

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI  
Dated <sup>2<sup>nd</sup> November</sup> ~~October~~, 2017 *At*

Broadcasting Petition No. 425 of 2013

Indusind Media and Communication Ltd, Mumbai .....Petitioner  
Versus  
M/s. Sai Prasad Media Pvt. Ltd. Noida U.P. ....Respondent

BEFORE:

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON  
HON'BLE MR. B.B. SRIVASTAVA, MEMBER  
HON'BLE MR. A.K. BHARGAVA, MEMBER

For Petitioner : Ms. Vandana D. Jaisingh, Advocate  
For Respondent : None

ORDER

**By A. K. Bhargava, Member** - The petitioner is a Multi System Operator while the respondent is the exclusive owner or has been exclusively authorized to distribute the channel known as "News Express" (referred to as channel hereinafter). Petitioner has been carrying the said channel of the respondent on its network and raising the invoices from time to time. On default in payment, the petitioner issued a demand notice dated 11-11-2013 calling upon the respondent to pay the dues, but to no avail. Aggrieved by this, the petitioner has filed this petition on 02-12-2013, seeking the following relief;

(a) *The respondents be ordered and directed to pay to the petitioner outstanding dues amount of Rs. 3,89,79,550/- (Rupees Three Crores Eighty Nine Lakhs Seventy Nine Thousand Five Hundred Fifty only) inclusive of interest till 31<sup>st</sup> October 2013 with further interest @ 18% p.a. compounded per month from date of default till realization.*

(b) Direct the respondent to deposit the sum as stated in prayer (a) in this Hon'ble Tribunal pending disposal of present petition.

The petition has been filed within limitation period.

Due to non-appearance of the respondent, the matter has proceeded *ex-parte*.

The parties had executed an agreement dated 5-8-2012 to retransmit/carry the channel on petitioner's network in Delhi with effect from 16-07-2012 to 15-07-2013. Further the respondent has also executed a carriage agreement dated 14-03-2013 for a period from 18-03-2013 to 17-03-2014 for various areas including Delhi, in which there is an overlapping period from 18-03-2013 to 15-07-2013 only for Delhi which was inadvertently not realized by either of the parties. As per the petitioner, he has issued a credit note of Rs. 33,24,625/- to the respondent which is reflected in the statement of account (Annexure P-1). As per the agreement dated 14-3-2013, the respondent was liable to pay Rs 2,50,00,000/- plus taxes for placing its channel on petitioner's network through his headends in Delhi, Mumbai and other analog and digital headend specified in Schedule B of the agreement. The placement charges were to be paid in two installments as specified in Schedule C of the said agreement.

As per the evidence tendered by the petitioner, the respondent has availed of its services till the respondent's signals were deactivated on 12-08-2014. Since this has not been controverted, we accept that the signals were deactivated on 12-08-2014.


In support of his claim, the petitioner has submitted a statement of account, showing a total outstanding as on 31-10-2013 to be Rs. 34,063,016 and an interest amount of Rs. 49,16,514 has also been shown (claimed to be calculated @18% on monthly compounding basis). Petitioner has further submitted an affidavit on 14-09-2017, which contains some additional documents including a copy of MoU dated 28-07-2011 for placement through to 28-07-2011 for deal value

of Rs. 4.4 Cr. and a revised statement of account. The MoU dated 28-07-2011 supports the entries in the statement of account starting from 25-07-2011. The revised statement of account as on 20-05-2014 however, adds an increased interest amount of Rs. 75,73,581 to make the total claim as 4,16,36,617/-. In the evidence given by the petitioner, this claim is further enhanced to Rs. 4,63,65,985 as on 12-08-2014, on account of further interest.

At this stage we note that the respondent has alleged in his reply that his channel remained completely off the network w.e.f. 18-03-2013 to 30-06-2013 and it was placed only w.e.f. 01.07.2013. For that purpose, a MoU was signed dated 26-07-2013 extending the validity from 17-03-2014 to 30-06-2014. This has been admitted by the petitioner. Thus channel was not placed when it was supposed to be placed as per agreement, though remedial relief was provided by way of extending future validity. Apart from this, the respondent has alleged that services of the respondent throughout remained unsatisfactory and the channel went off the network on regular intervals causing him huge losses. Some documents giving specific details have also been annexed with the reply. Petitioner has of course denied these allegations in the rejoinder. The respondent also claims deduction of amount proportionate to the period when the channel remained off on the petitioner's network as per the report of Data Chrome (Annexure R3). This claimed deduction is to the tune of Rs. 1,23,75,744 and amount to be paid as shown by the respondent in this annexure is Rs. 40,93,423 subject to reconciliation. In its evidence, the petitioner states that this report can't be relied upon since Chrome Data is not a government entity. We find no requirement that such a report has to be from a government entity. However, there is no supporting evidence also towards contention of respondent's claim for specific deductions. In view of this we can only say that both sides have erred in performance to some extent; petitioner in maintaining timely and uninterrupted supply and respondent in its duty towards full and timely payment. In view of this, we do not find claim of the petitioner towards interest justified and disallow it. However, the claim of the petitioner as per the agreements and as stated in the statement of account (after taking into account the

payments and credit given and discarding the interest component), which amounts to Rs. 3,40,63,036 (Three Crore Forty Lakh Sixty Three Thousand and Thirty Six only), is allowed. Respondent is granted one month from today to make this payment; failing which he will be liable to pay 8% per annum simple interest on the sum allowed till the date of realization.

Petition 425(C) of 2015 is allowed in above terms. A decree may be drawn accordingly.

  
**(S.K. Singh, J)**  
Chairperson

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

  
**(A.K. Bhargava)**  
Member

