raise invoices timely. However, according to the petitioner, respondent continuously defaulted in fulfilling its obligations with regard to payment of channel placement fee. Besides, he did not respond as well to communications from the petitioner for payment of the outstanding channel placement fee. Consequently vide email dated 3.3.2014, the respondent was informed to pay Rs. 34,45,120/- as outstanding channel placement charges till 01.03.2014.

The respondent in its reply has not disputed the amount as such, However, it says that the channels of the respondent were not appropriately placed by the petitioner during the term of the agreement; and hence there is neither any need nor any occasion to pay the agreement amount. In support of

this contention, the respondent has annexed a copy of a report termed as “Chrome Report”; an agency expert in ascertaining the placement of channels, according to the respondent.

The petitioner in its rejoinder has reiterated its stand and claimed that the details of the carriage/placement agreement of placement of “News Express” was mutually agreed and executed and the outstanding amount of Rs.34,45,120/- till 01.03.2014 is based entirely on performance of its obligations by the petitioner and invoices raised in this regard. The petitioner also pleads in its rejoinder that the respondent never raised the issue of incorrect or non-placement of its channels on the petitioner’s network nor took steps in terms of its rights under the channel placement agreement. In so far as the “Chrome Report” is concerned, it is the case of the petitioner that it is inadmissible and legally not valid being undated, untitled and unsigned; besides not being supported by the requisite affidavit as required under Section 65 (B) of the Indian Evidence Act. It is, further the case of the petitioner that it fulfilled its obligations of placing respondent’s channels on its network in specified frequency and in areas as mentioned in Annexure –A of the agreement. It has supported its contention further through reiterating the location, network and Head-end name and address thereof {para VIII (G)} of the

rejoinder. It also states in its rejoinder that after filing the petition on 01.03.2014, in view of invoice for the period 01.05.2014 to 31.07.2014 for an amount of Rs. 11,23,500/-; the total outstanding comes to Rs. 45,68,720/-.

The pleadings of the petitioner have been supported by its witness in its evidence of affidavit and stated that subsequent to the filing of the petition another invoice for Rs. 11,23,600/- has been found unpaid for the period of 1.5.2014 to 31.7.2014 and accordingly a decree in favour of the petitioner and against the respondent has been sought for an amount of Rs. 45,68,720/-. The petitioner's witness has not been cross examined.

Now we examine the facts in the pleadings, documents annexed with the petition, reply of the respondent and rejoinder of the petitioner and evidence on affidavit.

It is a fact that the petitioner and respondent had two consecutive channel placement agreements valid for 17.8.2012 to 16.8.2013 and 1.8.2013 to 31.7.2014. The petition was filed on 7.3.2014 i.e. during the currency of the second channel placement agreement and outstanding as on 1.3.2014, as claimed by the petitioner was Rs. 34,45,120/-. Subsequently in its rejoinder,

the petitioner has claimed that vide invoice dated 7.7.2014 for the period between 1.5.2014 to 31.7.2014 another Rs. 11,23,600/- becomes due; thereby the total outstanding amount comes to Rs. 45,68,720/-. It has annexed a Statement of Account (Annexure P-10) to the rejoinder substantiating its claim. This has been supported by petitioner's witness Mr. Amit Kumar, General Manager of the petitioner company. It is also a fact that the respondent in its reply has never pleaded against the amount outstanding, its sole defence has been non placement of the channel or its faulty placement. However, it never appeared to cross examine the petitioner's witness nor to defend its counter claim with regard to the amount outstanding. In so far as the respondent's reliance on "Chrome Report" is concerned; it is not possible to decipher as to what does it wish to convey. Besides being unsigned and not even indicating the name of the agency which prepares this report as well as authority according to which its report can be treated as an admissible evidence; it is not possible to consider this document as a proper defence in so far as respondent is concerned. In this situation we feel inclined to come to the conclusion that petitioner's claim of the outstanding amount i.e. Rs. 45,68,720/- for placement of carriage charges is admissible; and requires to be paid by the respondent.

Accordingly we direct that a decree be issued in favour of the petitioner and against the respondent for an amount of Rs. 45,68,720/-. We direct that this decretal amount shall be paid to the petitioner within three months from today. In the event of nonpayment within this period, the respondent will be liable to pay a simple interest @ 8% from the date of judgment till the date of payment of the afore-stated amount.

There will be a consolidated cost of Rs. 50,000/- payable by the respondent to the petitioner.

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(S.K. Singh, J)
Chairperson

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(B.B. Srivastava)
Member

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(A.K. Bhargava)
Member

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